

No. 14639

Supreme Court of Illinois

Meixsel

vs.

Williamson

14630

STATE OF ILLINOIS,
SUPREME COURT,
THIRD GRADE DIVISION.

Abigail C. Williams

No. 26-33

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

Madison

1862

Meisner

To

Williams

1863

1864

State of Illinois, } In Third Grand Division,
SUPREME COURT, } APRIL TERM, A. D. 1862.

GEORGE MEIXEL

vs.

CHAPMAN WILLIAMSON.

ERROR TO TAZEVELL.

Abstract of Record.

Page 1

Pleas to the June term of the Tazewell county circuit court, 1861. In replevin and affidavit of plaintiff, that he was the owner of, and entitled to, the possession of the property in controversy, and that the defendant had unlawfully taken, and unlawfully and unjustly detained the same from him.

2 Writ of replevin and service on defendant, and delivery of property to plaintiff.

3 Declaration in replevin, pleas of non cepit, and property in Phares Meixel, and not the property of plaintiff; and that the defendant, as sheriff, by virtue of an execution against Phares Meixel, took the property, &c., and issue on each plea.

5 September term, 1861. Trial and verdict for defendant, and new trial awarded on motion of plaintiff, and cause continued to February term, 1862, when the same came up on new trial, and being submitted on the evidence, &c., to the jury, they found the defendant not guilty. Plaintiff moved for a new trial; which motion the court overruled, and rendered judgment for defendant.

And plaintiff thereupon prayed an appeal, which was granted on filing bond; which was done accordingly.

6 The bill of exceptions shows that plaintiff offered and read in evidence a note of hand of one Phares Meixel, dated August 27th, 1860, and payable to the plaintiff August 27th, 1862, for \$910, with ten per cent. interest from date, and a chattel mortgage in due form executed by Phares Meixel to the plaintiff, to secure the note offered in evidence, and upon the property in controversy; which chattel mortgage was dated August 27th, 1860, and duly acknowledged before a justice of the peace by Phares Meixel, and recorded the same day; which chattel mortgage, on its face, provides that the possession of the property described therein, and now in controversy, should remain with P. Meixel until the note became due or was paid, unless the same should be seized under an execution or attachment against P. Meixel, or be claimed by some other person before the note became due or was paid, when it provided the plaintiff should be entitled to the immediate possession, &c.

To the reading of which, defendant excepted.

Plaintiff then called said Phares Meixel, who testified, that he was the brother of plaintiff, and the person who executed the note and mortgage read in evidence; that he executed them on the 27th day of August, 1860, and on the same day acknowledged the mortgage before the justice who

certified thereto; and that the justice was an acting justice of the peace in the precinct in which the witness then resided; that, at the time, he justly owed his brother, the plaintiff, the sum named in the note; and that he executed the mortgage read in evidence in good faith, on the property in controversy, to secure the said note; and that the note and mortgage was now as it was when he executed it; that the body of the note was not in his hand writing, but the signature was his; that the mortgage was drawn to correspond with the note, and the note, when he executed it, was made payable August 27th, 1862; and that the difference in the appearance of the writing constituting the figure 2, in the body of the note, arose from using a different ink in writing it when executed; and the appearance of the date of the note arose from the same cause; that the note, except the signature, was, he believed, in the hand writing of one Jonathan Corey; and that he (witness) wrote his name on the note and mortgage shown to the court, and delivered them to the plaintiff on the 27th day of August, 1860, the day they bear date; and that he did not say to Warren or Hagerman it was to delay his creditors.

The plaintiff then called Jonathan Corey, who testified that he drew the note and mortgage in question, for the plaintiff, about the time they bear date, and delivered them to the defendant to be executed, but was not present when they were executed; that the figure 2 in the body of the note was not in witness' hand writing, but all the rest was; and that witness had affixed the date on the note since it was executed.

Defendant then admitted that he took the property in controversy out of the possession of Phares Meixsel.

Plaintiff then proved that, before he commenced this suit, he demanded the property of the defendant, and he refused to give it up; and that he had been damaged by the detention and use of the property \$6. It was admitted by plaintiff that defendant had a valid execution against Phares Meixsel, and took the property by levying the same thereon.

Defendant then called one Griswold, as an expert, who testified that he was well acquainted with the appearance of hand writing after its exposure for different times, and on being shown the note read by the plaintiff, said he had no doubt that the date of that note and the figure 2 in the body of the note, was made with a different ink from that with which the body of the note was written, and had been put there long since the note was written, and he would think it had not been on many days; and that, in his opinion, the signature of the maker of the note was from different ink from the body of the note, but could not say from its appearance when it was put there.

The defendant then proved that he was sheriff, and levied the execution in his plea alleged, on the property in controversy, while it was in possession of Phares Meixsel; and that, from the time the mortgage was executed, P. Meixsel had possession of it, and it was the same property described in the mortgage.

Which was all the evidence in the case.

The court then for the defendant gave the following instructions:

1. The court instructs the jury, that if they believe from the evidence that the mortgage was not bona fide, but was made to delay and hinder the creditors of said Meixsel, then the jury are to find the defendant not guilty.

2. If the jury believe from the evidence and statement of Mr. Corey, sworn as a witness in this cause, that the witness Phares Meixsel has sworn falsely as to the note having been dated at the time of execution; and from such evidence that said Phares Meixsel is unworthy of belief, the jury may disregard his whole testimony.

*Not found
may conclude
opinion "find"
have been
ad ded -*

3. If the jury believe from the evidence of Corey, that Phares Meixsel has sworn falsely, and that he is unworthy of belief, and that there is no other evidence to show that the mortgage was given bona fide, they will find for defendant.

4. The court instructs the jury, that the mortgage and note, to be valid, must have been made in good faith and bona fide; and that the production of said note and mortgage is only prima facie evidence of the good faith of the transaction; and if the jury believe from the evidence, that it was not made in good faith, they will find for the defendant.

5. The court instructs the jury, that if they believe from the evidence that the note has been altered since its execution, and that Phares Meixsel is contradicted by the testimony of other witnesses, and that the note was altered to make it conform with the description in the mortgage, they may take all those facts into consideration to show that the mortgage was fraudulent; and if they believe from the evidence that it was fraudulent, they will find for the defendant.

10 6. The court instructs the jury, that if they believe from the evidence that the note in question was altered since the execution to make it conform with the mortgage, and that said note was delivered to said George Meixsel, and has been produced by his attorneys upon this trial, it is evidence to show that he (George Meixsel) knew of the alteration and consented to it.

7. If the jury believe from the evidence, that Phares Meixsel is so unworthy of belief, they may disregard his whole testimony; and if there is no other evidence of the indebtedness of Phares Meixsel to George Meixsel, and there was no such bona fide indebtedness, they will find for defendant.

8. The court instructs the jury, that they may take into consideration and inspect the note and the testimony of Corey and Griswold, and if, from all that testimony, they believe that the note was made payable on the 27th of August, 1860, and the mortgage was given to secure that note, then Phares Meixsel had no right to retain the possession of the property after that time, they will find for the defendant; and under this state of circumstances, it does not make any difference whether the mortgage was fraudulent or not.

9. The court instructs the jury, that Meixsel would not have any right to correct the note to the prejudice of the defendant; and if the note was made payable in 1860, the plaintiff nor any one else had any right to correct it to the prejudice of the defendant.

11 Which instructions the court then and there gave to the jury; and to the giving of which, the plaintiff then and there excepted; and thereupon, the jury returned a verdict for the defendant; and thereupon the plaintiff moved the court for a new trial, for the following reasons:

1st. The finding of the jury was contrary to the evidence.

2d. The finding of the jury was contrary to the law.

3d. The finding of the jury was contrary to the instructions of the court.

4th. The finding of the jury in the cause was totally at variance with all the evidence, and the instructions of the court.

5th. The court gave improper instructions for the defendant.

Which the court refused, and the plaintiff then and there excepted, &c., and filed appeal, bond, &c.

Assignment of errors:

1. The court erred in overruling the plaintiff's motion for a new trial, and in rendering judgment for defendant.

2. The court erred in giving the defendant instructions asked for.

The 2d, because it was improper.

The 3d and 4th, because they were unwarranted by the testimony.

The 6th, because it is immaterial.

The 7th, because it is not based on the evidence, and is calculated to mislead.

The 8th, because not in accordance with the law.

The 9th, because it assumes that the note was corrected to the prejudice of the defendant, without evidence; and each and all are calculated to mislead the jury.

B. S. PRETTYMAN, *for Plaintiff.*

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George Meixsell
Chap. Willardman

Abstract

of the defendant without evidence; and each of the notes attached to the indictment.

The 8th, because it was unnecessary with the 1st and 2nd, because it is not based on the evidence and is irrelevant to the case.

The 3d, because it is immaterial.

The 4th and 5th, because they were unwarranted by the testimony.

The 6th, because it was improper.

Filed May 1, 1862
L. Willard
Clk.

R. E. MEIXSELL, for Plaintiff.

Meas.

To a Term of the Circuit Court
begun and held at the Court House in
Pekin, within and for the County of
Tazewell and State of Illinois, on the
first Monday of the month of June -
A.D. 1861. Present, Hon James Harriott
Judge of the 21st Judicial Circuit of
the State of Illinois, composed of the
Counties of Mason, Tazewell &c.

Be it remembered, that on the 21st day of May
A.D. 1861, an affidavit was filed in the office of the Clerk
of the Circuit Court of Tazewell County, Illinois, which
said Transcript is in the words and figures, following.
To wit: =

George Meixsell

vs
Chapman Williamson

} June Term of the Tazewell
Circuit Court, A.D. 1861.

George Meixsell the plaintiff
in this suit being sworn, says that he is ^{the} owner of & entitled
to the possession of one pair of Black Horses about seven
years old, one blind in one eye. One sorrel Mare about
three years old, one pair of dun Mares, (one with foal) about
five years old, one red spotted yearling Bull, two red and
white calves, of the value of Four hundred dollars. That
Chapman Williamson on the twenty first day of May A.D.
1861, unlawfully and unjustly detain the said black
Horses, sorrel Mare, dun mares & yearling Bull, two red
and white calves, from the possession of said affiant, that
said black Horses, sorrel mare, dun mares & yearling bull

two red and white Balves, has not been taken for any tax
assessment, or fine levied by virtue of any Law of this State
nor seized under any execution or attachment against the
goods and chattels of plaintiffs, liable to execution or
attachment, and prays a writ of Replevin directed to the
Coroner of Tazewell County under the Statute in such
case made and provided

Subscribed and sworn to
Before me, the 21st day of
May A.D. 1861.
Geo H. Harlow Clerk
per A. P. Griswold Deputy

George Meixsell

Now afterwards, to wit: on the same day, a writ was
issued from the office of the Clerk of the Circuit Court
for said County, which said writ is in the words and
figures following, to wit:—

State of Illinois } The People of the State of Illinois, To
Tazewell County } the Coroner of said County, Greeting:—
If George Meixsell of County of Logan shall give
you good and sufficient security to prosecute his suit
to effect and without delay, and to make return of the
following described goods and chattels, the property of
him, the said George Meixsell, to wit:— One pair of black
Horses about seven years old, one blind in one eye, one sorrel
Mare about three years old, One pair of dum Mares (one with
foal) about five years old, one red spotted yearling Bull,
two red and white Balves, of the value of Four hundred Dollars
which Chapman Williamson of Tazewell County, forcibly
and unlawfully took, and unjustly detains — and return
the said property, if return thereof be awarded — and
further to save and keep you harmless in replevying

By
John C. Chase & Son,
203 West Street,
Hartford, Conn.

" said property; then you are to cause the said goods and
" chattels to be replevied and delivered to said Plaintiff without
" delay, And summon the said Defendant personally to be
" and appear before our Circuit Court in and for said Tazewell
" County, on the first day of the next term thereof, to be
" holden at the Court House in said Tazewell County, on
" the first Monday of June A.D. 1861, to answer to the said
" plaint of the said Plaintiff for his unjustly detaining
" the goods and chattels aforesaid, And make due return
" of the bond to be taken of the said Plaintiff as aforesaid
" together with this Writ, to the Clerk of our said Court, with
" an endorsement thereon as to your doings in the premises
" Witness George H. Harlow Clerk of said Court, and
" the seal thereof, at Pekin, in said County, this
" 21st day of May A.D. 1861.
" Geo H. Harlow, Clerk
" per A. P. Griswold deputy

Which said writ, was on the 30th day of May 1861, returned
with the following endorsement, to wit:—
" State of Illinois }
" Tazewell County } By virtue of the within writ I have replevied
" the within named goods & chattels, and delivered the same
" to the plaintiff as directed, and served the said by reading
" to the within named Chapman & Williamson on this 25th day
" of May 1861.
" John Wildhackl - Coroner

And now afterwards, to wit: on the 23rd day of May A.D. 1861,
a declaration was filed in said cause, in the words and
figures following, to wit:—
" State of Illinois } Circuit Court of the June
" Tazewell County } Term A.D. 1861.

George Meixsell plaintiff in this suit by Jonathan Cory,
 his attorney complains of Chapman Williamson defend-
 ant in this suit, who is summoned to answer the plaintiff
 in this suit of a pledge of, wherefore he took the goods and
 chattels of the said George Meixsell, and unjustly detained
 the same against sureties and pledges until &c
 For that the said defendant on the 21st day of May A.D.
 1861. in the County of Tazewell and State of Illinois took the
 goods and chattels, to wit: one pair of Black Horses
 about seven years old, one blind in one eye, one sorrel
 Mare about three years old, one pair of dun colored
 Mares (one with foul) about five years old, one red spotted
 yearling Bull, two red and white Calves of great value,
 to wit: of the value of four hundred dollars, and unjustly
 detained the same against sureties and pledges, until &c
 Wherefore the said plaintiff saith that he is injured and
 hath sustained damage to the amount of Eight hundred
 dollars, and therefore he brings this suit.

Jonathan Cory
 atty for Plff

Now afterwards, to wit: at a Term of the Circuit Court
 begun and held at the Court House in Pekin, within
 and for the County of Tazewell and State of Illinois
 on the first Monday of the month of June A.D. 1861.
 Present Hon James Harriott Judge of the 2nd Judicial
 Circuit of the State of Illinois, Hugh Fullerton, States
 Attorney, Chapman Williamson Sheriff and George H.
 Harlow Clerk, the following proceedings were had
 to wit:

12th day

Monday June 17, 1861.

George Meixsell
Chapman Williamson } Replevin

This cause is ordered to be continued

Now afterwards, to wit: on the 4th day of September A.D. 1861. pleas were filed in said cause in the words and figures following, to wit:—

"State of Illinois }
"Jazewell County } ss. In Circuit Court
Sept Term A.D. 1861.

"George Meixsell
"Chapman Williamson }

And the said defendants, by Robert Ireland his attorneys comes and defends the wrong and injury whereof, and says that he did not take the said goods and chattels in said plaintiffs declaration mentioned in manner and form as the said plaintiff hath above thereof complained against him, and this he prays may be inquired of by the country &
"plaintiff doth the like
"Cory & Pettyman
Robert Ireland for Defts

And for a further plea herein, defendant says actio non, & because he says that the said goods and chattels in said declaration mentioned at the said time, whereof were the property of one Phares Meixsell, and not the property of said plaintiff as by said declaration is above supposed and defendant avers that heretofore, to wit:

on the 3^d day of September 1860 in the Circuit Court of
 Tazewell County Illinois, one John Lutz recovered a
 Judgment against Phares Meixsell and Jacob
 Keese for the sum of Seven hundred and twenty
 seven ⁴⁰/₁₀₀ dollars and costs of suit, and defendant
 further avers that afterwards, to wit: on the 18th of March
 1861, an execution was issued upon said Judgment
 by the Clerk of the Circuit Court of said Tazewell County
 under the seal of said Court, directed to the Sheriff
 of Tazewell County Illinois, commanding him, that
 of the goods and chattels, lands and tenements of said
 Phares Meixsell and Jacob Keese, he should cause to
 be made the sum of Seven hundred and twenty
 seven ⁴⁰/₁₀₀ Dollars damages, and twelve ⁷/₁₀₀ Dollars, costs,
 which on the 3^d day of September A.D. 1860, in the Circuit
 Court for said Tazewell County, John Lutz recovered
 against the said Meixsell & Keese, and that he should
 have that money, debt, damage and interest thereon
 from said 3^d day of September 1860 ready in ninety
 days from the date thereof, ready to render to the said
 John Lutz, and that he should thereof make due
 return, with an indorsement of the manner in which
 he should execute the same, as by reference to said
 execution will more fully appear. And defendant
 avers that he was on the said 18th day of March A.D. 1861,
 and from thence hitherto hath been and still is Sheriff
 of Tazewell County Illinois, and on said last named
 day said writ of execution was placed in the hands
 of said defendant as such Sheriff as aforesaid, to execute
 and defendant avers that by virtue of and in pursuance
 of the commands of said writ of execution he levied
 upon said property in said declaration mentioned as
 the property of the said Phares Meixsell as he lawfully

might to satisfy said execution, and this he is ready
to verify, wherefore he prays Judgment if the said defendant
ought to be further allowed to prosecute his said action
thereof against said defendant and for a return of
said goods and chattels and his costs & adjudged
to him &c

Roberts & Inland
for Defendants

And the said plaintiff say precludi now because
he says that the matters & things in said defendants
plea & action pleaded in manner & form & are not true
& of this &c puts himself upon the Country

Cory & Prettyman
att

Now afterwards, to wit: at a Term of the Circuit
Court begun and held at the Court House in Pekin
within and for the County of Tazewell and State of
Illinois, on the first Monday of the month of
September A.D. 1861. Present Hon James Harriott, Judge
of the 21st Judicial Circuit of the State of Illinois
Whapman Williamson Sheriff and George H. Harlow
Clerk the following proceedings were had, to wit:

1st day

Monday September 2^d 1861

Hugh Fullerton States attorney being absent
the Court appointed Caleb J. Dilworth States
attorney for the present Term of this Court

3^d day

Wednesday September 4th 1861

George Meixsell

Chapman Williamson

} Replevin

Now comes as well the Plaintiff by his attorney Cory, as the said defendant by his attorney Roberts. Whereupon came a Jury of 12 good and lawful men, to wit: J. O. Gillespie, G. F. Cleveland, E. W. West, J. H. Oliver, E. McHaines, J. W. Robinson, C. A. Smith, J. Curby, Geo Gibson, J. H. Fenner, Joseph Evans and A. A. Sweet, duly elected, tried and sworn, who having heard the allegations and proofs of parties, and argument of counsel thereon, retired to consider of their verdict.

4th day

Thursday September 5th 1861.

George Meixsell

Chapman Williamson

} Replevin

Now comes as well the parties by their attorneys, as also the Jury heretofore empanelled in this cause, who for verdict say. We the Jury find the defendant not guilty. Whereupon the Defendant enters his motion for a new trial, which is granted by the Court on condition that he pay the costs of this suit in sixty days.

Now afterwards, to wit: at a Term of the Circuit Court, Begun and held at the Court House in Pekin within and for the County of Tazewell and State of Illinois, on the first Monday of the month of February A. D. 1862, Present Hon James Harriott Judge of the 21st Judicial Circuit of the State of Illinois, Chapman

Williamson Sheriff, and George H. Harlow Clerk, the following proceedings were had, to wit:

1st day Monday February 3rd 1862

Hugh Fullerton States attorney being absent, the Court appointed Caleb J. Dilworth States attorney for the present Term of this Court.

3^d day Wednesday February 5th 1862

George Meixsell }
Chapman¹⁰ Williamson } Deploin - New Trial

Now on this day comes as well the Plaintiff by his attorney Pettysman, as the said defendant by his attorneys Roberts & Irelande, whereupon came a Jury of 12 good and lawful men, to wit: B. O. Higginson, B. E. Roe, P. F. Orendorff, J. Pettijohn, D. Harlow, M. McCorkle, A. Reid, A. Bradley, S. B. Hardman, A. H. Rockhold, A. Kerr, and J. Seadley, duly elected, tried and sworn, who having heard the allegations and proofs of parties, and argument of counsel thereon, for verdict say, "We the Jury find the defendant not guilty of unlawfully withholding the property in the declaration mentioned. Whereupon the Plaintiff entered his motion for a new trial, which motion the Court overruled. It is therefore ordered and adjudged by the Court, that the defendant have and recover of the Plaintiff the costs and charges by him about his defence expended and that execution issue therefor. Whereupon the Plaintiff prays an appeal, which is granted by the Court, with bond to be filed in 30 days in the sum of three hundred

6
Dollars, and by agreement Bond to be approved by the
Clerk

Be it remembered that on the 15th day of
February A.D. 1862, a Bill of exceptions, was filed in said
cause, in the words and figures following, to wit:—

George Meixsell

vs.
Chapman Williamson

In Replevin

Be it remembered that on this
day, this cause coming on to trial, the Plaintiff in
support of the issue offered in evidence, the following
note & mortgage & certificate of acknowledgment and
record, to wit:—

On or before the 27th day of August A 1862 I promise
to pay to George Meixsell or order, nine hundred
and ten Dollars with ten per cent interest from date
August 27 1860 Phares Meixsell

Know all men by these presents, that Phares Meixsell
of the County of Tazewell in the State of Illinois of the
first part, for and in consideration of nine hundred
and ten dollars to me in hand paid by George Meixsell
of the second part, the receipt of which is hereby acknowl-
edged do hereby grant, bargain and sell unto the said
party of the second part his heirs and assigns the
following goods and chattels, to wit: 3 black horses
7 years old, one blind in one eye, one bay Mare 7 years
old, 2 dunn Mares 4 years old, one sorrel Mare colt

two years old, one white Heifer two years old, one red
Heifer two years, one red and white cow six years, one white
Cow with red neck 4 years old, one two year old red Heifer
spotted on the rump, 1 bull calf six months old, red and
white spotted, all of which property is now in my
possession, and the only property of the kind I own or
have, to have and to hold all and singular the said
goods and chattels unto the said party of the second
part his heirs and assigns forever. And the said
party of the first part for himself his heirs and
executors and administrators doth hereby covenant
to and with the said party of the second part and
his assigns, that he is lawfully possessed of the said
goods and chattels of his own property, that the
same are free from all incumbrance, and that
he will warrant and defend the same to him the
said party of the second part, his heirs and assigns
against the lawful claims and demands of all
persons. Provided nevertheless, that if the said party
of the first part, his heirs, executors and administrators
shall well and truly pay to the said party of the
second part, his heirs, executors, administrators or
assigns for the redemption of the above bargained goods
and chattels, the just and full sum of Nine hundred
and ten dollars on or before the 27th day of August
1862, with interest according to the tenor and effect
of one certain promissory note, given by the said
party of the first part, to the said party of the second
part bearing date August 27th 1860, then this mortgage
to be void, otherwise to remain in full force and virtue
and provided further that until default made
by the said party of the first part, in the performance
of the condition aforesaid, it shall and may be

In witness whereof the said party of the first part has
 " hereunto set his hand and seal this 27th day of August
 " A.D. 1860,

" State of Illinois
" Hazen County
" before me by Phaul Meix.
" of August A.D. 1860.

Genl Pector J. P. 23

" State of Illinois)
 " Tazewell County)^{set} I, Merrill & Young, Clerk of the Circuit
 " Court, and Ex-Officio Recorder in and for said County, do hereby
 " certify that the within chattel mortgage was entered for Record on the
 " 27th day of August A.D. 1860, and duly recorded in Book E of
 " Mortg. Page 111.

Merrill C. Young Clerk C.C. and ex officio Recorder
per A. D. Brinwold Deputy

to the reading of which in evidence, the Defendant then and there excepted. The Plaintiff then called Phares Meisell the payor named in said note, who testified that he was a brother of the Plaintiff and the

payor of said that he executed the mortgage and note offered in evidence to his brother on the day and year named therein, and duly acknowledged the mortgage before the Justice of the Peace Rector, who at the time was an acting Justice of the Peace in the Township where witness then resided, and where the property then was, and that he justly owed his brother at that time the amount named in the note, and that he executed the mortgage in good faith on the property in controversy to secure the note, and that the note and mortgage was now as it was when he executed it at the day of its date, that the body of the note was not in his handwriting, but the signature was his, that the mortgage was drawn to correspond with the note, and the note made payable at the time it was executed as stated in the mortgage, that the difference in the appearance of writing, constituting the figure two in the body of the note in describing when the note was payable, arose from using a different ink in writing it when executed, and the appearance of the date on the note arose from the same cause, that the note he believed except the signature was in the handwriting of one Jonathan Corey and that he, witness, wrote his name upon the note shown to the Court, & mortgage and delivered it to the Plaintiff on the 27th day of August 1860, as appears from its date and that he had not said to Hagerman or Womner that he made the note &c to delay his creditors. Plaintiff then called said Jonathan Corey, who testified that he drew the note and mortgage in question for the Plaintiff about the time they bore date and delivered them to the Defendant to be executed but was not present when the same was executed.

4
that the figure two in the body of the note was not in witness's handwriting, but all the rest was, and that witness had affixed the date on the note since it was executed, Plaintiff then read the note and mortgage in evidence, to which Defendant then objected - it was then admitted on the part of the Defendant that he took the property in controversy out of the possession of Phares Meixsell, and Plaintiff proved that before he commenced this suit, he demanded the property of the defendant, and he refused to give it up, and that the Plaintiff was damaged by the detention and the use of the property about \$6. dollars, and it was admitted by the Plaintiff that Defendant had a valid execution against Phares Meixsell and took the property by levying the same thereon - Defendant then called one Griswold as an expert, who testified that he was well acquainted with the appearance of handwriting after its exposure for different times, and on being shown the note read by the Plaintiff in evidence, testified that he had no doubt that the date of that note, and the figure two in the body of the note was made with a different ink from that with which the body of the note was written, and that it had been put there long since the original note was written, and he would think it ~~could~~ ^{had} not been on the note many days, and that in his opinion the signature of the maker of the note was from different ink from the body of the note. but could not say from its appearance when it was put there. Defendants then offered to prove by James Hagerman and one Honner that after the date of the making of the note and mortgage, Phares Meixsell had said that he mortgaged his property to the Plaintiff to prevent his creditors from getting it, which evidence was offered by defendant to impeach

Meixsell's testimony, to the giving of which evidence the Plaintiff objected, because if such things were said it was not in his presence and not with his knowledge, and the Court refused to permit the witness to testify as to the statements of P. Meixsell unless the Plaintiff was present. to which ruling Defendant excepted.

That Defendant was at the time of taking said property and still was Sheriff of Tazewell County. that on the 3d of September 1860, one John Lutz obtained a Judgment in the Circuit Court of Tazewell County Illinois against Phares Meixsell & Jacob Keese for \$727⁴⁰/₁₀₀ Dollars and costs of suit and that on the 18th of March 1861, an execution was issued by the Clerk of the Circuit Court of Tazewell County Illinois, to the Sheriff of Tazewell County and which was given to said defendant as Sheriff to execute, and that by virtue of said execution he took said property about the first of May 1861, which he found in the possession of Phares Meixsell, and that said property was from the time of executing said mortgage in the possession of said Meixsell, and the same property mentioned in the mortgage - and the foregoing was all the evidence offered in the cause. Defendant then asked the Court to instruct the jury as follows -

George Meixsell	} Defendants
Chapman Williamson	

1st The Court instructs that if they believe from the evidence that the mortgage was not bona fide but was made to delay and hinder the creditors of said Meixsell, then the jury are to find the defendant not guilty

9
2^d If the Jury believe from the evidence and statement of Mr Cory sworn as a witness this cause that the witness Phares Weissell has sworn falsely as to the note having been dated at the time of execution and from such evidence that said Phares Weissell is unworthy of belief, the Jury may disregard his whole testimony

3^d If the Jury believe from evidence of Cory that Phares Weissell has sworn falsely and that he is unworthy of belief, and that there is no other evidence to show that the mortgage was given bona fide, they will find for defendant

4th The Court instructs the Jury that the mortgage and note to be valid, must have been made in good faith and bona fide, and that the production of the note and mortgage is only prima facie evidence of the good faith of the transaction, and if the Jury believe from the evidence that it was not made in good faith, they will find for the Defendant

5th The Court instructs the Jury, that if they believe from the evidence that the note has been altered since its execution, and that Phares Weissell is contradicted by the testimony of other witnesses, and that the note was altered to make it conform with the description in the mortgage, they may take all those facts into consideration to show that the mortgage was fraudulent, and if they believe from the evidence that it was fraudulent they will find for Defendant

6th The Court instructs the Jury that if they believe

10

from the evidence that the note in question was altered since its execution to make it conform with the mortgage, and that the said note was delivered to said George Meixsell and has been produced by his attorneys upon the trial, it is evidence to show that he (George Meixsell) knew of the alteration and consented to it

7th If the Jury believe from the evidence that Pharo Meixsell is unworthy of belief they may disregard his whole testimony, and if there is ^{no other} evidence of the indebtedness of Pharo Meixsell to George Meixsell and there was no such bona fide indebtedness they will find for defendant

8th The Court instructs the Jury that they may take into consideration and inspect the note and the testimony of Cory and Griswold and if from all that testimony they believe that the note was made payable on the 27th of August 1860, and the mortgage was given to secure that note, then Pharo Meixsell had no right to retain the property in question after that time, and if the Jury believe from the evidence that Pharo Meixsell did retain the possession of the property after that time, they will find for the defendant, and under this state of circumstances it does not make any difference whether mortgage was fraudulent or not

9th The Court instructs the Jury that Meixsell would not have any right to correct the note to the prejudice of the defendant, and if the note was made payable in 1860, the plaintiff nor any one else had any right to correct it to the prejudice of the Defendant

11
which instructions the Court then and there gave to the Jury, and to the giving of which the Plaintiff then and there excepted, and thereupon the Jury retired and returned a verdict for the Defendant, and thereupon the Plaintiff moved the Court for a new trial for the following reasons to wit:

1st The finding of the Jury was contrary to the evidence

2^d The finding of the Jury was contrary to the Law upon the evidence given in the case

3^d The finding of the Jury was contrary to the instructions of the Court

4th The finding of the Jury in the cause totally at variance with all the evidence and the instructions of the Court

5th The Court gave improper instructions for the Defendant

Which the Court refused, and Plaintiff then and there excepted and prays that this his Bill of Exceptions be signed and sealed which is done

James Harriott

Now afterwards, to wit: on the 27th day of February A. D. 1862, an appeal bond was filed in said cause in the words and figures following to wit:-

Know all men by these presents that we George Mixsell and David B. Allen are held and firmly

12
Borrowed unto Chapman Williamson in the penal
sum of Three Hundred Dollars lawful money, for the
payment of which, well and truly to be made, we
bind ourselves, our heirs, executors and administrators
jointly, severally and firmly by these presents.

Witness our hands and seals this 22^d day of
February A D 1862.

The condition of this obligation is
such that whereas at a term of the Circuit Court
of Tazewell County Illinois begun and held in
the City of Pekin, on the first Monday of February A D
1862, and on the 5th day of said month of February
in an action of Replevin the above named
Chapman Williamson recovered a Judgment against
the above bounden George Mixsell for the return
of the property mentioned in plaintiff declaration
and costs of suit, from which Judgment the
said George Mixsell has prayed an appeal to the
Supreme Court of the State of Illinois. Now
if the above bounden George Mixsell shall
well and truly prosecute his said appeal to
effect and without delay and pay all judgments
costs, interest and damages in case the said
Judgment shall be affirmed, then this
obligation to be null and void, otherwise to
remain in full force and effect.

Taken and approved
by me this 27th day
of February A D 1862
Geo. H. Harlow

George Mixsell
David B. Allen

13
State of Illinois)
Tazewell County)

I, George A. Harlow Clerk of the
Circuit Court, within and for said County, do hereby
certify that the foregoing 19 pages contain a full, true
and complete transcript of the record of proceedings had
in the cause therein named, as fully as the same appears
of record in my office.



Witness my hand and the seal of
said Circuit Court, hereto affixed
at Office in Pekin this 17th day of
March A.D. 1862.

Geo A Harlow Clerk
Jas A. P. Griswold Deputy

And the said Plaintiff in error in the above
cause comes and says that in the foregoing record
there is manifest error in this viz:

1 The court erred in giving the Defendants instructions
asked for. The first & second, & each of the several

Because they were improper from the evidence
given in the Case and each and all calculations
mistaken the jury

2 The Court erred in overruling Plaintiff's
motion for New trial & in rendering
judgment for Defendant.

B. B. Brown
Att'y for P'ty

And now comes the Defendant in
error by Robert Ireland his attorney
and says that in his record and
proceedings aforesaid in the
judgment aforesaid no such
error as is above set forth hath
returned or occurred therein &
this he prays may be ascertained
and that the same ought
to be affirmed

Robert Ireland
Att'y for Defendant

~~77 340 740~~
George Meixell 33

Chapman Williamson

Record

Filed May 1. 1862
L. Viland
Clk.

Filed Apr 24. 1862
J. S. Lamm
Clk.

Sup^{co} paid by J. S. Lamm