

13227

No. _____

Supreme Court of Illinois

Davis

vs.

Ransom et al

STATE OF ILLINOIS,

SUPREME COURT,

Third Grand Division.

No. 61.

Dano
vs
Bates

Ransom

SUPREME COURT OF ILLINOIS.

WILLIAM DAVIS,
Plaintiff in Error,

vs.

JONATHAN H. RANSOM, AND
JOSHUA H. BATES,
Defendants in Error.

RECORD PAGE.

ABSTRACT OF RECORD.

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This was an action of Replevin brought by Ransom and Bates in the Ogle Circuit Court against Davis, to recover a stock of goods from the possession of the defendant, and they file their *plaint*, sworn to by Henry A. Mix, in which he swears "for and in behalf of" the plaintiffs, that the plaintiffs are the owners of the goods, as mortgagers under a certain chattel mortgage, made by one Edmund P. Sexton to them, hereinafter set forth.

3, 4

Plaintiffs file their security for costs, made and executed by H. A. Mix, and also their replevin bond, made and executed by Ransom and Bates, "by H. A. Mix, his attorney hereto duly authorized," and also executed by Henry A. Mix, as security.

6

The replevin writ is returned by the sheriff, as executed, by replevying and delivering the goods into the possession of plaintiffs' agent, H. A. Mix.

7, 8

Plaintiffs, by H. A. Mix, as their attorney, file their declaration in the *detinet*.

The defendant claimed to hold the goods, as the custodian of the U. S. Marshal, by virtue of a levy under an execution from the U. S. Court

against the goods of said Sexton, issued upon a judgment in favor of Cummings, Collins, Seaman, and Slate; and pleaded, by Higgins and Thompson, his attorneys,

8 1st. The general issue.

9, 10 2nd. That the goods were the property of Sexton, and not the property of the plaintiffs—the recovery of a judgment at the April term, 1855, in the U. S. Court, Northern District of Illinois, in favor of Thomas A. Cummins *et al.* against Sexton for \$2,452.70—the writ of execution on said judgment, issued April 26, 1855, against the property of said Sexton, for said sum, to the marshal of said district—the levy, by Michael Regan, then and there being deputy U. S. Marshal, duly authorized and appointed to execute said writ, made April 27, 1855, on the said goods, and the placing the goods in the hands of defendant Davis as custodian; concluding with verification.

11 3rd. That the goods were the property of Sexton, and not the property of the plaintiffs; concluding with verification.

12 The plaintiffs, by H. A. Mix, attorney, at the May term, 1856, add *similiter* to general issue, and reply, 1st, to defendant's *second* plea, *precludi non*, because the goods were the property of plaintiffs, and not the property of Sexton—concluding to the country; and 2nd, to defendant's *third* plea, *precludi non*, because the goods were the property of the plaintiffs, and not the property of Sexton—concluding to the country;
13 with similiter added.

Leave is granted at the said May term, 1856, to plaintiffs, to file double replications to defendant's pleas.

14 At the May term, 1856, a trial was had, and verdict rendered by the jury for the plaintiffs. Motion for new trial entered and overruled.

15 At the October term, 1857, the cause was again placed on the docket on motion of Thompson & Sweet, defendant's attorneys, and in conformity with the order of the Supreme Court, (reversing judgment and remanding cause.)

16 On motion of Mix, plaintiffs' attorney, at the June term, 1858, leave was granted to plaintiffs to file a new replication.

17 Plaintiffs, at said June term, by Mix & Heaton, attorneys, file new replication to defendant's *second* plea, as follows:

1st. They reply further, *precludi non*, because they say that the said Regan, in said plea named, was not a deputy Marshall of the U. S., duly authorized and appointed as alleged—concluding to the country; with similiter added by plaintiffs.

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2nd. Further reply, *precludi non*, because there was not any such judgment in the U. S. Court as alleged—concluding to the country; with similiter added by the plaintiffs. And

3rd. Further reply, *precludi non*, because there was not any such execution as alleged—concluding to the country; with similiter added by plaintiffs.

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Defendant, by Sweet & Thompson, his attorneys, files a general demurrer to replications of plaintiffs, *thirdly, fourthly, and fifthly* above pleaded.

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At the October Term, 1858, the following order was entered, viz.:

"Jonathan H. Ransom, and Joshua H. Bates, vs. William Davis.	}	Replevin.
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This day come the plaintiffs, by Mix & Heaton, their attorneys, and the defendant, by Sweet & Dutcher, his attorneys," and now comes on to be heard, "the plaintiffs' replications to the defendant's pleas herein, and after argument of counsel, and the court being fully advised in the premises, it is ordered, that the said replications be overruled; and now to try the issues, herein come the jurors," etc.; recites the empanneling of jury; trial; verdict for plaintiffs; motion for a new trial and in arrest.

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The motion for new trial was overruled, judgment rendered on the verdict, and bill of exceptions filed.

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On the trial, the plaintiffs introduced Edmund P. Sexton as a witness, by whom they proved the making and delivery of the instrument in writing, of which the following is a copy, viz.:

22-27

(Copy of Mortgage from E. P. Sexton.)

"Whereas, I, Edmund P. Sexton, of the village of Oregon, county of Ogle, and State of Illinois, am justly indebted to James G. Manlove in the sum of six hundred and forty-four dollars; to J. H. Ransom & Co., about the sum of nine hundred and sixty-six dollars; to Bates, Taylor & Co., about the sum of six hundred dollars; to Cummings, Collins & Seaman, about the sum of twenty-four hundred dollars; to Hoppick & Moodey, about five hundred dollars; to Bridge and Shepherd, the sum of one hundred and eleven dollars; to Levee & Lauendick, four hundred and seven dollars; Lyman Cook & Co., one hundred and twenty-nine dollars; Blume, Palmer & Steult, three hundred and thirty dollars; Griffin & Titus, five hundred and two dollars. And whereas, I am unable to pay or discharge said debts without further time, and being desirous to secure the payment of the same, therefore, this indenture witnesseth, that I, Edmund P. Sexton, party of the first part, and J. H. Bates, and J. H. Ransom, of the city of New York, parties of the second part, that the said party of the first part being so justly indebted to the several persons before named, in the several sums mentioned above, amounting to the sum of six thousand two hundred and ninety-seven dollars, for and in consideration of the same, and for the purpose of securing the payment thereof, have granted, bargained, sold and mort-

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gaged, and by these presents, do grant, bargain, sell and mortgage, unto the said J. H. Bates and J. H. Ransom, parties of the second part, all the goods, chattels and personal property belonging to the party of the first part, and now in his possession in the building known as Entyre's buiding, that part now occupied by the party of the first part in the village of Oregon, county of Ogle, and State of Illinois, said property to include all the merchandise and stock in trade, consisting of thirty pieces of Broadcloths, Cassimeres and Satinets; thirty pieces of Gingham; three hundred pieces of Prints; thirty pieces of Alpacas; twenty pieces of Dress Goods; twenty pieces of Ribbons; fifty pieces of Shirting; a quantity of Sheeting; twenty pieces of Cambric; four pieces of Velvet; five pieces of Silks; sixty over and under Coats; thirty pair of Pants; thirty Vests; twelve cases of Boots; one hundred pair of Shoes; fifty pair of Brogans; a quantity of Groceries; a quantity of Hardware; a quantity of Crockery; together with all and every article of merchandise of whatever kind and description now of said stock, to have and to hold all and singular the said goods, wares and merchandise, hereinbefore granted, bargained and sold, or mentioned, or intended so to be, unto the said parties of the second part, their executors, administrators and assigns, to the only proper use and benefit of the said parties of the second part, their executors, administrators and assigns forever. Provided always, and these presents are on this condition, that the said party of the first part, his executors or administrators, shall and do well and truly pay, or cause to be paid, unto the said parties of the second part, their executors, administrators or assigns, the several sums of money due to each of said persons before mentioned, with seven per cent. interest thereon, to be paid as follows, to wit: the said sum specified to be paid first to J. G. Manlove, the said sum second to be paid to J. H. Ransom & Co., the said sum specified third to Bates, Taylor & Co., and fourth to pay the others, the other said several sums *pro rata*, hereinbefore mentioned, the payment of all said several sums to be paid within fifteen months from the date, or sooner if the proceeds of sale of said goods, wares and merchandise, will enable the party of the first part to do so. It is hereby provided, by and between the parties to this mortgage, that the said Edmund P. Sexton, party of the first part, shall have and retain possession of all the goods, wares and merchandise hereby mortgaged, for the purpose of selling and disposing of the same in the usual course of trade, as heretofore followed, to sell for ready pay only, for the purpose of paying and discharging the said several debts as before mentioned, and for no other purpose; and that the said party of the first part, shall well and faithfully pay over to the parties of the second part, all the money and avails of the sales, every thirty days after the date hereof, or oftener if he choose so to do, for the purpose of paying said debts, as before mentioned; and it is also provided and agreed by the parties to the mortgage, that the party of the first part shall not remove said goods and merchandise from the village of Oregon, where they are now situate, without the consent of the parties of the second part, their agent or attorney. And it is also provided and agreed between the parties to this mortgage, that if default be made in the payments as aforesaid, or in case the party of the first part neglects to pay over, as herein provided, the avails of the sales of said goods and merchandise to the said party of the second part, their agent or attorney, as before provided, or in case the said party of the first part shall do any thing or act, whereby, in the opinion of the parties of the second part, their agent or attorney shall consider this security in danger, then and in that case it shall and may be lawful for the said parties of the second part, their agent or attorney, or assigns, executors or administrators, shall have the right to take possession of the said goods and merchandise hereby mortgaged—(and all the goods and merchandise which may be hereinafter purchased by the party of the first part,) wheresoever the same may be or can be found, and sell the same at best price for cash which can be obtained, and from the sales pay and discharge the said several sums before mentioned, which may remain unpaid or unsatisfied; and in case there shall be more than sufficient to pay the same, the remainder shall be returned to the said party of the first part, after paying all costs and charges in the premises. It is also further provided, that in case the party of the first part

shall well and faithfully perform the conditions of this mortgage on his part, pay and discharge the said several debts as before mentioned, at the time and in the manner before specified, then these presents and every matter and thing herein contained, and this mortgage, shall be cancelled and delivered up.

In witness whereof, the party of the first part has hereunto set his hand and seal this fifth day of our Lord one thousand eight hundred and fifty-five.

(Signed,)

EDMUND P. SEXTON. [SEAL.]

Witness, DAVID S. PRIDE.

This Mortgage was acknowledged before me by Edmund P. Sexton, this 5th day of March, A. D. 1855

DAVID S. PRIDE, J. P. [SEAL.]

27 Which said instrument was recorded in the Recorder's office, Ogle county, March 5, 1855. And thereupon the said plaintiffs offered said instrument in evidence; to the reading of which to the jury, defendant objected, which objection was overruled, and said instrument was allowed to be read to the jury; to which ruling, defendant excepted.

28, 29 Plaintiffs further proved by said Sexton, that at the time of the making said instrument in writing, E. S. Smith, the attorney and agent of the plaintiffs, took possession of the goods described therein for the plaintiffs, and employed witness, as provided for in said instrument, to sell said goods, directed witness to get out handbills, and before the handbills were got out, the goods were levied upon by a person purporting to be a deputy Marshal; that at the time said writing was made, and also at the time of the levy by said Marshal, the goods were in a store in Oregon, Ogle county; that witness was a merchant selling goods in said store at the time of making said writing; that after making the same, witness continued to sell goods, and was in the possession of the same till they were levied on by the Marshal; that he did not change his sign after making said writing; that after the making said instrument, and before the goods were levied on by said Marshal, witness sold some of the goods in the writing mentioned, and paid proceeds to H. A. Mix, the attorney of the plaintiffs; that the plaintiffs resided in New York; that after the said instrument was made, witness replenished said stock of goods by purchases made by witness of pedlars; that the goods in the writing mentioned were the same goods taken by the deputy Marshall, and by the Marshal delivered to Davis, the defendant, and the same replevied in this suit; that the proceeds of the sales paid over to Mix, was \$644. Witness said that Smith took possession of the goods about the middle of April.

29 The said plaintiffs, further to prove the issue on their part, produced, and caused to be sworn, Henry A. Mix, and the defendant, by his counsel, objected to said Mix being examined as a witness, which objection was overruled by the court, and the defendant did then and there except to the ruling of the court in overruling the said objection, and allowing said Mix to be examined as a witness. Plaintiffs proved by said Mix

that the defendant was in possession of the goods at the time they were replevied, and that, as the agent of the plaintiffs, he (Mix) demanded the goods of the defendant before this suit was commenced.

30 The plaintiffs here closed their evidence, and the defendant, to prove
the issue on his part, produced and offered in evidence a writ of execu-
tion from the U. S. Court, Northern District of Illinois, in favor of
Thomas A. Cummings *et al.*, against the property of said Sexton, dated
33 April 26, 1855, for \$2,452.70, and directed to the marshal of said
district. Also the levy by virtue of said execution, made April 27,
1855, by Harry Wilton, U. S. Marshal, by Michael Regan, deputy, on the
33-44 said stock of goods, with inventory thereof in detail, and the return of
said execution, setting forth that on the 10th day of May, 1855, the
sheriff of Ogle county took the stock under replevin writ—copies of
which said execution, levy and return, are given in full in record. To
the reading of which said execution, levy and return, to the jury, the
plaintiffs did object; which objection was sustained by the court; to
which ruling of the court in refusing to allow said execution, levy and
return to be read to the jury, the defendant excepted.

This was all the evidence in the case.

45 Thereupon the plaintiffs, by their counsel, asked the court to give to
the jury the following instruction, to wit: "The plaintiffs ask the court
to instruct the jury that the chattel mortgage offered in evidence, if the
plaintiffs took possession under it, is good and valid as between plaintiff,
the maker, Sexton; and in the absence of all other proof, entitles the
plaintiffs to recover." Which said instruction the court gave; to the
giving of which instruction, the defendant, by his counsel, did then and
there except.

The jury rendered a verdict for the plaintiffs.

Defendant enters motion for a new trial, which was overruled by the court. Defendant excepts to such ruling, and files bill of exceptions; brings the case into this court, and assigns the following errors in the record, viz:

1. The court erred in admitting the instrument in writing, or chattel mortgage, to be read to the jury.
2. The court erred in allowing Henry A. Mix to be sworn as a witness before the jury.
3. The court erred in allowing the case to be tried, without disposing of the defendant's demurrer.
4. The court erred in allowing the case to be tried without an issue joined on defendant's second and third pleas.
5. The court erred in rejecting from the jury the evidence offered by defendant.
6. The court erred in giving the plaintiffs' instruction to the jury.
7. The court erred in overruling motion for new trial,—because, *First*, The verdict is against the law, and *Second*, The verdict is against the evidence.

GEO. W. THOMPSON and M. P. SWEET,

For Plaintiff in Error.

~~262~~ 61
Supreme Court
William Davis
Plff in error

Ransom & Bates
Defts

8 Abstracts

Filed April 26, 1860
L. L. Lacy
clerk

SUPREME COURT OF ILLINOIS.

WILLIAM DAVIS,
Plaintiff in Error,
vs.
JONATHAN H. RANSOM, AND
JOSHUA H. BATES,
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ABSTRACT OF RECORD.

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shall well and faithfully perform the conditions of this mortgage on his part, pay and discharge the said several debts as before mentioned, at the time and in the manner before specified, then these presents and every matter and thing herein contained, and this mortgage, shall be cancelled and delivered up.

In witness whereof, the party of the first part has hereunto set his hand and seal this fifth day of our Lord one thousand eight hundred and fifty-five.

(Signed,)

EDMUND P. SEXTON. [SEAL.]

Witness, DAVID S. PRIDE.

This Mortgage was acknowledged before me by Edmund P. Sexton, this 5th day of March, A. D. 1855

DAVID S. PRIDE, J. P. [SEAL.]

27 Which said instrument was recorded in the Recorder's office, Ogle county, March 5, 1855. And thereupon the said plaintiffs offered said instrument in evidence; to the reading of which to the jury, defendant objected, which objection was overruled, and said instrument was allowed to be read to the jury; to which ruling, defendant excepted.

28, 29 Plaintiffs further proved by said Sexton, that at the time of the making said instrument in writing, E. S. Smith, the attorney and agent of the plaintiffs, took possession of the goods described therein for the plaintiffs, and employed witness, as provided for in said instrument, to sell said goods, directed witness to get out handbills, and before the handbills were got out, the goods were levied upon by a person purporting to be a deputy Marshal; that at the time said writing was made, and also at the time of the levy by said Marshal, the goods were in a store in Oregon, Ogle county; that witness was a merchant selling goods in said store at the time of making said writing; that after making the same, witness continued to sell goods, and was in the possession of the same till they were levied on by the Marshal; that he did not change his sign after making said writing; that after the making said instrument, and before the goods were levied on by said Marshal, witness sold some of the goods in the writing mentioned, and paid proceeds to H. A. Mix, the attorney of the plaintiffs; that the plaintiffs resided in New York; that after the said instrument was made, witness replenished said stock of goods by purchases made by witness of pedlars; that the goods in the writing mentioned were the same goods taken by the deputy Marshall, and by the Marshal delivered to Davis, the defendant, and the same replevied in this suit; that the proceeds of the sales paid over to Mix, was \$644. Witness said that Smith took possession of the goods about the middle of April.

29 The said plaintiffs, further to prove the issue on their part, produced, and caused to be sworn, Henry A. Mix, and the defendant, by his counsel, objected to said Mix being examined as a witness, which objection was overruled by the court, and the defendant did then and there except to the ruling of the court in overruling the said objection, and allowing said Mix to be examined as a witness. Plaintiffs proved by said Mix

that the defendant was in possession of the goods at the time they were replevied, and that, as the agent of the plaintiffs, he (Mix) demanded the goods of the defendant before this suit was commenced.

30 The plaintiffs here closed their evidence, and the defendant, to prove
the issue on his part, produced and offered in evidence a writ of execu-
tion from the U. S. Court, Northern District of Illinois, in favor of
Thomas A. Cummings *et al.*, against the property of said Sexton, dated
33 April 26, 1855, for \$2,452.70, and directed to the marshal of said
district. Also the levy by virtue of said execution, made April 27,
1855, by Harry Wilton, U. S. Marshal, by Michael Regan, deputy, on the
33-44 said stock of goods, with inventory thereof in detail, and the return of
said execution, setting forth that on the 10th day of May, 1855, the
sheriff of Ogle county took the stock under replevin writ—copies of
which said execution, levy and return, are given in full in record. To
the reading of which said execution, levy and return, to the jury, the
plaintiffs did object; which objection was sustained by the court; to
which ruling of the court in refusing to allow said execution, levy and
return to be read to the jury, the defendant excepted.

This was all the evidence in the case.

45 Thereupon the plaintiffs, by their counsel, asked the court to give to
the jury the following instruction, to wit: "The plaintiffs ask the court
to instruct the jury that the chattel mortgage offered in evidence, if the
plaintiffs took possession under it, is good and valid as between plaintiff,
the maker, Sexton, and in the absence of all other proof, entitles the
plaintiffs to recover." Which said instruction the court gave; to the
giving of which instruction, the defendant, by his counsel, did then and
there except.

The jury rendered a verdict for the plaintiffs.

Defendant enters motion for a new trial, which was overruled by the court. Defendant excepts to such ruling, and files bill of exceptions; brings the case into this court, and assigns the following errors in the record, viz:

1. The court erred in admitting the instrument in writing, or chattel mortgage, to be read to the jury.
2. The court erred in allowing Henry A. Mix to be sworn as a witness before the jury.
3. The court erred in allowing the case to be tried, without disposing of the defendant's demurrer.
4. The court erred in allowing the case to be tried without an issue joined on defendant's second and third pleas.
5. The court erred in rejecting from the jury the evidence offered by defendant.
6. The court erred in giving the plaintiffs' instruction to the jury.
7. The court erred in overruling motion for new trial,—because, *First*, The verdict is against the law, and *Second*, The verdict is against the evidence.

GEO. W. THOMPSON and M. P. SWEET,
For Plaintiff in Error.

~~262~~ — 61

Supreme Court

William Davis

Plff - in Error

vs

Ransom & Bates

Defts -

Abstract

Filed April 26 - 1860

G. Ireland

Clerk

SUPREME COURT OF ILLINOIS.

WILLIAM DAVIS,
Plaintiff in Error,
vs.
JONATHAN H. RANSOM, AND
JOSHUA H. BATES,
Defendants in Error.

RECORD
PAGE.

ABSTRACT OF RECORD.

1, 2

This was an action of Replevin brought by Ransom and Bates in the Ogle Circuit Court against Davis, to recover a stock of goods from the possession of the defendant, and they file their *plaint*, sworn to by Henry A. Mix, in which he swears "for and in behalf of" the plaintiffs, that the plaintiffs are the owners of the goods, as mortgagers under a certain chattel mortgage, made by one Edmund P. Sexton to them, hereinafter set forth.

3, 4

Plaintiffs file their security for costs, made and executed by H. A. Mix, and also their replevin bond, made and executed by Ransom and Bates, "by H. A. Mix, his attorney hereto duly authorized," and also executed by Henry A. Mix, as security.

6

The replevin writ is returned by the sheriff, as executed, by replevying and delivering the goods into the possession of plaintiffs' agent, H. A. Mix.

7, 8

Plaintiffs, by H. A. Mix, as their attorney, file their declaration in the *delinet*.

The defendant claimed to hold the goods, as the custodian of the U. S. Marshal, by virtue of a levy under an execution from the U. S. Court

against the goods of said Sexton, issued upon a judgment in favor of Cummings, Collins, Seaman, and Slate; and pleaded, by Higgins and Thompson, his attorneys,

8 1st. The general issue.

9, 10 2nd. That the goods were the property of Sexton, and not the property of the plaintiffs—the recovery of a judgment at the April term, 1855, in the U. S. Court, Northern District of Illinois, in favor of Thomas A. Cummins *et al.* against Sexton for \$2,452.70—the writ of execution on said judgment, issued April 26, 1855, against the property of said Sexton, for said sum, to the marshal of said district—the levy, by Michael Regan, then and there being deputy U. S. Marshal, duly authorized and appointed to execute said writ, made April 27, 1855, on the said goods, and the placing the goods in the hands of defendant Davis as custodian; concluding with verification.

11 3rd. That the goods were the property of Sexton, and not the property of the plaintiffs; concluding with verification.

12 The plaintiffs, by H. A. Mix, attorney, at the May term, 1856, add *similiter* to general issue, and reply, 1st, to defendant's *second* plea, *precludi non*, because the goods were the property of plaintiffs, and not the property of Sexton—concluding to the country; and 2nd, to defendant's *third* plea, *precludi non*, because the goods were the property of the plaintiffs, and not the property of Sexton—concluding to the country; with *similiters* added.

13

Leave is granted at the said May term, 1856, to plaintiffs, to file double replications to defendant's pleas.

14 At the May term, 1856, a trial was had, and verdict rendered by the jury for the plaintiffs. Motion for new trial entered and overruled.

15 At the October term, 1857, the cause was again placed on the docket on motion of Thompson & Sweet, defendant's attorneys, and in conformity with the order of the Supreme Court, (reversing judgment and remanding cause.)

16 On motion of Mix, plaintiffs' attorney, at the June term, 1858, leave was granted to plaintiffs to file a new replication.

17 Plaintiffs, at said June term, by Mix & Heaton, attorneys, file new replication to defendant's *second* plea, as follows:

1st. They reply further, *precludi non*, because they say that the said Regan, in said plea named, was not a deputy Marshall of the U. S., duly authorized and appointed as alleged—concluding to the country; with *similiter* added by plaintiffs.

18 2nd. Further reply, *precludi non*, because there was not any such judgment in the U. S. Court as alleged—concluding to the country; with similiter added by the plaintiffs. And

3rd. Further reply, *precludi non*, because there was not any such execution as alleged—concluding to the country; with similiter added by plaintiffs.

19 Defendant, by Sweet & Thompson, his attorneys, files a general demurrer to replications of plaintiffs, *thirdly*, *fourthly*, and *fifthly* above pleaded.

20 At the October Term, 1858, the following order was entered, viz.:

"Jonathan H. Ransom, and Joshua H. Bates, vs. William Davis.	}	Replevin.
---	---	-----------

This day come the plaintiffs, by Mix & Heaton, their attorneys, and the defendant, by Sweet & Dutcher, his attorneys," and now comes on to be heard, "the plaintiffs' replications to the defendant's pleas herein, and after argument of counsel, and the court being fully advised in the premises, it is ordered, that the said replications be overruled; and now to try the issues, herein come the jurors," etc.; recites the empanneling of jury; trial; verdict for plaintiffs; motion for a new trial and in arrest.

21 The motion for new trial was overruled, judgment rendered on the
22 verdict, and bill of exceptions filed.

22-27 On the trial, the plaintiffs introduced Edmund P. Sexton as a witness, by whom they proved the making and delivery of the instrument in writing, of which the following is a copy, viz.:

(Copy of Mortgage from E. P. Sexton.)

"Whereas, I, Edmund P. Sexton, of the village of Oregon, county of Ogle, and State of Illinois, am justly indebted to James G. Manlove in the sum of six hundred and forty-four dollars; to J. H. Ransom & Co., about the sum of nine hundred and sixty-six dollars; to Bates, Taylor & Co., about the sum of six hundred dollars; to Cummings, Collins & Seaman, about the sum of twenty-four hundred dollars; to Hoppick & Moodey, about five hundred dollars; to Bridge and Shepherd, the sum of one hundred and eleven dollars; to Levee & Lauendick, four hundred and seven dollars; Lyman Cook & Co., one hundred and twenty-nine dollars; Blume, Palmer & Steuelt, three hundred and thirty dollars; Griffin & Titus, five hundred and two dollars. And whereas, I am unable to pay or discharge said debts without further time, and being desirous to secure the payment of the same, therefore, this indenture witnesseth, that I, Edmund P. Sexton, party of the first part, and J. H. Bates, and J. H. Ransom, of the city of New York, parties of the second part, that the said party of the first part being so justly indebted to the several persons before named, in the several sums mentioned above, amounting to the sum of six thousand two hundred and ninety-seven dollars, for and in consideration of the same, and for the purpose of securing the payment thereof, have granted, bargained, sold and mort-

gaged, and by these presents, do grant, bargain, sell and mortgage, unto the said J. H. Bates and J. H. Ransom, parties of the second part, all the goods, chattels and personal property belonging to the party of the first part, and now in his possession in the building known as Entyre's buiding, that part now occupied by the party of the first part in the village of Oregon, county of Ogle, and State of Illinois, said property to include all the merchandise and stock in trade, consisting of thirty pieces of Broadcloths, Cassimeres and Satinetts; thirty pieces of Gingham; three hundred pieces of Prints; thirty pieces of Alpaca; twenty pieces of Dress Goods; twenty pieces of Ribbons; fifty pieces of Shirting; a quantity of Sheetting; twenty pieces of Cambric; four pieces of Velvet; five pieces of Silks; sixty over and under Coats; thirty pair of Pants; thirty Vests; twelve cases of Boots; one hundred pair of Shoes; fifty pair of Brogans; a quantity of Groceries; a quantity of Hardware; a quantity of Crockery; together with all and every article of merchandise of whatever kind and description now of said stock, to have and to hold all and singular the said goods, wares and merchandise, hereinbefore granted, bargained and sold, or mentioned, or intended so to be, unto the said parties of the second part, their executors, administrators and assigns, to the only proper use and benefit of the said parties of the second part, their executors, administrators and assigns forever. Provided always, and these presents are on this condition, that the said party of the first part, his executors or administrators, shall and do well and truly pay, or cause to be paid, unto the said parties of the second part, their executors, administrators or assigns, the several sums of money due to each of said persons before mentioned, with seven per cent. interest thereon, to be paid as follows, to wit: the said sum specified to be paid first to J. G. Manlove, the said sum second to be paid to J. H. Ransom & Co., the said sum specified third to Bates, Taylor & Co., and fourth to pay the others, the other said several sums *pro rata*, hereinbefore mentioned, the payment of all said several sums to be paid within fifteen months from the date, or sooner if the proceeds of sale of said goods, wares and merchandise, will enable the party of the first part to do so. It is hereby provided, by and between the parties to this mortgage, that the said Edmund P. Sexton, party of the first part, shall have and retain possession of all the goods, wares and merchandise hereby mortgaged, for the purpose of selling and disposing of the same in the usual course of trade, as heretofore followed, to sell for ready pay only, for the purpose of paying and discharging the said several debts as before mentioned, and for no other purpose; and that the said party of the first part, shall well and faithfully pay over to the parties of the second part, all the money and avails of the sales, every thirty days after the date hereof, or oftener if he choose so to do, for the purpose of paying said debts, as before mentioned; and it is also provided and agreed by the parties to the mortgage, that the party of the first part shall not remove said goods and merchandise from the village of Oregon, where they are now situate, without the consent of the parties of the second part, their agent or attorney. And it is also provided and agreed between the parties to this mortgage, that if default be made in the payments as aforesaid, or in case the party of the first part neglects to pay over, as herein provided, the avails of the sales of said goods and merchandise to the said party of the second part, their agent or attorney, as before provided, or in case the said party of the first part shall do any thing or act, whereby, in the opinion of the parties of the second part, their agent or attorney shall consider this security in danger, then and in that case it shall and may be lawful for the said parties of the second part, their agent or attorney, or assigns, executors or administrators, shall have the right to take possession of the said goods and merchandise hereby mortgaged—(and all the goods and merchandise which may be hereinafter purchased by the party of the first part,) wheresoever the same may be or can be found, and sell the same at best price for cash which can be obtained, and from the sales pay and discharge the said several sums before mentioned, which may remain unpaid or unsatisfied; and in case there shall be more than sufficient to pay the same, the remainder shall be returned to the said party of the first part, after paying all costs and charges in the premises. It is also further provided, that in case the party of the first part

shall well and faithfully perform the conditions of this mortgage on his part, pay and discharge the said several debts as before mentioned, at the time and in the manner before specified, then these presents and every matter and thing herein contained, and this mortgage, shall be cancelled and delivered up.

In witness whereof, the party of the first part has hereunto set his hand and seal this fifth day of our Lord one thousand eight hundred and fifty-five.

(Signed,) EDMUND P. SEXTON. [SEAL.]

Witness, DAVID S. PRIDE.

This Mortgage was acknowledged before me by Edmund P. Sexton, this 5th day of March, A. D. 1855

DAVID S. PRIDE, J. P. [SEAL.]

27 Which said instrument was recorded in the Recorder's office, Ogle county, March 5, 1855. And thereupon the said plaintiffs offered said instrument in evidence; to the reading of which to the jury, defendant objected, which objection was overruled, and said instrument was allowed to be read to the jury; to which ruling, defendant excepted.

28, 29 Plaintiffs further proved by said Sexton, that at the time of the making said instrument in writing, E. S. Smith, the attorney and agent of the plaintiffs, took possession of the goods described therein for the plaintiffs, and employed witness, as provided for in said instrument, to sell said goods, directed witness to get out handbills, and before the handbills were got out, the goods were levied upon by a person purporting to be a deputy Marshal; that at the time said writing was made, and also at the time of the levy by said Marshal, the goods were in a store in Oregon, Ogle county; that witness was a merchant selling goods in said store at the time of making said writing; that after making the same, witness continued to sell goods, and was in the possession of the same till they were levied on by the Marshal; that he did not change his sign after making said writing; that after the making said instrument, and before the goods were levied on by said Marshal, witness sold some of the goods in the writing mentioned, and paid proceeds to H. A. Mix, the attorney of the plaintiffs; that the plaintiffs resided in New York; that after the said instrument was made, witness replenished said stock of goods by purchases made by witness of pedlars; that the goods in the writing mentioned were the same goods taken by the deputy Marshall, and by the Marshal delivered to Davis, the defendant, and the same replevied in this suit; that the proceeds of the sales paid over to Mix, was \$644. Witness said that Smith took possession of the goods about the middle of April.

29 The said plaintiffs, further to prove the issue on their part, produced, and caused to be sworn, Henry A. Mix, and the defendant, by his counsel, objected to said Mix being examined as a witness, which objection was overruled by the court, and the defendant did then and there except to the ruling of the court in overruling the said objection, and allowing said Mix to be examined as a witness. Plaintiffs proved by said Mix

that the defendant was in possession of the goods at the time they were replevied, and that, as the agent of the plaintiffs, he (Mix) demanded the goods of the defendant before this suit was commenced.

30 The plaintiffs here closed their evidence, and the defendant, to prove
the issue on his part, produced and offered in evidence a writ of execu-
tion from the U. S. Court, Northern District of Illinois, in favor of
Thomas A. Cummings *et al.*, against the property of said Sexton, dated
33 April 26, 1855, for \$2,452.70, and directed to the marshal of said
district. Also the levy by virtue of said execution, made April 27,
33-44 1855, by Harry Wilton, U. S. Marshal, by Michael Regan, deputy, on the
said stock of goods, with inventory thereof in detail, and the return of
said execution, setting forth that on the 10th day of May, 1855, the
sheriff of Ogle county took the stock under replevin writ—copies of
which said execution, levy and return, are given in full in record. To
the reading of which said execution, levy and return, to the jury, the
plaintiffs did object; which objection was sustained by the court; to
which ruling of the court in refusing to allow said execution, levy and
return to be read to the jury, the defendant excepted.

This was all the evidence in the case.

45 Thereupon the plaintiffs, by their counsel, asked the court to give to
the jury the following instruction, to wit: "The plaintiffs ask the court
to instruct the jury that the chattel mortgage offered in evidence, if the
plaintiffs took possession under it, is good and valid as between plaintiff,
the maker, Sexton, and in the absence of all other proof, entitles the
plaintiffs to recover." Which said instruction the court gave; to the
giving of which instruction, the defendant, by his counsel, did then and
there except.

The jury rendered a verdict for the plaintiffs.

Defendant enters motion for a new trial, which was overruled by the court. Defendant excepts to such ruling, and files bill of exceptions; brings the case into this court, and assigns the following errors in the record, viz:

1. The court erred in admitting the instrument in writing, or chattel mortgage, to be read to the jury.
2. The court erred in allowing Henry A. Mix to be sworn as a witness before the jury.
3. The court erred in allowing the case to be tried, without disposing of the defendant's demurrer.
4. The court erred in allowing the case to be tried without an issue joined on defendant's second and third pleas.
5. The court erred in rejecting from the jury the evidence offered by defendant.
6. The court erred in giving the plaintiffs' instruction to the jury.
7. The court erred in overruling motion for new trial,—because, *First*, The verdict is against the law, and *Second*, The verdict is against the evidence.

GEO. W. THOMPSON and M. P. SWEET,

For Plaintiff in Error.

61-35-

~~562~~

Supreme Court

William Davis

Plff in error

Vs.

Ransom & Bates.

Defts -

Abstract

Filed April 26-1860

L. Y. Oakland

Clerk

State of Illinois
Cgl Circuit

Jonathan W Ransom &
Joshua W Bates
vs
William S Davis

Edmund F Dutcher

being first duly sworn doth depose and say that affiant and Martin P Sweet were the Attorneys for the Defendant and tried the above entitled cause at the October Term of the Cgl Circuit Court in the year A.D. 1858. That affiant's memory is clear and distinct as to the persons who were sworn & gave evidence on the trial of said cause that Edmund P Sexton & Henry A Mix were both sworn and gave evidence on the part of the plaintiffs. That this Affiant took down the testimony of both said Sexton and Mix at the time, and as they gave in their evidence, and that the testimony taken down by affiant is correctly stated in the Bill of exceptions on file in this cause, that the same was prepared from the minutes of Affiant and the said Sweet and carefully compared with

the notes of affiant taken down on the trial
And affiant knows that the said Veris
testified as is stated and set forth in said
Bill of exceptions. That affiant now assisted
to try said cause but at one Term which
was the trial upon which judgment was
rendered was rendered by the Jury for
the plaintiffs and from which decision
the said defendant took an Appeal to
the supreme Court. That at the time
of the signing of the Bill of exceptions
by Judge Cuatrecasas this affiant and said
Dewey furnished the Court with the
original minutes taken on the trial of
said cause in the U.S. Circuit Court
And that said minutes were fully examined
by the Court and were read in the presence
and hearing of W. W. Weston one of the
counsel for the plaintiffs who was then present
That said Weston did then and there state
that he would not consent to any thing
because Smith had directed him not to
but at the request of the Court said Weston
did examine said bill of exceptions &
did say as this affiant understood him
that he did not see any thing but what
was right in the Bill of exceptions.
That thereupon the Court did after a

careful ~~examination~~ consideration of the same
saw said Bill of exceptions - And this
affiant further says that Ezekiel S Smith
was present during the whole trial of said
cause and must have known and ^{must} ~~must~~
now know that Henry A Mint was sworn
as a witness in said cause on the part
of the plaintiffs and must have known
that the plaintiffs did ask an instruction
as to the Law of the lease, which was given
by the Court. And this affiant says that
said instruction was asked and given in the
~~words and~~ Language & words contained in
a copy thereof in said Bill of exceptions
the original of which instruction is now on
file in the Office of the Clerk of the Circuit
Court of Qlg County Illinois and is in the
words & figures following to wit; "The Plaintiff
" asks the Court to instruct the jury that the
" Chattel Mortgage offered in evidence if the
" plaintiffs took possession under it is good and
" valid as between the plaintiffs and the
" maker Sexton and in the absence of all
" other proof entitles the plaintiff to recover"
which said instruction was filed in the
Qlg Circuit Court on the 3rd day of
October A.D 1858 - That said mortgage
was offered not as stated by said Smith

in his affidavit herein, but was offered as
a bill of sale of said property and admitted
by the court - not for the purpose of
showing indebtedness by Dutton, but as
evidence of sale of said goods by him
to plaintiffs as stated by counsel at the
time of offering said Chattel Mortgage
That this affiant verily believes the
testimony given by Edmund P Dutton is
truly & fully set forth in said Record
That this affiant had this day a con-
-versation with Edmund P Dutton a
witness in said cause and who has filed
an affidavit herein in which affidavit
are the words following that is to say
" That affiant was in court during
" all the time the evidence was being
" taken in said cause and that he did
" not see the said Mrs qualified nor
" hear him testify during said last trial"
and said Dutton stated to this affiant
that said statement is not according to the
fact nor as he supposed it to be -
That said affidavit should read that
he said Dutton ~~was not~~ present during
all the time of taking the evidence in
said cause and did not nor does know
whether the said Mrs was qualified or

testified out ^{said cause} ^{not then} & does not now know whether any
other witness was sworn in said cause or not

That affiant has a few minutes since
had a conversation with said Edmund P
Sexton as to what he swore to on said
trial as to the possession of the goods
at the time of the Levy by the "Marshall"
and send to him what purports to be
an affidavit of Wm H Steaton but not
sworn to by him which appears among
the papers on file in said cause in
which is the following statement to wit;
"That it (the Bill of exceptions) did not show
"that the plaintiff below by their agent Smith
"was in the actual possession of the goods in
"contrary some one or two days before the writ
"of execution offered in evidence by the Defendant
"came to the hands of the Marshall and that
"Sexton had not possession at the time by
"any actual occupation of the goods or store"
"Affiant knows such evidence was given
"by Sexton and was not in bill of exceptions
"where I saw them" And the said Sexton
told this affiant that he did not so testify
but on the contrary said he did testify
that he Sexton was in occupation of the
store at the time of Levy on the goods by the
Marshall"

And this Affiant further says that he well
suspects the testimony of said Sexton and
knows that the said Sexton testified that
he was in the actual occupancy of said Store
& goods at the time of the Levy by the
Marshal thereon that said Heaton and
Meix had full knowledge of the time and
place for setting said Bill of exceptions
and the time was extended thirty days
and to be heard at Dixon in order that
said Meix & Heaton might confer with said
Ezekiel S. Smith & that he might be present
if he said Smith thought proper so to
do And that the said Meix was fully
informed of the fact at the time the day
was fixed for said hearing - And that the
same was not ex parte as stated by said
Meix in his affidavit, said Heaton being
present. That said trial so far as said
plaintiffs case was concerned did not
depend upon the admissibility of the
execution as stated in said Meix affidavit
as that question did not arise until the
plaintiffs had closed their case and could
not have had any thing to do with
introducing testimony by the plaintiffs
as affiant verily believes. And Affiant
further says that said Sexton on said

April 10 1861
Horace Smith
Notary Public
Oregon Ogden Ill



State of Illinois } Ransom & Bates
Coke County } William S Davis
 } Horace Smith of the
 } County of Coke and state
aforesaid being first duly sworn doth
depose and say that affiant was deputy
clerk of Coke County Illinois during
the year A.D. 1858 and was present and
acted as such deputy clerk during the
October Term of the Coke Circuit Court
A.D. 1858 And affiant remembers the trial
of a suit in which Ransom & Bates were
Plaintiffs and William S Davis was
Defendant at said October Term
That this affiant as such deputy
clerk made the following entry upon
a Book kept by the clerk of said
court for that purpose, to wit: "
"Ransom & Bates vs Davis," "C, P, Ex Lon
"H. A. M. M.," that said entry was
made by me at the time said cause
was being tried, And Affiant
verily believes said Mit was sworn
on the part of the plaintiffs in said
cause at said October Term A.D. 1858
and further saith not

Sworn & Subscribed before me }
this 9th day of April A.D. } Horace Smith
1861 }
J. P. R. Hines

State of Illinois
Ogle County

Jonathan H. Ransom &
Joshua H. Bates

vs
William S. Davis

Edmund J. Sexton

being first duly sworn doth depose and say
that affiant has this day been shown an affidavit
signed by him in above entitled cause sworn to
on the 4th day of June A.D. 1860 and filed
on the same day in Ogle Circuit Court in
which is the following statement to wit;
"That affiant was in Court during all the
" time the evidence was being taken in said
" cause and that he did not see the said J. H.
" qualified during said last trial and affiant
" further says that no other witness on
" behalf of the plaintiffs testified in
" said cause except himself". That
affiant was called upon in a hurry to make said
affidavit in the night & stated what he
could swear to — And supposed the same
was written as he dictated — And did not
read the same himself, That said
affiant was sworn in said case and
immediately left the Court House and
did not then and does not now know

whether any other witness was sworn in said case or not, in the trial of said cause in the Ugle Circuit Court and Affiant refers that this may be placed on file as a correction to the former affidavit

Subscribed & sworn to before me this 19th day of February A.D. 1861
J. B. Petrie Clerk
Edmund, P. Sexton
Filed

State of Illinois }
County of }
I, Hiram B. Pitman Clerk of the Circuit Court in and for said County and State do hereby certify that the above and foregoing is a true and exact copy of an affidavit now on file in my office
Given under my hand and the seal of said Court at Oregon in said County the 9th day of April A.D. 1861
H. B. Pitman Clerk

Received of
M. J. Jones
Affidavit of
E. P. Sexton

Filed March 19th A.D. 1861
J. B. Petrie Clerk
By B. F. Shults-deg

Ransom & Bates vs Davis

Given

The Plaintiff asks the Court to instruct the jury that the Chattel Mortgage offered ~~offered~~ in evidence if the Plaintiff took possession under it is good & valid as between the Plaintiff and the maker Sexton & in the absence of all other Proof entitles the Plaintiff to recover

Filed Oct 7. 1858. M W Smith clk

by H J Smith Dep

State of Illinois }

Ogle County ss }

I Frederick G Petrie Clerk of the Circuit Court within and for said County do hereby certify that the foregoing is a true and perfect copy of an Instruction on file in a cause wherein Jonathan H Ransom and Joshua H Bates are Plaintiffs and William S Davis is Defendant

Witness my hand and the seal of said Court at my office in Oregon this 9th day of April AD 1861

F. G. Petrie

Clerk

Jonathan W. Ransom &
 Joshua W. Bates
 vs
 William S. Davis

Affidavits & Certified
 Copies of Records
 in " in

Filed April 20, 1861
 L. Leland
 Clerk

Cause argued
 19th

Davis & Bates
 Attys for Affiants

State of Illinois
Supreme Court } Third Grand Division

William Davis
Plaintiff in Error
vs
Jonathan A. Hanson &
Joshua A. Bates
Defendant in Error }

William W. Proton
Being first duly sworn doth depose
say that he was one of the Counsel
in the above entitled cause & was
present on the last trial of the said
cause in the Circuit Court of Ogle
County, that on said trial one
E. P. Sexton was sworn as a witness
and as far as this affiant can now
recollect as has any person to believe
was the only witness sworn on the
part of the Plaintiff below, that if
Henry A. Trip one of the Counsel was
sworn he has no recollection of the
fact, and that he positively knows
that if said Trip was sworn that no
specific truthful or valid objection
was made to his testifying, as he
feels very confident that no such
fact could escape his attention or
from his memory, that affiant was
present, when the motion for a new
trial was overruled by the Court, & refused
to consent to the filing of a bill of

exceptions at any time, stating
to the court & to the opposite attorney
that he was only employed for the
trial that he had been settled with
for his services & was out of the
case, & that E. J. Smith Esq of
Chicago had the control of the matter
& had requested officials to say to
the court & the court that if any
bill of exceptions was asked for
on the decision of the motion that
it should be submitted to him
for settlement, That official
was present at Dixon Lee County
when the bill of exceptions was
signed by the Judge that he
again informed both the counsel
for the defendant below & the
Judge that he was no longer in
the case, The Judge then asked
officials if he would look over
the bill & see if it corresponded
to his officials recollection of the
facts that officials did look over
the bill in part and did then
state to the court that said bill
did not state truly the evidence
on the trial & the facts, & ~~the~~ officials
mistaken as one portion of the
testimony of Depton that it did
not show that the plaintiffs below
by their Agent Smith were in the
actual possession of the goods in
controversy some one or two days

before the writ of execution offered
in evidence by the defendant, came
to the hands of the Marshall & that
Dayton had not possession at that
time by any actual occupation of
the goods or store. Official Vermon
that such testimony was given by
Dayton and it was not in the bill
at the time it was shown him, the
Judge could not recollect the
testimony Mr. Sumner said he did
not recollect it, & Official thinks
it was not inserted, Official did
not notice that the bill of exceptions
stated that this was sworn to
a witness

Subscribed &

M. W. H. Raton

Sworn to before me

This 25th day of April

A.D. 1880 at my office in DuPage Co. Illinois

J. West Benton

Notary Public in and for the
County of DuPage State of Illinois



~~26~~ 61
Supreme Court
William Davis

17
Jonathan N. Bauman
Esq

u
Appt of Hearing

Filed Oct. 27. 1860
St. Louis
Mo.

Smith & Sewing
of Cincinnati

State of Illinois
Supreme Court

Third Grand Division

William Davis

Plaintiff in Error

vs

Jonathan H. Ransom

and Joshua H. Bates

Defendants in error.

Henry A. Miss being
duly sworn doth depose and say that he
was one of the counsel on the trial of the
above cause in the Circuit Court of Ogle
County at the October Term of said Court
A.D. 1858.

That according to the best recollection
of affiant but one witness was called on the
part of the Ransom & Bates and that witness
was Edmund P. Sexton who was upon the
stand but a few moments and whose testimo-
ny was very short. The trial depending upon
the admissibility of an execution offered in
evidence by Davis without the judgment on
which it was issued and where the one Michael
Bogan was a deputy marshal of the United
States.

That affiant has not the most ^{remote} recollection

of having been qualified as a witness in said cause at said term and only believes that he was not, and is positive that if he was so called he testified without exception being taken on the part of Davis - that the affiant's recollection & memory not being most reliable in the premises, is positive, that a circumstance so prominent as to be excepted to as a witness on the ground of interest could not possibly have escaped the recollection of affiant - he therefore states positively that if he testified in said cause his testimony was not excepted to by the defense.

Affiant further says that at the November Term A.D. 1859 the said Davis by his attorney M. P. Sweet desired that a bill of exceptions should be made in said cause that W. W. Hutton and affiant excepted to any action being had by the Court in the premises alleging that so long a time had intervened since the trial of said cause that it was impossible for them or the Court to recollect the evidence to enable the parties in Court to prepare a proper bill of exceptions and therefore insisted that none should be signed by the Court. That the order that appears in the record fixing the time for making the bill of exceptions at thirty days was made contrary to the wishes of

said Heaton and affiant. That the said bill of exceptions was made and signed without ever having been submitted to affiant who never saw it until last evening. And affiant in like manner is advised that the same was not submitted to W W Heaton Esq previous to being signed and that the same was made ex parte to the best knowledge of affiant and contains many errors and mistatements.

H. A. Allen —

State of Illinois Subscribed and sworn to before
Ogle County ss I me Mortimer Smith Clerk
of the Circuit Court in and for said Ogle County
City, Mo. Allen this 25th day of April A.D. 1860

Witness my hand and seal of said
Court this 25th day of April A.D. 1860

Mortimer Smith Clerk

~~262~~ 61

Supreme Court
William Jarvis
by

Jonathan H. Ransom
et al

Att of Unit

Filed April 27, 1860
Shelburne Vt.

Smith & Sewey
of Court

State of Illinois } In Circuit Court of said County
Ogle County as }

At the October Term A.D. 1858, the following entry appears upon the Docket of the Court and the following cause, to wit:

"Jonathan Ransom &	}	7	New. to refs over-ruled. Jury sworn - Verdict for Plff, was 5cts. Refd. enters mo. for new trial."
"Joshua H. Bates			
"			
"William Davis			

And at the November Term A.D. 1859 of said Court the following entry appears upon the Docket of the Court, to wit

Jonathan Ransom &	}	212	do. for new trial overruled
Joshua H. Bates			
"			
William Davis			

Lefts excepts judgth on verdict for Plff. for five cents damages and for costs

213 Leave to have bill of excepts signed in thirty days

State of Illinois }
County of Ogle { I Mortimer W Smith Clerk
of the Circuit Court in and for
said County, do hereby Certify that the above entries
are true and perfect copies of the Orders of Court as they
appear upon the Court's Docket of the October Term, 1858

and November Term 1839. And that no
other orders appear of Record in said Cause since
the said October Term AD 1838 up to this date

Witness my hand and seal of
said Court this 25th day of April
AD 1860

Mortimer W. Smith Clerk

~~262~~ 61
Hyman Cook
William Sant

by
Jonathan H. Ransom
— 1 —
Certificate of clerk

Filed Oct. 29, 1860
Shelton
Ct.

Smith & Drury
of Council

State of Illinois -
Supreme Court Third Division

Jonathan H Ransom &
Joshua H Bates - Defendants in Error
vs
William Davis. Plaintiff in Error

April Term 1860

State of Illinois
Ogle County

Edmund P Sexton of said County, and state first being duly sworn upon his oath deposes and says, that upon the trial of the above entitled cause, in the Circuit Court of Ogle County A D 1858 he was called upon as a witness in behalf of said Ransom & Bates, and being qualified deposed as follows: That "Defendant" was indebted to the said Ransom & Bates, ^{in the sum of} about sixteen hundred dollars - That their agent E. Smith of came from Chicago to get the same secured, and said Smith was determined that the claim should be secured before he left. He so came on or about the fifth day of March A D 1855, & to secure the said Ransom & Bates this affiant executed a Chattel Mortgage on a stock of goods in Oregon, to secure them and other persons And that subsequently, on or about

the 16th day of April A.D. 1855, said Smith as agent of said Ransom & Bates again came to the store of affiant in Oregon and took possession of the stock so mortgaged as aforesaid for Ransom & Bates. He then designed selling the entire stock and made several ineffectual efforts to sell the same to merchants in the village of Oregon. — Failing in this, he arranged to have handbills printed with the design of having the goods sold at public Auction; and that said change of the ownership of said stocks of goods, was generally known. That soon after one Michael Ryan, claiming to be a Deputy Marshall of the District, levied upon the above mentioned stock of goods — That affiant then informed said Ryan that the goods taken by him were not his, that they had been taken by Ransom & Bates on a mortgage, and that E. S. Smith of Chicago and H. A. Mills of Oregon were the agents of said Ransom & Bates. Affiant further says That his attention has been called to his testimony as set forth in the Bill of Exceptions filed in this cause — that affiant never testified as set forth in said Bill of Exceptions, that said "E. S. Smith as attorney and agent for the Plaintiff took possession of the goods in the said writing

" at the time of the making of said mortgage
" described for the Plaintiffs, and employed
" affiant as provided for in said writing to
" sell said goods; but on the contrary thereof
this affiant testified as above stated, that
said Smith took possession of said goods
on the 16th of April." Affiant further says
that on the said last trial, that he has
no recollection of having said that "he did
not change his sign after making said
instrument of writing" nor did he state
that "before the goods mentioned were levied
on by said Marshall, the witness sold some
of the goods in the said writing mentioned
and paid the proceeds thereof to H. A. Albis."

nor did he state on the said last trial
that "he replenished the said stock of goods
by purchases made by affiant ~~from~~ of ped-
lars." That affiant was on the stand at
said last trial but a very few moments—
that witness was asked in addition to the
above testimony whether he knew of a demand
having been made on the defendant pre-
vious to the said merchandise being replevied.
To which affiant answered that he did
know of H. A. Albis's having made a de-
mand of Davis of the merchandise pre-
vious to the said being brought—that
affiant was in Court during all the time
the evidence was being taken in said case;

and that he did not see the said deis
qualifier nor hear him testify, during said
last trial And affiant further says that
no other witnesses on behalf of the plaintiff
testified in said cause except himself.

Edmund P. Peyton

State of Illinois }
Depe County } Subscribed and sworn to before
me Mortimer Smith Clerk of the Circuit Court of said
County by Edmund Peyton, ~~whose name appears~~
this 25th day of April A.D. 1860

Attest Mortimer Smith

Supreme Court
Illinois
by
J. M. H. & R. M.
Stacy
Affidavit of Exh-

Filed
Feb. 27. 1860
Chelam
Ch.

Book & Entry
of Circuit

3^d It appearing that the testimony of
Arthur Section is incorrectly stated therein

4th It appearing that the bill of exceptions
was not signed at the proper time
and proper manner and that
~~this was~~ & the same was objected to by
the Defendants in error

Smith & Drury
of counsel
for Defendants in error

~~262~~ 61
Supreme Court
William Judd
by
Jonathan H. Nauman
Att.

Motion

Filed Apr. 27. 1860
L. Veland
Clk.

Smith & Brown
of Counsel

State of Illinois
Supreme Court 3 Division }

William Davis, Plaintiff in Error
vs

Jonathan H. Ransom & Joshua H. Bates, Defendants in error } Martinest, Jr.

Smith Clerk of the Circuit Court in and for the County of Ogle and State of Illinois first being duly sworn upo his oath depose and says that at the October Term of said Court AD 1858, the following memorandum appears upon the Court docket in the above entitled suit

"Jonathan Ransom
& Joshua H. Bates
vs
William Davis } 7 Mem. to refs. overruled - Jury sworn - verdict for Plffs for 5 cts - Hlfdt. enters mo. for new trial."

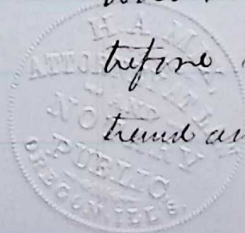
and affiant further says that from the above memorandum ~~entry~~ the order entered at the October Term AD 1858 was made, in the words and figures following to wit:

"Tuesday, October 7th 1858
Replevin This day came
"Jonathan H. Ransom
" & Joshua H. Bates
vs
"William Davis } the Plaintiffs by their and
Heaton their Attorneys and
the Defendants by Sweet &

"Dutcher his Attorneys and now comes onto
"he heard the Plaintiffs Replications to the De-
"fendants plea herein, and after argument
"of counsel and the Court being fully advised
"in the premises it is ordered that the said
"Replication be overruled. And now to try the
"issue herein came the jurors of a jury, good and
"lawful men to wit: James Meayre, Jesse Ohment, David
"Stoner, Luther Kemmer, Abramson Post, Jacob Williams,
"John Eyckman, William Fremt, George Lilly, George
"Slaughter, Hiram Allen, Henry Staughton, who
"being duly elected tried and sworn, after
"hearing the evidence the argument of Coun-
"sel, and the instructions of the Court retire to
"consider their verdict, and afterward, on
"this day return into Court and say that
"they find the issue for the plaintiffs, and
"assess their damages at five cents. And
"thereupon the said Defendant enters his
"motion in arrest of judgment and for a
"new trial herein." Mortimer M. Smith

State of Illinois I the undersigned Notary
Ogle County } Public in and for
said County do hereby certify, that on
this ~~24~~th day personally appeared
before me the above named affiant M. M. Smith
who subscribed & swore to the foregoing affidavit
before me. In witness whereof I have hereunto set my
hand and official seal this 24th day of April A.D. 1880

W. A. McIs
Notary Public



~~61~~ 61
Supreme Court
William Dorr
Jefferson
Jonathan H. Burman
atul
Deft in error

Applicant of Smith

Filed Apr. 27. 1860
C. Seland
Clk.

E. M. Jewey
of counsel

State of Illinois
Supreme Court 3rd Term

William Davis

Plff in error

vs

Jonathan H. Ransom &

Joshua H. Bates

And now comes the said William Davis plaintiff in error by Thompson & Sweet-
his attys and says there is manifest-
error in the record filed herein, in this
Docket.

- 1st. The court erred in admitting the
instrument in writing or chattel
Mortgage & be read to the jury.
- 2^d The court erred in allowing Henry
A. Mix & be sworn as a witness
before the jury -
- 3^d - The court erred in allowing the
case & be tried without disposing
of the defendants' Demurrers.
- 4th The court erred in allowing
the case & be tried without
an issue joined on defendants
2^d & 3^d pleas.
- 5th The court erred in rejecting from
the jury the evidence offered
by defendant
- 6th The court erred in giving

Plaintiffs instruction & the jury
7th - The court erred in over-
= ruling motion for new trial
first, because the verdict
is against the law & hence
because the verdict is against
the evidence

Geo. W. Thompson &
M. P. Sweet
for Plff in error

Charles C. Bonney
of counsel -

262 Court -

Liana Davis
Plff in error

21

Thos. H. Parsons &
W. Bates

represent of error

about
plff in error

1
State of Illinois }
County of Ogle } Pleas begun and holden in the
Circuit Court of the County of Ogle in the State of Illinois, in
the 22nd Judicial Circuit of said State on Monday the 20th day of April
A.D. 1855, before the Honorable Ira O. Wilkinson Circuit Judge of said
Judicial Circuit, Robert B. Light Clerk, and Charles Newcomer
Sheriff
As follows to wit

(Security for costs) State of Illinois } Circuit Court of said County May Term
Ogle County } 1855

Jonathan H. Ransom }
& Joshua H. Bates } I do hereby enter myself se=
as } curity for costs and acknowl=
William Davis } edge myself bound to pay or
cause to be paid all costs that may accrue in this
action, either to the opposite party or to any of the officers
of this Court, in pursuance of the laws of this State
Witness this 10th day of May A.D. 1855

H. A. Meigs Seal

(Endorsed) Filed May 10, 1855 R. B. Light Clerk

(Affidavit) State of Illinois }
Ogle County } Henry A. Meigs for and in behalf of
Jonathan H. Ransom and Joshua H. Bates, being duly
sworn on his oath states, that the said Ransom
and Bates are the owners or mortgagors of the property
herein mentioned and that they are lawfully
entitled to the immediate possession thereof, to

with: of the following goods and chattel; All the
 merchandize and Stock in trade consisting of Thirty
 pieces of Broad cloth. cassimers and Sattinets. Thirty pieces
 of Hingham 300 pieces of Prints. - 30 pieces of Alpacas 20
 pieces of dress goods. 20 pieces of Ribbands. 30 pieces of Sheetting
 a quantity of Shirting. 20 pieces of Cambrick 5 pieces of velvet
 5 pieces of Silks 60 over and under coats. 30 pairs of pants
 30 vests. 12 Cases of Boots. 100 pairs of Shoes. 50 pairs of brogans
 a quantity of groceries - a quantity of hard ware, and a quantity
 of crockery. together with all and every article of merchandize
 of whatever kind and description. now in that part of Etuyres
 Building. recently occupied by E. P Sexton. being the same
 Stock of goods, wares and merchandize recently in possession
 of said Sexton except so much thereof as may have been
 sold. Since the Execution of the Mortgage above referred to. being
 a mortgage from said Sexton to the said Ransom and Bates -
 and Executed on or about the 5th day of March last. all of which
 property aforesaid. has been unlawfully taken and detained
 at and within said county by by William Davis. that they
 are the value of Five Thousand Dollars. and said Affiant
 farther states that the said property has not been taken by
 any tax. assessment or fine. levied by any law of this State. nor
 seized under any Execution or attachment of the said goods
 and chattels of the said Ransom and Bates or either of them
 liable to Execution or attachment. all of which Statements afore-
 said. this affiant believes to be true
 Sworn and Subscribed before
 me. this 10th day of May AD 1855.

R B Light - clerk

H. A. Meis

(Endorsed on Back)

Filed May 10. 1855.

RB Light - Clerk

Know all men by these presents, that we, Jonathan H Ransom and Joshua H Bates, of the city of New York and State of New York, as Principals and H A Moir of the county of Ogle and State of Illinois as Security, are held and firmly bound unto Charles Newcomer, Sheriff of the county of Ogle, and State of Illinois in the penal sum of Ten Thousand Dollars, lawful money of the United States, for the payment of which well, and truly to be made, we bind ourselves, our heirs Executors administrators and assigns and every of them firmly by these presents. Witness our hands and seals, this 10th day of May AD 1855

The condition of the above obligation is such, that whereas the above bounden Jonathan H Ransom, and Joshua H Bates has this day sued out of the Circuit Court of Ogle County Illinois, a certain writ of Replevin, against William Davis of the County of Ogle and State of Illinois for the recovery of the possession of all the following described Merchandize, and stock in trade consisting of thirty pieces of Broad cloth, Cypresses and Satinets, thirty pieces of Gingham 300 pieces of Prints 30 pieces of Alpaccas, 20 pieces of Dress Goods 20 pieces of Ribband, 50 pieces of Shirting, a quantity of Sheetting, 20 pieces of Cambric, 5 pieces of Velvet, 5 pieces of Silks, 60 over and under coats, 30 pairs of Pants, thirty vests, 12 cases of Boots, 100 pieces of Shoes, 50 pairs of Brogans, a quantity of Groceries, a quantity of Hard ware, and a quantity of

crockery, together with all & every article of merchandise of what kind and description now in that part of Etmyre's Building recently occupied by E P Sexton being the same stock of goods wares and merchandise recently, in the possession of said Sexton all of the value of Five thousand Dollars, returnable at the next Term of the Circuit Court to be holden, at the Court House at Oregon, in said County on the second Monday of October AD 1855. Now if the said Jonathan H Ransom and Joshua H Bates, shall prosecute this said suit to effect, and without delay, and make return of the property if return thereof shall be awarded and save and keep harmless the said Sheriff, in Replevying the said property, then this obligation to be void, otherwise to remain in full force and effect

In presence of

{ }

Jonathan H Ransom Seal

Joshua H Ransom Seal

By H A Meis, his attorney Seal
hereto duly authorized

Henry A Meis Seal

(Endorsed on Back)

Filed May 11 - 1855 — R. B. Light - Clerk

And afterwards on the same day was issued out of said Court, the writ of Replevin, in the words and figures following to wit:

5-

State of Illinois }
 Ogle County } Sch

The People of the State of Illinois
 to the Sheriff of Ogle County Greeting

Whereas Jonathan H. Ransom & Joshua H. Bates by
 their attorney H. A. Hois plaintiffs Complaine
 William Davis Defendant unlawfully and wrong-
 fully, came in possession of and still does detain
 from the possession of them the said Plaintiff
 all the Merchandise and stock in trade con-
 sisting of thirty pieces of Broad Cloth, Cassimers
 and Sattinets, Thirty pieces of Gingham 300 pieces
 of Prints, 30 pieces of Alpaca, 20 pieces of Drift goods
 20 pieces of Ribbands 50 pieces of Shirting, a quantity
 of Shooling, 20 pieces of Cambricks 5 pieces of
 Velvet 5 pieces of Silks 60 over and undercoats
 30 pairs of pants, ^{thirty} ~~30~~ vests, 12 cases of Boots, 100
 pairs of Shoes 50 pairs of Brogans a quantity of
 Groceries a quantity of hardware, and a quantity of brockery
 together with all and every article of merchandise of what
 kind and description, now in that part of Ettinger's Building
 recently occupied by E. P. Sexton, being the same stock of goods
 wares and merchandise recently in the possession of said Sexton
 of the value of Five thousand Dollars, and that the same have
 been unlawfully taken & detained by Wm Davis. Therefore,
 we command you, that if the said Plaintiff shall give
 Bond, with good and sufficient security in double of the value
 of said Goods & Chattels, as required by Law, to prosecute his
 Suit in this behalf to effect, without delay, and to make

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return of the Said Goods & Chattels, if return thereof shall be awarded, and to save & keep you harmless in Replevying Said Goods and chattels, you cause the Said Goods and chattels to be Replevied and delivered to the Said Plaintiff, without delay. And also, that you Summon the Said Defendant to be and appear before the Ogle County Circuit Court, to be holden in the Court House in Oregon on the Second Monday of October next, to answer unto the Said Plaintiff in the premises and have you then and there, this writ with an endorsement thereon, in what manner you shall have Executed the Same, together with the Bond, which you shall take, from the Said Plaintiffs as before commanded, before executing this writ: Witness R B Light clerk of our Said Court and the seal thereof at Oregon, in Said county this 10th day of May AD 1855

Seal
C C C

R B Light - clerk

On the Back of which Said writ is the following Endorsement to wit:

"Executed the within writ by reading the Same in the presence and hearing of the within named William Davis, this 10th day of May AD 1855, and also by Replevying and delivering the within described Property, into the Possession of the Plaintiffs Agent H A Meis, this Same date

May 10th 1855

Charles Newcomer, Shff. Ogle

Co. Ill

"Shurffs fee

Serving writ 50

taking Bond, 50

Return 10

\$1.10"

Filed May 16, 1855

R B Light clerk

(which Said writ was endorsed, filed as follows)

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And afterwards to wit: on the Twenty Eighth day of September AD 1855. the Said Plaintiffs filed their Declaration in the words and figures following to wit:

State of Illinois } Circuit Court of Said County.
Ogle County } October Term 1855.

Jonathan H Ransom &
Joshua H Bates -

vs
William Davis - } Jonathan H Ransom, and Joshua
H Bates, of New York, the plaintiffs.

complain of William Davis in a plea wherefore he took the goods and chattels of the Said Ransom and Bates, and detained the Same, against Sureties and pledges and thereupon the Plaintiffs complain for that the Defendant, on the tenth day of May AD 1855, at and within Said County, took the goods and chattels to wit: Thirty pieces of Broadclothes cassimores and Sattinets, Thirty pieces of Ginghamms, Three hundred pieces of prints thirty pieces of Alpaccas, Twenty pieces of Dress goods Twenty pieces of Ribbands, fifty pieces of Shirting, a quantity of Sheetting, Twenty - pieces of Cambrics, five pieces of silks Sixty over and under coats, thirty pairs of pants, thirty vests twelve Cases of Boots, One hundred pairs of Shoes, fifty pairs of Brogans, a quantity of Groceries, a quantity of hard ware a quantity of crockery, together with all and any article of merchandise of whatsoever kind, and discription recently in the possession of E. P. Sexton, of them the Said Plaintiffs of great value to wit: of the value of five Thousand Dollars, and

unjustly detains the same. against securities and pledges, to the Damage of the Plaintiffs as they say, of One thousand Dollars. and therefore they bring suit.

H. A. Meix - *pl'r* ~~off~~

(Endorsed on Back as follows:)

Filed Sept 28. 1855 - R B Light clerk

And afterwards to wit: at the October Term of the Said Court held (in and for Said county) in the year AD 1855, on the ninth day of Said October, the following order was made by the Said Court

No 2307	Jonathan H Ransom	Replevin
	and Joshua H Bates	
59	vs	
	William Davis	On Motion of Plaintiffs by Miss their Attorney, it is ordered by the Court, that this cause be Continued

And afterwards, to wit: on the Sixth day of May 1856, the Said Defendant filed his plea herein, in the words and figures following, to wit.

William Davis	Circuit Court of Ogle County
vs	Of the October Term 1855
Jonathan H Ransom	
+ Joshua H. Bates	And the Said William Davis Defendant in this Suit, by Higgins & Thompson, his Attorneys' comes and defends the wrong & injury
	when &c. and says that he doth not detain the Said goods

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and chattels in Said Declaration mentioned, or any part thereof, in manner and form, as the Said Plaintiffs have above, thereof complained, against him, and of this, he puts himself upon the Country &c.

Higgins & Thompson - Defts Attys

And for a further plea, in this behalf, by leave of Court, first had & obtained, the Said Defendant Says that the Said Plaintiffs ought not to have or maintain their action aforesaid, thereof, against him, because he says that the Said goods & chattels, in the Said Declaration mentioned, at the time when &c were the property of one Edmund P Sexton, and not the property of the Said Plaintiffs, as by Said Declaration is above supposed, and that Thomas A Cummins, Charles B Collins, George C. T. Seaman & Horace Slate, by the consideration & Judgment of the Circuit Court, of the United States, for the Northern District of Illinois at the April Term AD 1855, recovered a Judgment against the Said Edmund P Sexton of the sum of Two thousand four hundred fifty two & 7/100 Dollars. Damages & costs, of suit upon which said Judgment a writ of Execution was issued out of Said Court on the 26th day of April AD 1855, directed to the Marshall of the Northern District of Illinois commanding him, of the goods and chattels lands & tenements of Said Sexton in Said District, he caused to be made Said sum of money so, as aforesaid recovered against him the Said Sexton and returnable in thirty days from the date thereof, and thereupon directed: on the Said 26th day of April 1855 the Said writ of Execution was delivered to Michael Regan, then and there being a Deputy Marshall, duly authorized & appointed under & by Harry

Willon, Marshall of Said District to Execute Said writ whereby and by virtue of Said writ of Execution the Said Michael Regan, Deputy Marshall as aforesaid afterwards to wit: on the Twenty Seventh day of April A.D. 1855, at the County of Ogle, in Said District, and before the return of Said writ, levied upon & took the Said goods & chattels mentioned in Said Declaration as the property goods & chattels of the Said Edmund P. Sexton liable to Said Execution, and thereupon, to Satisfy the Said writ of Execution and thereupon the Said Michael Regan, Deputy Marshall as aforesaid placed Said goods & chattels in the custody of the Said William Davis Defendant, ^{who held the same for said deputy Marshall} in this Suit ^{in his} absence, and which were to be delivered to Said Marshall at his request, ~~who held the same for Said Deputy Marshall~~ and this, the Said Defendant, is ready to verify, wherefore he prays Judgment, if the Said Plaintiffs ought to have, or maintain their aforesaid action thereof, against him and he prays a return of the Said Goods & Chattels — together with his costs in this behalf, to be adjudged to him.

Higgins & Thompsons — Defts. Attys

And for a further plea in this behalf, by leave of Court &c, the Said Defendant says that the Said Plaintiffs ought not to have or maintain their aforesaid action thereof against him, because he says that the Said goods & chattels in the Said Declaration mentioned at the time when &c were the property of one Edmund P. Sexton and not the property of the Said Plaintiffs as by Said Declaration is supposed.

and thus, the Said Deft. is ready to verify &c. wherefore
the Said Deft. prays judgment &c

Higgins & Thompson - Defts Attys

(which Said Plea. is endorsed on the Back as follows)

Filed May 6. 1856 -- R B Light, clerk

And afterwards, to wit: on the Thirteenth day of May
AD 1856, the Said Plaintiffs filed their Replications
herein, which Replications are in the words
and figures following to wit

Jonathan Ransom &
Joshua H Bates

or

William Davis

And the Said Plaintiffs, as to the
plea of the Said Defendant, first

above pleaded & wherein the Defendant hath put himself
upon the country doth the like. ~ ~ ~

And the Said Plaintiffs as to the plea of the Said Defendant
Secondly above pleaded, say precludi non because they
say that there was not, at the time &c. any such judgment
in the Circuit Court of the United States or any such
writ of Execution, as is in the Said plea alleged and thus
the Said Plaintiffs pray, may be inquired of, by the country
&c.

And the Said Plaintiffs for a Replication to Defendants
Second plea, by leave &c. say precludi non because they
say that the Said goods and chattels in the Plaintiffs -

With drawn by Consent

Declaration & in Said pleas mentioned, were, at the time when & the proper goods and chattels of the Said plaintiff and not of the Said Edmund P Sexton as is in and by the Said plea alleged and this the Said Plaintiffs pray may be inquired of, by the Country & and the Deft. doth the like.

And the Said Plaintiffs as to the plea of the Said Defendant thirdly above pleaded say Precludi non, because they say that the Said goods and chattels in the plaintiffs Declaration & in Said plea mentioned, were at the time when & and still the goods and chattels, of the Said Plaintiffs and not of the Said Edmund P Sexton as is in & by Said plea alleged and this the Said Plaintiffs pray may be inquired of, by the Country &

And the Deft. doth the like.

H. A. Meix
Atty for. Plffs

(and which Said Replications are filed on the Back as follows)
Filed May 13. 1856 - R B Light. clerk.

And afterwards, to wit: on the Fourteenth day of May AD 1856. the Said Defendant, filed his Similitur herein in the words and figures following to wit:

Ogle Cir Court

William Davis
ads.

Jonathan H Ransom

& Joshua H Bates

May 7. 1856

And the Said Defendant, as to

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the Said Replication of the Said Plaintiffs by them above pleaded and which they pray may be enquired of, by the Country, doth the like

Heigginis & Thompsons - for Deft
(Endorsed on Back as follows)

Filed May 14. 1856. - R B Light - clerk

And afterwards to wit: at the May Term of the Said Court. (held in and for Said County of Ogle) in the year AD 1856, on the Fourteenth day of Said May the following Order, was made by the Court:

2307 Jonathan H Ransom + Replevin
Joshua H Bates -

48

vs

William Davis

Now, on this day, come the Plaintiffs by Meir & Loop their Attorneys and the Defendant by Thompson his Attorney and on motion of Plaintiffs, leave is given them to file double Replications to Defendants pleas, and thereupon, issue being joined, the Jurors of a Jury good and lawful men to wit: Heigh Rea, Virgil A Bogue, John H Rutledge Charles C Royce, Luther Odell, Hosea Alvarson, John H Wynans, William Hilfuld - Seth H Hills Daniel Currier Solomon Shaver, & Edward Longsdell, were elected tried and sworn, well and truly to try the issue in the cause, - after hearing the evidence and the arguments of Counsel, and being fully instructed in the law, by the

Court, the Jury retire to consider their verdict, and after consultation and deliberation, returned into Court and delivered the following verdict to wit: "We the Jury in this case, find the issues for the Plaintiffs and assess their damages at the sum of five cents. ~ Defendant then moves for a new Trial, which, after being heard and duly considered by the Court, is overruled -

And afterwards to wit: on the fifteenth day of May AD 1856, (the Said day being one of the days of Said May Term) the Said Defendants filed their "Motion for a new Trial" herein, in the words and figures following to wit:

Jonathan H Ransom	} Ogle. Cir. Court
& Josiah H Bates	
vs	

William Davis

And now comes the Said Defendant by his Attorneys & moves the Court to set aside the verdict rendered herein and grant him a new Trial for the following reasons, viz: First the Court, Erred in pronouncing the Instrument, or Mortgage offered in this case, in evidence by the Plffs. Valid, and allowing the Same, to be admitted as Evidence, ~ Second, the Court erred, in refusing the instructions asked for by the Defendant, - Third, the Court erred in allowing improper questions to be asked by Plffs. counsel, to the witness Sexton, and also in referring

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to allow proper questions to be asked by the Defence to
Said Witness - Fourth. the Verdict is against the law
and Evidence

Heigginis & Thompsons - for Deft

(Endorsed on Back as follows:)

Filed May 15. 1856 - R. B. Light - clerk

X And afterwards, to wit: ~~at~~ the October Term
of Said Court AD 1857. held in and for Said County
on the Seventh Day of Said October, the following order
was made by the Court:

2307 Jonathan H Pansom } Replevin
& Joshua H Bates }

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vs

William Davis }

This Day comes the Said
Defendant by Thompson Sweet
his Attorneys, and on his Motion it is ordered that this
Cause be placed upon the Docket, and the Said Defen-
dant produces therewith the order of the Supreme Court
herein, and upon his motion it is ordered that the
Same be filed in the Cause, And thereupon come the
Said Plaintiffs by their Attorney, and by agreement
of parties it is ordered that this Cause be continued
generally ~

And afterwards, to wit: at the June Term. of the Said Court, (held in and for Said County) in the year AD1858, on the Eighth day of Said June, the following order was made by the Court:

2307 Jonathan Ransom } Replevin
 & Joshua H Bates }

84

vs

William Davis }

This day come the Said Plaintiffs by their Attorney and enter their motion for leave to file a new Replication herein ~

And afterwards, to wit: on the Ninth day of the Said June Term, AD1858, the following order was made by the Court:

2307 Jonathan Ransom & } Replevin
 Joshua H Bates }

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vs

William Davis }

This day come the Said Plaintiffs as heretofore, and the Defendant comes by Sweet and Dutcher his Attorneys. and the motion of the Plaintiffs for leave to file new Replication, coming on to be heard after argument of Counsel, and consideration by the Court Said motion is sustained. And it is ordered that the Said New Replication be filed by tomorrow morning. And It is therefore considered that the Said Plaintiff pay all

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costs herein made, since this cause was Re-Docketed —
after being Re-manded and that a Fee Bill issue —
therefor —

And afterwards, to wit: on the Twelfth day of Said
June. Bore the Plaintiffs, and file their
Replication herein, in the words and figures
following to wit:

State of Illinois } Ogle County Circuit Court, of the
Ogle County } June Term A.D. 1858 —

Ransom & Bates } Replevin

vs
William Davis } And the Said Plaintiff by Smith,
Meix & Heaton, come and as to
the Said plea of the Said Defendant by him secondly
above pleaded, and for further Replication, to Said plea
leave of the Court herein being first had & obtained
say, precludi non, because they say that the Said
Michael Regan, in Said plea mentioned to wit: on the
day & year in Said plea mentioned, was not then & there
a Deputy Marshall, of the United States for the Said
Northern District of Illinois duly authorized and ap-
pointed as in Said plea is alledged & of this they put
themselves upon the Country &c

And the Deft, doth the like

Meix & Heaton
for the Plffs

and for further Replication to Said 2^d Plea. Said Plff says Precludi non because they say that there was not at the time when &c Said plea mentioned, any
 X Such Judgment. Remaining in the District Court of United States, as in Said plea is alledged & of this they put themselves ~~upon the country~~ upon the Country &c. - and the Deft, doth the like - & for further Replication to Said 2.^d plea Said plff says. Precludi non, because they say there was not any Such Execution at the time when &c in Said Declaration is alledged, and of this, they put themselves upon the Country &c

And the Deft. doth the like

Meis & Heraton.

for Deft

(Replication is endorsed on Back as follows)

Filed June 12, 1858 - McMinnis clk - By Hessmuth Dep

And afterwards to wit: at the Said June Term of Said Court. AD 1858, on the fifteenth day of Said June the following Order was made by the Court

Jonathan Ransom } Replevin
 Joshua H Bates }

84

vs

William Davis

This day come the parties as heretofore and by agreement, it is ordered that this Cause be continued generally

And afterwards, to wit: on the Fifth day of October AD 1858, the Same being one of the Days of the October Term of Said Court in the year AD 1858, the Said Defendant filed his — Demurrer herein, as follows:

State of Illinois } In the Circuit Court of Said County
Ogle County } of the October Term AD 1858

William Davis —

vs

Jonathan Ransom

& Joshua H. Bates

And the Said Defendant by Sweet & Thompson his attorneys as to the Replication by him thirdly, fourthly and fifthly above pleaded, says Actio non because, he says that that the Said Several Replications and the matters and things therein set forth, are not sufficient in law for the Said Plaintiffs, to further have, or maintain his aforesaid Action, thereof, against him and of this, he is ready to verify wherefore, he prays Judgment of Said Replications and a return of the property in the Said Declaration mentioned

Sweet & Thompson — Defts Atty

(Said Demurrer is filed on Back as follows)

Filed Oct 5, 1858

McSmiths dK

X

By H. Smith, Dep

X

And afterwards, to wit: at the October Term of Said Court, in the year AD 1858. (held in and for Said County), on the Seventh day of Said October the following order, was made by the Court;

Jonathan Ransom and } Replevin
Joshua H Bates }
62 vs

William Davis

This day come the Plaintiffs by Meis and Heaton their Attorneys, and the Defendant by Sweet and Dutcher his Attorneys and now comes on to be heard, the ~~Plaintiffs~~ Replications to the Defendants pleas herein, and after argument of counsel, and the Court being fully advised in the premises It is ordered that the Said Replications be overruled and now, to try the issue herein, come the Jurors of a Jury, good and lawful men to wit: James Moagne, Jesse Chant David Storer, Luther Kemmer, Hanson Port, Jacob Williams John Eychaer, William Frank, George Lilly John Slaughter, Henry Slaughter, Hiram Allen, who being duly elected tried and sworn after hearing the Evidence the argument of counsel, and the Instructions of the Court, retire to consider their Verdict; and afterwards on this day return into Court, and say, that they find the issues for the Plaintiffs and assess their Damages at Five cents. And thereupon the Said Defendant enters his motion in arrest of Judgment, and for a new Trial therein -

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And afterwards, to wit: at the November Term of Said Court, ~~held in~~, and for Said County, in the year, AD 1859, on the Twenty Second day of Said November, the following order was made by the Court:

Jonathan Ransom } Replevin
and Joshua H Bates }
vs
23 William Davis ~ } This day come the Said Plaintiffs by Meix and Keaton their Attorneys, and the Said Defendant comes by Sweet and Dutcher his Attorneys, and now comes on to be heard, the motion of the Said Defendant, made at a previous Term of this Court, for a New Trial herein - and after argument of Counsel and consideration by the Court. It is ordered that Said motion be overruled to which, the Said Defendant, did then and there except And it appearing to the Court, that the Jury herein have heretofore brought their Verdict for the Said Plaintiffs and assessed their Damages at Five cents, It is therefore ordered by the Court, that the Said Plaintiffs have and recover of the Said Defendant the Said sum of Five cents, their damages aforesaid, so assessed, by the Jury aforesaid together with their costs in this behalf expended, and that they have Execution therefor

And afterwards to wit: on the Twenty third day of Said November and yet of Said Term, the following order was entered of Record, ^{to wit:}
Jonathan Ransom & Joshua H Bates vs William Davis, Replevin - This day comes

the said Defendant, as heretofore and on his motion leave is given him to have his Bill of Exceptions herein, filed within thirty days from this Date -

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And afterwards, to wit: on the Nineteenth day of December in the year AD1858 the said Defendants filed their Bill of Exceptions herein, in the words and figures following to wit:

State of Illinois }
Ogle County - }

William Davis
ads

Jonathan H Ransom
& Joshua H Bates

In the Circuit Court of said
County of the October Term AD1858

Be it remembered that on the Seventh day of October One thousand Eight hundred and fifty Eight at the October Term of the Circuit Court holden in and for the County of Ogle, in the State of Illinois before the Honorable John V Eustace Circuit Judge, in and for the twenty Second Judicial Circuit in said State, upon issue joined came on to be tried the above entitled cause. Whereupon the following proceedings were had to wit: a Jury having been empanelled and sworn to try the issue joined in said cause the said Plaintiffs to prove the issues on their part, ^{produced} and caused to be sworn Edward P Sexton by which witness the Plaintiffs proved the making signing and delivery by the said witness to the Plaintiffs of the instrument in writing of which the following is a true copy viz:

Whereas, I.

Edmund P. Sexton of the Village of Oregon County of Ogle, and State of Illinois am justly indebted to James G. Manlove in the sum of Six hundred and forty four Dollars to J. H. Ransom do. about the sum of Nine hundred and Sixty Six Dollars to Bates Taylor do. about the sum of Six hundred dollars to Cummins, Collins & Senon about the sum of twenty four hundred dollars to Hoppick & Moosley about Five hundred Dollars to Bridge & Shepherd the sum of one hundred and eleven dollars to Sever & Sourendick four hundred and seven dollars Lyman took the one hundred and twenty nine dollars, Blume Palmer & Stewart three hundred and thirty dollars Griffin & Litus Ten hundred and ten dollars And whereas I am unable to pay ^{or} ~~and~~ discharge said debts without further time, and being desirous to secure the payment of the same Therefore This Indenture witnesseth that I, Edmund P. Sexton party of the first part and J. H. Bates and J. H. Ransom of the City of New York, parties of the second part, that the said party of the first part, being so justly indebted to the several persons before named in the several sums mentioned above amounting to the sum of six Thousand Two hundred and thirty seven ~~seven~~ dollars for and in consideration of the same, and for the purpose of securing the payment thereof have granted

bargain, sold and mortgaged, and by these
 present do great bargain sell and mortgage
 unto the said J. H. Bates and J. H. Ransom
 parties of the second part all the goods, chat-
 tels and personal property belonging to the
 party of the first part and now in his posses-
 sion in the building known as Etnyres building,
 that part now occupied by the party of the first
 part, in the village of Oregon, County of Ogle
 and State of Illinois Said property to include all the
 Merchandise and Stock in trade. consisting of 30 pieces of
 Broadcloth Cassimere and Sattinets. Thirty pieces of Gingham
 Three hundred pieces of prints, thirty pieces of Alpaca -
 twenty pieces of Dress goods Twenty pieces of Ribbons, fifty
 pieces of Shirting, a quantity of Sheetting Twenty pieces of
 Cambric, five pieces of velvets, five pieces of Silks, Sixty
 over, and under coats, thirty pairs of Pants, thirty vests
 Twelve Cases of Boots, One hundred pairs of Shoes, fifty
 pairs Brogans, a quantity of Groceries, a quantity of hard-
 ware, a quantity of Crockery, together with all and every
 article of merchandise of whatever Kind or description
 now of Said Stock. To have and to hold all and sin-
 gular the Said Goods, Wares, and Merchandise therein
 before granted, bargained and sold or mentioned ~~in~~ in-
 tended ~~to be~~ into the Said parties of the Second part,
 their Executors administrators and assigns to the only proper
 use and benefit of the Said parties of the Second part
 their executors administrators and assigns forever
 Provided Always, and these presents are upon this

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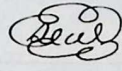
express condition, that the Said party of the first part, his executors or administrators shall, and do, well and truly pay, or cause to be paid unto the Said parties of the Second part their executors administrators or assigns the Several sums of money, due to each of Said firms, before mentioned with Seven per cent interest thereon, to be paid as follows, to wit: the Said Sum Specified to be paid, first to J. G. Meaulove, the Said Sum, Second to be paid to J. H. Ransom & Co. the Said sum specified, third to Bates, Taylor, & Co. and fourth to pay the others, the other Said Several sums, pro rata hereinbefore mentioned, the payment of all Said Several sums to be made within fifteen months from this date or sooner, if the proceeds of Sale, of Said Goods wares and merchandise, will enable the party of the first part to do so. It is hereby provided, by, and between the parties, to this mortgage that the Said Edmund P. Sexton, party of the first part shall have and retain, possession of all the goods, wares and merchandise hereby mortgaged, for the purpose of selling and disposing of the same, in the usual course of trade as heretofore followed, to sell for ready pay only, for the purpose of paying and discharging the Said Several debts as before mentioned and for no other purpose, and that the Said party of the first part, shall well and faithfully pay over to the parties of the Second part all the money and avails of the Sales, every thirty days after the date hereof, or oftener if he chooses to do so, for the purpose of paying Said debts, as before mentioned. And it is also provided and agreed by the parties to this mortgage, that the party of the first part shall not remove Said Goods and merchandise from the village of Oregon, where they are now situate, without the consent

of the parties of the Second part, their agent, or attorney. And it is also provided and agreed between the parties to this mortgage, that if default be made in the payment as aforesaid or in case the party of the first part neglects to pay over, as herein provided, the avails of the Sales of Said Goods and Merchandise to the Said parties of the Second part their agent or attorney, as before provided or in case the Said party of the first part shall do any thing or act, whereby, in the opinion of the parties of the Second part their agent or attorney, shall consider this Security in danger, then, and in that case it shall and may be lawful for the Said parties of the Second part their agent or attorney or assigns executors or administrators shall have the right to take possession of the Said Goods and Merchandise hereby mortgaged, and all the goods and merchandise which may be hereafter purchased by the party of the first part, wherever the same may be or can be found, and sell the same, at the best price for cash, which can be obtained, and from the Sales, pay and discharge the Said Several Sums, before mentioned which may remain unpaid, or unsatisfied and in case there shall be more than sufficient to pay the same, the remainder shall be returned to the Said party of the first part, after paying all costs and charges in the premises, it is also further provided that in case the party of the first part shall well and faithfully perform the conditions of this Mortgage on his part, pay and discharge the Said Several Debts, as before mentioned at the times and in the manner before specified, then these presents,

and every matter and thing herein contained and this mortgage shall be cancelled and delivered up. In Witness whereof the party of the first part has hereunto set his hand and Seal this fifth day of March, in the year of our Lord, One thousand Eight hundred and fifty five
Witness - David S. Pride

Edmund P. Sexton 

This Mortgage was acknowledged before me, by Edmund P. Sexton, this 5th day of March AD 1855

David S. Pride. J.P. 

(Which said Mortgage is endorsed on Back as follows:)

No. 11583.

State of Illinois }
Ogle County } Recorder's Office -

Filed for Record March

5th 1855 at 4 O'clock P.M. Recorded in Book

"E" of Mortgages Page 53, and Examined

R. B. Light, Recorder

Filed Oct 7, 1858 - McSmith. CLK - By Hes Smith - Dep

The Said Plaintiffs further to maintain the issue on their part, did then and there offer the Said instrument in writing in evidence, to the reading of which Said instrument in writing in evidence, to the jury, the Said Defendant, by his Counsel, did then and there object to, and after hearing the argument of Counsel, the Court overruled the Said objection, and allowed the Said instrument, in writing, to be read to the jury, to which ruling of the Court in allowing Said instrument in writing

to be read to the jury. the Said Defendant by his Counsel did then and there except and prayed that this his Bill of exceptions may be signed sealed and made a part of the record herein and it is so done. the Said writing was then read to the jury. The Plaintiffs further to maintain the issues on their part proved by Said witness. that at the time of the making of Said Instrument in writing. E. S. Smith the Attorney and agent of the Plaintiffs took possession of the goods in Said writing described for the Plaintiffs and employed the witness as provided for. in Said writing. to sell Said goods and directed the witness to get out hand Bills for that purpose. that before witness got out such hand Bills. the Said goods were levied on by a person purporting to be Deputy Marshall. that at the time Said writing was made. and when the goods were levied on by Said Marshall. they were in a store in the Town of Oregon. in Ogle County. in Etngers Block that witness was a Merchant selling goods in Said Store. at Said time of making Said writing that after making the same. he continued to sell Said goods and was in the possession of the same. till they were levied on by Said Marshall. in this suit. that he did not change his ^{that} sign after making Said instrument of writing and after the making of Said writing and before the goods mentioned in it. were levied on by Said Marshall. the witness sold some of the goods in Said writing mentioned. and paid the proceeds thereof to H. A. Meix. the attorney of the Plaintiffs. that at the

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time the Said writing was made, the Plaintiffs resided
 in the city of New York, that after executing the Said
 writing the Witness ^{replenished} ~~replenished~~ the Said Stock of goods
 by purchases made by witness of Pedlars, that the goods
 in the Said writing named, were the same goods
 taken by the Deputy Marshall, and by the Said Mar-
 shall delivered to Davis, the Defendant and the same
 goods replevied by the Sheriff of Ogle county from the
 Defendant, that the proceeds of the Sale of Said goods
 and paid over to Said Meix, was \$ 644.00 - Witness
 said that E S Smith took possession of the goods, about
 the middle of April. The Said plaintiffs further to
 maintain the issue on their part, produced and caused
 to be sworn, Henry A Meix. The Defendant by his Counsel
 objected to Said Meix being examined as a Witness
 which objection was overruled, by the court, and the
 Defendant by his Counsel did then and there except
 to the ruling of the court, in overruling the Said objection
 and in allowing Said Meix to be examined as a Witness
 The Plaintiffs proved by Said Meix, that the Defendant
 was in possession of the goods on the day and at the
 time they were Replevied, and that as the agent of the
 plaintiffs the Witness demanded the goods of the
 Defendant before the commencement of this suit.
 The Plaintiffs having here closed the Evidence on their
 part The Defendant to prove the issue on his part
 offered and produced in evidence an Execution
 levy and Return thereon, of which the following
 are true and correct copies to wit:

E - No 442.

Circuit Court United States.

District of Illinois

Thomas A Cummins et al

Edmund P Sexton

vs

Debt.

Damages \$ 2427. 60

Costs 24. 00

Deft. Fee Bill 1. 10

collect \$ 2452. 70

Judgment Rendered, April 26th 1855

Heaven & Thompson - Pffs. Atty

United States of America } ss

Northern District of Illinois

The United States of America

To the Marshall of the Northern

District of Illinois Greeting: We Command you that of the goods and chattels, lands and tenements of Edmund P Sexton in your District, you cause to be made, Twenty four hundred fifty one Dollars and Sixty Cents (\$2451. 60) which Thomas A Cummins, Charles B Collins & George C. F. Seaman & Horace Slate, lately in our circuit court of the United States, for the Northern District of Illinois before the Judges thereof, at Chicago, in the District aforesaid, recovered against him for Damages, which had sustained as well by occasion of the non performance of certain promises and under takings as for their costs and charges, by them, about their suit in this behalf expended, whereof Said Defendant is convicted as appears to us of Record. And have you that

money, at the Clerk's office of our Said Court at Chicago, in Thirty Days from the date hereof, to render to the Said plaintiffs for their Damages aforesaid and this writ ~ Witness the Hon. Roger B Taney Chief Justice of the Supreme Court of the United States of America at Chicago aforesaid this 26th day of April in the year of our Lord One thousand Eight hundred and fifty five, and of our Independence the 79th year.

W^m H Bradley - Clerk

Cummins vs Sexton - Bond
Indemnifying Bond.

Know all men by these presents that we, Thomas A Cummins, Charles B Collins ^{Esq.} & C. F. Seaman & Horace Slatt, are held and firmly bound unto Harry Wilton Marshall of the Northern District of Illinois and to his Successors, in Office, Executors administrators and assigns, in the sum of Five thousand Dollars, lawful money of the United States for the payment of which sum, we do hereby, jointly and severally bind ourselves, our heirs executors and administrators ~ The condition of this Obligation is such, that whereas, on the 26th day of April 1855, there issued from the United States Circuit Court, of the Northern District of Illinois a certain writ of Fine Facias in favor of the above bounden persons, partners in Trade, under the name of Cummins, Collins Seaman, plaintiffs and against Edmund P Sexton Defendant, directed to the Said Marshall to Execute and whereas the Said

Marshall as aforesaid at the Instance of the Said Plaintiffs in Said Suit is about to Execute Said writ by levying upon, and taking as the property of the Said Defendant — liable to Execution and attachment the following described property, a stock of Goods & merchandise now or lately in possession of Said Deft. in the Village of Oregon, in Said District — Now if the Said Cummins, Collins, Seaman & Slate, shall and do from time to time and at all times hereafter, defend, save keep harmless and indemnified the Said Marshall as aforesaid his heirs executors and administrators and also his Deputies and all other persons acting with, under or by ~~his~~ Instructions of him the Said Marshall or his Deputies and all and every of them of, and from all actions, Suits, costs, charges damages and expenses, whatsoever, including attorney's fees, which shall, or may at any time hereafter happen or come to them, or either of them, for or by reason of the Execution of the Said writ as aforesaid, and the retaining possession of, and selling the Said property under Said writ, or other process hereafter to issue, or by reason of assisting in such Execution or selling, then this obligation to be void, otherwise to remain in full force and effect — Witness our hands and seals this Twenty Sixth day of April, Eighteen hundred and fifty five.

Witness of the Signatures of.

Thomas A Cummins, Charles

B Collins, George & J Seaman

Horace Slate.

Henry H Child

Thomas A Cummins *(Signature)*

Charles B Collins *(Signature)*

Geo. C. J. Seaman *(Signature)*

Horace Slate *(Signature)*

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By virtue of the annexed writ of Execution, issued from the Circuit Court of the United States of America for the Northern District of Illinois in favor of Thomas A Cummins, Charles B Collins, George, C. T. Seaman, and Horace Slat, and against Edmond P Sexton, I have on this Twenty Seventh day of April 1855, levied upon all the right, title and interest of said Edmond P Sexton in and to the following described property to wit: Eighteen umbrellas, Eight silk hats, thirty six common Rough and Ready hats, twelve cloth caps, five oil caps, One Snuff hat five white Rough & Ready hats, 9 Carpet bags, Nine Oil Carpet bags, fifteen Linen coats - Eight black Alpaca coats, Six light Tweed coats, two tweed over coats, Seven Jean coats, Six common Over coats - twelve black Dress coats, Nine black dress coats, two fine - black coats, thirteen farmers Satin vests, three worsted vests five common vests, two fine black Satin vests, One fine figured Velvet vest, five Corduroy pants, three common Satinell pants, One piece of Mole skin, about 25 yards, One piece Corduroy, about 8 yards, One piece of gray Summer cloth, One piece Kentucky Jeans, One piece cotton tweeds One piece brown Satinell One piece Sacco, cassimere, One piece Tweed, Nineteen pair cotton over hauls, three pair cotton shirts, two pieces Satinell three pair cotton check, pants three pair cotton pants, three pair coarse linen pants, nine ladies muffs, One piece Kentucky Jeans, One piece Kentucky Jeans, One piece black Cassimere, One piece plaid One piece Jeans, One piece Sacco cassimere, One piece Double cottonade, two pieces Sheeps gray, One piece cottonade One piece linen plaid, One piece cotton fabric,

One piece Sacco Cassimere. One Bolt. coarse linen
 One bolt cotton linen. One Bolt union cloth, One piece
 cotton Cassimere. One piece union cloth, two pieces shags
 gray. two pieces Sattinell. One piece Jeans. One piece
 Sattinell. two bolts black beaver Sattinell. ten pair Sattinell
 pants. two pair Shags gray pants. One pair Cassimere
 pants. two fancy Straw Hats. ^{Le} palm leaf hats. One
 Straw hat. One piece Rock River Sheetting. 9 whole pieces
 Rock River Sheetting. twenty two whole pieces marked. four-
 rain sheetting. four lawn bonnets, twenty seven open work
 Bonnets. twelve leghorn. And rice pearl Bonnets. Seven Satin
 Bonnets. dresden cards. agate buttons. Eleven half. fancy
 agate Buttons. half dozen horn buttons One gross pearl
 Shirt Buttons. One piece Victoria cord. twenty five bunches
 steel & silver beads. five tobacco boxes. ^x one lot steel pins
 two cards Diaper pins & bodkins. two port monies. five
 calf mallets. One lot fiddle strings. four dozen combs. ^{for}
 dozen tumblers. two bunches knives. Six pieces straw
 trimmings. One lot of tassels. One card straw buttons. ^x
 forty five pieces bonnet Ribbon. Seven pieces cap. Ribbon
 thirty three pieces raffia Ribbon. Eleven pieces Satin Ribbon
 One Spool floss. One Box white cotton hose. One Box
 black Cashmere. two boxes white cotton hose. One pair black
 hose. One box mixed cotton hose. four ~~hundred~~ ^{bunches} black
 patent thread. half dozen lader brushes. One half bunches
 pins. One piece black crape. Seven ^{fourth}. boxes hooks &
 Eyes. One Box cotton hose. four pieces Cotton Ribbon
 one hook bloomer comb. One box mittens. two boxes twist
 combs. three dozen twist combs. One box french mits

One Box cashmere gloves. Six boxes white cotton hose, one
 bunch slate color worsted, one bunch knitting yarn, thirty
 three copy Books. One lot of fancy trimmings. One Box
 black linen thread, nineteen pair Ladies Kid gloves.
 One Box Edging, & Inserting. One lot hair brushes, One
 Lot cloth brushes one Box Lite thread, two Boxes Ladies
 gloves, One Box white Lile gloves, One Box mens gloves
 two Boxes mens gloves, four boxes Ladies thread gloves
 two boxes misses gloves, One Box Ladies gloves, One Box
 nits. One Box Gents Gloves, One Box Ladies Cashmere
 gloves, three pieces of Ribbon wire, Eight papers pins
 One Box Ladies Cashmere gloves, One Box Buckles
 fourteen papers pins, One Lot ladies nits, One Box,
 Pins, Six bunches Sewing silk One Lot Ladies elastic
 One lot knitting needles, thirty three papers buttons, One
 Box Sorted combs, One Box Ivory assorted combs, three
 boxes hair pins, One Lot knitting pins, four boxes needles
 One Box, agate Buttons, One Box pearl buttons, two pieces
 twist One Box puff combs, One Box jewelry, One
 Box Braid One Box pen holders, One Box whisker
 brushes, One Box, press pins, One Box, Morocco, pocket
 Books, One Card pen holder, two Boxes Postmonies, One
 Box combs, half dozen Carpenter pencils, One box Reticules
 one box wooden combs, One Box, ladies Elastic presses,
 One Box pen holders, two papers of pencils, One Box, Spec-
 tacles, four pieces paper Cambric, One pair pen cuffs,
 One Box, narrow Ribbon, One Glove Stretcher, three Boxes
 Suspenders, three Boxes, quality binding, One Box thread
 two Boxes dress trimmings, three Boxes Ladies shoes, two

boxes children's shoes. * four pieces Carpet binding nine
 pop guns. two balls melting cord. One package Buttons.
 Nineteen Dozen bunches spool thread, two boxes plush caps
 four boxes hose. twenty three summer vests. One summer coat.
 two lots Ladies collars. three embroidered Ladies handkerchiefs
 one Box shirt collars. One piece blue Baradge. four Baradge
 shawls five Cashmere. shalls. four pieces barred muslin
 five pieces Jackonett. One piece fancy vesting. two pieces
 embroidered Swiss. Six pieces Bishops Lawn. three pieces
 Brussels Lace. two Ladies Skirts. four pieces Florin Silk
 Eight Scarfs. two pieces Taffe velvet. five Ladies collars. five
 pieces Cap Lace. four pieces black Silk Edging. five Ladies
 collars. two pieces black silk. One piece vesting. five pieces
 Lawn. One Lot. Marking crewel. One Lot Kid gloves. Six
 bunches thread. One Box table Linen. One Box Linen
 handkerchiefs four pieces muslins. two pieces alpacca -
 four pair hose. One piece Lawn. five pieces wool. Ollins
 five Table Spreads. Eight Bunches table cloth. Eight pieces
 flag. Handkerchiefs. ten pair. children's hose. two pieces -
 Nankeen. Eight pocket h'Kfs three pieces cravat. One Box
 black silk cravat. One black silk stock. One redicuit. five
 pair gaiters. three bunches ratts & drawers. One Box gents
 caps. three boxes shirts. two boxes hats. three pair cord &
 Tassels. One Bag. one piece Bengal stripe One piece Denim.
 One piece slate drills. four pieces shirting. Six pieces sheeting
 two pieces table Linen. four pieces Brown Linen. twenty raw
 hides. five pieces of Hickory Stripe. One piece Denimings five
 pieces ticking. One Dozen. large paint brushes. two half Dozen
 small paint brushes. One & $\frac{1}{2}$ Dozen of Varnish brushes.

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One Box pen holders fourteen pair buckskin mits, two
 pair buck gloves, ten pair check shirts five pieces of
 carpet, five Rolls wall paper, half dozen red flannel
 shirts, One white flannel shirt, Six striped shirts, twenty
 two pair buck mits, two & half. Dozen shoe thread, one
 box mits, three fur hats, One Box boys caps, seventeen
 shot pouches, nine pieces. Cambric, two pieces toweling
 one piece black muslin, One piece Superior bleach
 muslin, One piece bleach shirting One piece fine do, One
 bunch white wadding, two Ladies muffs, One bunch
 wall paper, three pieces black, Alapacca, four pieces
 figured Alapaccas, three pieces plain Alapacca, One piece
 plaid Alapacca, One piece Gum cloth, One piece coarse
 toweling, three pieces Ex. flannel; ten pieces half mor-
 ning Calico, One bunch tronie, One bunch wicking, two
 fur hats, three fur caps & boxes, One Box bonnet tape
 One Box bonnet trimmings, two boxes artificials, One Box
 bonnet taps, One box Ladies shoes, One Box Ladies
 Gaiters, One Box Ladies Boots, four parmelica bonnets
 One Ladies bonnet, One Box Ladies shoes, twelve open
 work bonnets, two boxes Ladies corals, One box oil cloth
 caps, One box spool thread, three boxes childrens caps,
 two boxes Gents caps, four sheets, past-board, One box fine
 shirts, two boxes Gents caps, four pieces American prints
 four pieces union prints three pieces Compton prints, two
 pieces Donalds prints, two pieces Spragues prints, three pieces
 Harmer prints, three pieces Solid colors prints, Eight pieces
 Briggs prints, thirty five pieces madder prints, three pieces
 Sloates prints, Nine pieces globe prints, two pieces peruvian

prints. One piece New England print. twenty five pieces
 Allen's prints. Sixteen pieces Colnitas prints. Six wool hats.
 Nineteen pieces furniture Calico. four pieces ^Xberage
 Seven pieces of Shampery. Eighteen pieces Gingham. twenty
 pieces of Delaine. One piece Stripe Shirting. three pieces
 Summer cloths. ten Ladies Shalls. Six pieces bleached
 muslin. three pieces Cambric. One piece yellow flannel.
 two pieces white flannel. three pieces Salisbury flannel
 four pieces red flannel. One piece padding. five pieces
 Cambric. Six pieces oil colored prints. One piece brown
 Holland. two pieces Silesia two pieces Linsee. One piece
 printed cotton flannel. Eight pieces cotton flannel. ten
 pieces Diaper. One piece Linsee. four pieces blue Drill
 three pieces Brown Drill. Eight bottles Ink. three pieces
 Hickory check. One box Ladies pers. One Lot white —
 wadding. One Lot colored wadding. One check shirt
 three Oil stand cloths. fourteen pair suspenders. two
 Gingham shirts. Eight whip lashes. Nineteen Gents caps
 three quires writing paper. thirty two woollen tippets
 twelve Ladies night caps. four Ladies shawls. part box
 Indigo. twelve pint pitchers. Eight quart pitchers. four blue
 platters. One round dish. two white stone dishes twenty
 two small blue plates. thirty five white pint bowls
 Seven white stone bowls. Eight white bowls. twenty five
 blue plates. different sizes. four blue Edged deep
 dishes. Seventy blue plates. different sizes twelve cup
 plates. twenty two large white plates. ten small white
 plates. twenty two white stone cups and Saucers. Eighty
 nine white plates. different sizes. forty nine common

Sancers, thirty Six common cups. forty Six striped
 bowls. twelve white stone bowls. One cream. two white
 pitchers. One blue pitcher. three white teapots. four
 Sugar bowls. Six cream mugs. two white tureens
 One blue Dish. Seventy Seven white stone cups & Sancers
 Sixteen blue edged platters. four frock coats. 4 frock
 coats. four check frock coats. One black frock coat
 2 black frock coats. One cord coat. One Casimire
 coat. One black frock coat. four gray coat. One
 Linen coat. two Satinell coats. one Summer coat. two
 black over coats. One petrisham coat. three mixed
 overcoats. One blue overcoat. four Petrishams coats
 One Broad. over coat. One mixed coat. One brown
 overcoat. three black overcoats. 1 Casimire coat fifty
 Eight mill sacks. Eighty two lbs. of Carpet warp
 One Parlor stove pipe. twelve pair mens Kip Boots
 four pair boys boots. twenty pair Ladies Rubbers.
 five pair Gents Rubbers. Eighty pairs boys boots. One
 pair Boys shoes. One pair Ladies Boots. fifty two
 pair childrens shoes. two pair Ladies enameled boots
 One pair calf shoes. two pair morocco shoes. One case
 heavy Kip Boots. containing twelve pairs. One case
 Light Kip Boots. containing twelve pairs. nine pair
 misses shoes. two pair childrens shoes. three pair
 Boys enameled shoes. Six pair Gents Kip shoes. two
 pair Gents patent Leather. One pair Ladies boots. one
 pair Ladies shoes. three pair Boys shoes. ten pair boys
 boots. Eleven pairs mens Kip Boots. four pairs mens
 nails boots. twelve Gents Kip Boots. One pair of

Gents Kip Boots, One pair Gents Calf Boots, Eight
 pairs Gents Kip, Eleven pair Gents Kip, twenty pair
 mens Kip boots, ten pair Gents Kip Boots, Eight pair
 Boys Boots, fifty Eight Ladies calf boots, Six pairs
 men Kip Shoes, five pairs mens Kip shoes, sixty four
 pair Boys shoes, five pair Boys Boots, twenty five
 pairs mens Brogans, Seventeen pair boys shoes
 twelve pair mens Kip shoes, twenty three pairs
 Ladies enameled Boots, twenty one pair Ladies calf
 Boots, twelve pair Ladies calf shoes, four pair Ladies
 enameled boots, two pairs mens calf Boots, four
 glass Lamps, seven hand saws, One coffee mill
 One Bowl & Pitcher, nine Dozen Harrison Black Ink
 four Spindles, ten blacking brushes, five horse brushes
 twenty horse brushes, twelve bottles peppercane, Six
 boxes blacking, two Dozen, paper, brads, four boxes
 mustard, One Saltceller nine cruits, Eight pen Knives
 four Jack Knives, One box fish hooks, five Jack
 Knives, ^{four Jack Knives} One half Dozen powder flasks, two Razors,
 four door handles, Eight pair Stillards One Dozen
 drive Knobs, One half Dozen Cask stops, One Dozen
 pulleys, three dozen Sash Rollers, One Dozen Razors
 two ~~handed~~ ^{bundles} fish lines, One Dozen door handles,
 two plate locks, three Dozen, Butcher Knives, One
 half Dozen, powder flasks, five pad locks, One door
 lock, One Dozen door butts, One half Dozen door
 handles two powder flasks, three tower bolts, four pair
 Shears, nine breast snaps, two pair sheep shears, —
 fourteen Coro pins, three curry combs, one lot —

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Cushion, twenty papers baking powder, 7 files two files
 thirteen files, five Rasps, three chisels, three files, nine
 chisels, two drawing Knives, two tower Buts, Six crickets
 four plaining Irons, One half Box starch, two flat
 Irons, One lot nutmeg, One mouse trap, One Box
 transparent Soap, One Box transparent Soap, five bits
 three carving Knives & forks, Six Graters, Sixteen locks
 One counter Scales, and weights One sett Knives and
 forks, One sett Carving Knives and forks, One Box
 Shaving Soap, One Box Shaving Soap, two mouse traps
 One Dozen buts, three Butter Knives, One Box Soap
 thirty boxes Caps, Eighteen papers tacks, three Dozen
 blacking, fifteen papers tobacco, two bundles fish
 lines, three Boxes matches, five setts, tea spoons, seven
 setts Tea spoons, nine setts German Silver Tea spoons
 One Box soap One sett Table spoons, twelve setts Table
 spoons, nine setts Tea spoons, four setts German Silver
 Table spoons, two Dozen German Silver Table spoons
 three Razor Straps, ten Dozen narrow buts thirty two
 Dozen, narrow, buts One Bed cord, four pair Scissors
 five Shaving boxes four white wash brushes, four
 Oil Valises, twelve Carpet bags, One large wooden
 dish One ~~tin~~ box, two Shoemaker floats, One shoe
 maker punch, One Keg of Ginger, part Box Saleratus
 Eleven chopping axes, part Box soap, forty four
 papers Saleratus, part of two Boxes glass, part Box
 Young hyson Tea, Extra fine, part Box, Young hyson
 One nail hammer, twenty mahogany Door Knobs
 One chest Young Hyson Tea, No. 16, One chest Oolong

Tea. N^o 129. One chest fine young hyson Tea N^o 16
 One chest of hyson Skin Tea. N^o 102. One chest extra
 fine tea. Young Hyson N^o 43. One Mogome Young
 Hyson Tea. N^o 230, twenty three whisp lashes. Eight
 Corn cutters. five hay knives Nineteen Bed cords.
 twenty four. clothes lines, twelve coffee mills One half
 Dozen mouse traps. One Dozen Blacking brushes.
 twelve Japan Candlesticks: One Lamp. fifteen lanterns
 Six Metallic Tea pots, ten file handles. Eleven boxes
 gun wadding. One Dozen file handles. Six nail
 Hammers, Six Hatchets, twelve Dozen Blacking, three
 Saws, two Dozen baking powders, Eleven match safes
 X One box Shaving brushes, three looking glasses, two
 papers gun wadding, forty three papers of Screws.
 One Lamp. ten papers beads. One half Dozen. files
 One paper brass nails, twenty two, three-cornered files
 four hatchets, Six plaining Irons, Eleven Auger Bits
 One Dozen Knives, three Knives ^{four Jack Knives} four Jack Knives
 Six Jack knives, Seven Doz. ^{Doz.} Knives, One half Dozen
 pocket Knives, five horn handle. Jack Knives, One
 Dozen horn handled Jack Knives, nine sets. Knives and
 forks, two boxes buts, fifteen hammers, Six files
 four boxes gun wadding two Dozen cut plane jeons
 seven chisel Handles, One Dozen chisels, two Dozen
 chisel handles, three Boxes Gun wading three trays
 one coffee mill, one box gimlets, One Dozen white wash
 brushes, Six ten horse cards, twenty one sets Knives
 and forks, fifty Eight boring augurs, three Jenny
 Lind combs, two Horse combs, One Dozen chisels, three

trays. Nine wash boards. One Lot Sand paper three
 water pails. five broad axes. One hatchet five clocks
 three bundles cashmere. One Bail Bandboxes forty two
 Brooms. part barrel of Oil. five measures. five fun-
 nels. Six faucets. three whip handles. seven Sives. part
 tub of Putty One lot of Rags. One Barrel. Cut smoking
 tobacco. One Castor. Scales and weights. part Bale
 of Cotton yarn. One Box candles part Barrel of -
 Beans. One Bale of Ropes. five four tine forks. fifteen
 three trion forks. One Dozen. two trion forks. One
 half Dozen Manure forks. twenty Seven hoes. Eleven
 Scoops. twenty two Shovels. Sixteen Scythe Snaths. One
 lot Ropes. twenty nine Scythes. One pair of Nails. one
 bundle of Small Rope. One bundle Cotton Rope. three
 sett saw handles. Seventy augur handles. part Box
 Candles. One Box plug tobacco. three Boxes plug
 tobacco. One Box Scythe Stones. One Small Scales.
 nine Log chains. Seven trace chains. fifteen pair
 Iron hinges. five hitching chains. five Sivsingles
 two wooden dishes. One pair Boots. five pair Ladies
 enameled Gaiters. One pair Ladies Boots. one pair
 gents. gaiters. twenty Seven pair childrens shoes. two
 gross laces. two half reams. wrapping paper. thirty
 Eight pair cotton Socks. two Seams flax thread
 twenty Seven pair of Woollen Socks. five pair childrens
 mittens. three pair ^{mens} yarn mittens and all the empty
 Boxes and Barrels in the Store. and all the right
 title and interest of Edmund P Sexton in and to the
 lease of the Store. situated on Lot Number four (4)

Block Number Twenty Eight (28) situated on fourth Street, Town of Oregon, State of Illinois, known as Ettinger's Block, opposite the Court House.

Harry Wilton - U.S. Marshall
By, Michl. Regan - Deputy

And on the 10th day of May, 1855. By virtue of a writ of Replevin issued by R. B. Light clerk of the Circuit Court, of Ogle County, State of Illinois & directed to Charles Newcomer, Sheriff of the County and State. - aforesaid, has Replevied and taken the aforesaid property, out of my possession.

Harry Wilton - U.S. Marshall
By, Michl. Regan - Deputy

To the reading of which Said Execution, levy and return thereon, to the jury in evidence, the plaintiffs by their counsel, did object, which objection was sustained by the Court, to which ruling of the Court, in refusing to let the Said Execution, levy & sale thereon be read in evidence, to the jury, the Defendant by his counsel - did then and there except and prayed that this his Bill of exceptions be allowed signed & sealed and made a part of the record herein and it is so done, the foregoing being all the evidence in Said cause. Thereupon, the Plaintiffs by their counsel asked the Court to give to the jury, the following instructions to wit: - The Plaintiffs asks the Court, to instruct the jury, that the chattel mortgage, offered in evidence if the Plaintiffs

took possession under it is good & valid as between plaintiff, the maker Sexton, in the absence of all other proof, entitles the plaintiffs to recover" which said instruction the Court gave, to the jury, - To the giving of which said instruction, the Defendant by his counsel did then & there except - Thereupon the said Cause was submitted to the jury, who retired to consider of their verdict, and after a short absence, the jury returned into Court, the following verdict - "We the jury find the issues for the Plaintiff and assess the damages at five cents" Thereupon the counsel for the Defendant moved the Court for a new Trial, which motion is as follows, to wit: *His Honor said*

William Davis
ads
Jonathan Ransome
Joshua H. Bates

In the Ogle County Circuit
Court of the October Term, AD 1858

And the said Defendant comes by Sweet & Dutcher his Attorneys and moves the Court for a new Trial of this Cause, for the following reasons to wit:

- 1st The Court erred in admitting improper evidence in behalf of the Plaintiffs -
- 2^d The Court Erred in rejecting from the jury, the Evidence offered in behalf of the Defendant
- 3^d The Court erred in instructing the jury on the

part of the Plaintiffs

4th The Verdict of the Jury is contrary to the Evidence

5th The Verdict of the Jury is against the Law

Sweet & Dutcher - Attys for Deft
(Endorsed on back as follows)

Filed Oct 8. 1858 - Melvin clk - By Hefsmith Dep

And afterwards, at the November Term AD 1859
of said Court, after hearing the argument of counsel
the Court overruled the said motion "for a New Trial"
of said Cause, to which ruling of the Court, in refusing
a New Trial of said Cause the Defendant by his
counsel, then and there excepts and prays that
his Bill of exceptions be signed sealed and allowed
and it is so done

Dec 14th 1859

John Constable Seal
Judge 22nd Jd Cir

State of Illinois }
County of Ogle } ss. S. Mortimer W. Smith clerk of the
Circuit Court, within and for the County
of Ogle, in the State of Illinois, aforesaid, do hereby certify
that the foregoing is a true and complete copy of the record
of the Judgment, and of all the proceedings had in said
Court in the above entitled Cause wherein Jonathan H.
Ransom & Joshua H. Bates are Plaintiffs, and

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William Davis is Defendant. as the same appears
of the records and files of my office.

In Witness

Whereof. I have hereunto set my hand and affixed the
Seal of said Court at Oregon. in the County and
State aforesaid this Tenth day of April
A. D. 1860.

Mortimer Smith Clerk

362 61
Supreme Court

William Davis
Plff in error

vs
Jonathan H. Ransom
vs
John H. Bates.
Plff in error

Record

Filed Apr. 19, 1860
L. Leland
Clk.

G. W. Thompson
atst Mr. P. Sweet
Plffs Attys
Charles L. Bowers
of counsel.