No. 14791

Supreme Court of Illinois

Fisher & Haines

vs.

Meek

71611

STATE OF ILLINOIS.

SUPREME COURT,

THIRD GRAND DIVISION.

No. 204 — 100

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

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1865

DEFENDANT'S BRIEF.

FISHER & HAINES
vs.
NOEL B. MEEK.
} ERROR TO PEORIA.

Defendant in this case, as Sheriff of Woodford County, held an execution in favor of Goodheart against Fisher & Haines, the Plaintiffs. Tilton Howard was liable as indorser on the note upon which the judgment was rendered in case the execution should be returned unsatisfied. To secure him, Fisher & Haines turned out the note in controversy to collect and apply the money in satisfaction of the execution. With the assent of Haines, one of the Plaintiffs, Howard pledged the note to the Defendant, before its maturity, to collect and apply the proceeds in satisfaction of the execution. Phelps & Way, having failed to pay the note at maturity, and being in failing circumstances, the Defendant indorsed a levy of the note upon the execution, which he afterwards erased, and returned the execution unsatisfied. Being applied to for a return of the note, no payment of the execution or, offer to pay the same, having been made, he refused to deliver it, for the reason—as he alleged—that he had levied upon it. The pledge of the note was accepted by Defendant by the direction of Goodheart's attorney. Phelps & Way having failed while the note was in Defendant's hands, it has never been paid. Plaintiffs now sue him for a conversion of the note and for damages resulting from an illegal levy upon the note. This is the substance of the case.

Several important questions arise in the case.

I. *What position did the Defendant occupy with reference to the parties in interest?*

1. He was a public officer, charged with the collection of a debt due from Plaintiffs to Goodheart, and for this purpose held an execution against them.

2. He was the pledgee of the note for the purpose of collecting the money and applying the same upon the execution.

3. He was the custodian of collaterals for Goodheart and liable to him for a misuse or the loss of the same.

4. As Sheriff, he was liable to Goodheart for any neglect to collect the money on the execution.

II. *What was the nature of the bailment of the note in Defendant's hands?*

A reference to the testimony is here necessary. Howard, who contradicts himself several times, is the only witness who testifies on this point. He testifies (ab. 2.): "The note was left in my hands * * * for collection; I gave it to Defendant to hold * * * to show him that I was acting in good faith between the parties. * * * Meek was to hold said note and endorsed on it the money I paid him collected from Phelps & Way. * * * There was nothing said about the note being turned out as

collateral security for the payment of the debt. * * * (Abstr. 4.) I asked Haines if he had any objection to my giving Defendant the note to hold until I could make the money, which I expected to do in three or four weeks, and Haines assented to my giving Defendant the note. * * * I merely gave Defendant the note to receipt the payment of money on it, the same as it was given to me, and the Defendant was to indorse any money he might receive on the execution, and, also, on the note, if collected from Phelps & Way. * * * I was authorized to use the money collected upon said note, and upon other notes, to satisfy said execution. * * * I can't say that at the time I put the note into Defendant's hands I understood, or felt, that I had a right to demand it from Defendant at any time, but I know that sebsequently I thought I had a right to demand the note. * * * I held and controlled said note as the agent of Fisher & Haines. (p. 6.) The Phelps & Way note was placed in my hands for collection, together with some others, for the purpose of satisfying the Goodheart judgment." This much he testifies to from recollection. From his testimony it will be observed that his recollection was not very distinct after the lapse of several years. His letter, (p. 10), written at the time, shows the real nature of the transaction. *The note was turned out to him as collateral security on the execution.* It was given in pledge that the money to be collected thereon should be applied in satisfaction of the execution in his hands. It partook of all the incidents of a pawn or pledge.

Garlick *vs.* James, 12 Johns, 146.

III. What is the nature of the claim of a pledgee or pawnee? It is a property *sui generis.* It is a *special property in the thing*, entitling the pledgee to the *exclusive possession* of it during the time and for the objects for which it is pledged. (Story on Bailments, § 303, Jarvis *vs.* Rodgers, 15 Mass., 389.) It gives the right of sale in the case of default in redeeming at the time stipulated. (Story on Bailments, § 308.) It is different from an ordinary lien. (Id. § 311.) In case of negotiable paper the pledgee has a right to recover, receive or sue for the money in his own name. (Id. §321.) He has a right to sell, assign or pawn his interest to another, subject to claim of the general owner, (Id. §324,) and if he does so the other person, to whom transferred, can hold the pledge until the original debt is paid. (Id. § 327, Jarvis *vs.* Rodgers, *supra.*)

It is important that this character of the Defendant, as *pledgee* of the note, be kept in view, because many of the cases in which the question of waiver has arisen were those in which a claim was set up by parties having a *lien* for advances or labor, such as manufacturers, factors, warehouse-men, agisters, &c., and were decided upon principles applicable to those particular kinds of bailment.

The Defendant therefore had the right to the *exclusive possession* of the note until the execution in his hands was satisfied and had the absolute control over it for that purpose.

IV. The next question in the case therefore is: *Did the Defendant lose his special property in the note by assuming to hold it by virtue of a void levy?*

How can a pledgee be divested of his special property in the pledge? *First*: By waiving his rights so as to enable a third party to recover or hold the pledge. *Second:* By forfeiture in case of his wrongful acts whereby the right to the pledge is lost and the general owner can recover—in other words by a conversion.

Many of the cases in the books often quoted as authority on the question of waiver belong to the first class and are therefore not applicable to the present case.

Thus the case of Sweet vs. Pyme (1, East. 4.) referred to by plaintiff was the case of a fuller, who had a lien for work, and having delivered up the possession to a carrier, endeavored to revive his lien by a stoppage *in transitu.* It was held that his lien was waived and the assignees in bankruptcy, of the general owner recovered.

So in Massachusetts if a party in possession of a pledge suffer an attachment in his own suit to be levied upon the pledge he loses his lien as pledgee as to other attaching creditors by suffering the officer to take it out of his possession.

Swett *vs.* Brown 5, Pick. 178.

So when the pledgee had assigned the note secured by the pledge, and suffered an attachment to be levied upon it at the suit of the assignee of the note, he was held to have waived his lien as to the vendee of the general owner. Whitaker *vs.* Sumner 20, Pick. 399. See the observations of Mr. Story on these decisions. Story on Bailwents § 366. So in Homes *vs.* Crane (2 Pick. 610) it is said that the lien of the pledgee cannot be maintained but upon the basis of possession. See Story on Agency § 367.

Other cases go upon the ground that a tortious delivery of the property to a third party will enable the *general owner* to recover against such third person or the pledgee himself. Story on Bailments § 352.

Thus in McCombie *vs.* Davis (6 East. 540) where a broker pledged the goods of his principal to a third person the owner recovered against him. In the same case on new trial (7 East. 5) the case was put upon the ground of the tortious transfer of the goods of the principal by the broker undertaking "to *pledge* them *as his own,* and not to the case of one who intending to give a security to another to the extent of his lien to that other with notice of his lien and appoints that other as his servant to keep possession of the goods for him; in which case he might preserve his lien.

Urquhart *vs.* McIver (4 Johns. 103.)

If the delivery to the third person is with the *bona fide* intent to preserve the lien it is no waiver.

Townsend *vs.* Newell, 14 Pick. 332.

Story on Agency § 367.

It is the misuse or disposition of the pledge contrary to orders that constitutes the cause of action. Murray *vs.* Burling 10 Johns. 174. It is said (Story on Agency § 367, citing Jacobs *vs.* Latour 5 Bing. 130. Campbell *vs.* Proctor 6. Greenl. 12) if a person having a *lien* on goods should cause them to be taken in execution at his own suit he would lose his lien.

We have not the authorities before us but presume they decide that the lien is lost as to the rights of third persons; for it is again said (Story on Agency § 370) "that although a lien is lost by parting with the possession, yet it may revive and re-attach upon the property coming again into the possession of the party entitled to the lien, if it so comes, as the property of the same owner against whom his right exists, and no new intermediate equities have effected it. And in case of a *pledge* Mr. Story says the point has not been decided. Story on Bailments § 366.

The case at bar is different from all that have been decided. The note was pledged to the Defendant as the agent of Goodheart to pay an execution in his hands against the pledger. Everything he did was perfectly consistent with that right. The endorsement of the levy, even had it been legal, was not a diversion of the note from the object of the pledge. Had it been a chattel subject to sale on execution the Plaintiffs could not have alleged a conversion because Defendant as Sheriff had a right to levy on it by virtue of the execution; much less can they allege a conversion in case of a void levy until at least they have made an offer to redeem by paying off the execution. Had he delivered the note to Plaintiffs without Goodheart's consent he would have become liable to him for the debt secured thereby. There was here no such tortious delivery of the possession or misuse of the pledge as would amount to a conversion at law. The note was delivered to Defendant to satisfy the execution. Under a mistaken notion that he could levy upon and sell the note he endorsed a levy on the execution, which levy, on discovering his mistake, he abandoned. Plaintiffs were not deprived of the possession of the note one moment by reason of said levy, for they had no right to demand it until the execution was satisfied, and this would have released the note from all claims the Defendant had on it. The note was not lost by any default of his. He gave Haskell, the attorney for Plaintiffs, a copy of it upon which suit could have brought as well as if he had had the original.

V. The Defendant occupied such a relation to the parties that no act of his, whether tortious or otherwise, could entitle the Plaintiffs to demand the note without first paying the execution. The note was taken by Goodheart's order and after the levy was made he expressly disaffirmed it, and insisted upon his lien as collateral. In this view the case is even stronger than the case of *Townsend vs. Newell* (14 Pick. 332). Had Goodheart directed the levy to be made subject to his right as pledgee the cases would be parallel, but in this case when notified of the levy he expressly disaffirmed it and insisted upon the Defendants retaining the possession of the note by virtue of his pledge.

VI. Keeping the foregoing principles in view the points made by Plaintiffs are of easy solution.

1. Howard was the agent of Plaintiffs in making the pledge and did it by express authority. If he acted in either capacity his acts were binding upon the Plaintiffs. The letter of Howard to Defendant was proper to go to the jury, and the 9th instruction as modified is the law of the case.

2. The correspondence between Defendant and McCulloch was proper to go to the jury to show the authority under which Defendant was acting, and that Goodheart had not relinquished his lien.

The Court informed the jury as to the objects of this testimony at the time it was admitted. (See record p. 117.)

3. The errors assigned upon the other instructions seem to be abandoned in the argument. The law of the case seems to have been fully given in the other instructions.

VII. However the ~~effort~~ errors assigned may be disposed of, the judgment should be affirmed for the reason that the third plea remains unanswered. Under our practice act, the Defendant may plead as many pleas as he deems necessary for his defence. The old English practice was not to allow special pleas in actions of trover except in specified cases. But under the new rules the general issue only puts in issue the conversion.

1. *Archbold's Nisi Prius* 606.

We see no reason why the same practice should not obtain here. If the note belonged to Goodheart as the plea alleges the Plaintiffs had no cause of action. Judgment for this reason alone should be affirmed.

McCULLOCH & TAGGART,
Attorneys for Defendant.

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In the Supreme Court,

THIRD GRAND DIVISION,

APRIL TERM, A. D. 1865.

FISHER & HAINES,

vs.

NOEL B. MEEK.

DEFENDANT'S BRIEF.

Emery & Andrews, Printers and Blank Book Manufacturers, Peoria, Ill.

Filed Apl 20. 1865
L Leland Clk

STATE OF ILLINOIS,

Third Grand Division, ss.

In Supreme Court, to April Term, A. D. 1865.

FISHER & HAINES,
vs.
NOEL B. MEEK.
} ERROR TO PEORIA.

Page of Record.

1 This was an action of trover, to recover the value of a certain promissory note, dated December 15th, 1858, for $727 37-100, due two months and fifteen days after date, with ten per cent interest, signed by H. A. Phelps and Amos F. Way, to the plaintiff. The suit was originally commenced in Woodford county, brought to Peoria by change of venue, and tried at the June Term, A. D. 1864, before the Honorable Marion Williamson, Judge. Judgment for the defendant.

ABSTRACT OF RECORD.

1–3 Declaration containing five counts, first and second counts in trover for the conversion of promissory note, in substance as follows:

$727 37. WASHBURN, ILL., December 15, 1858.

2 Two months and fifteen days after date, we promise to pay to the order of Fisher & Haines $727 37-100 dollars, value received, with ten per cent. interest from date.

H. A. PHELPS,
AMOS F. WAY.

4–10 Third, fourth and fifth counts in case, for wrongfully levying on said note, by virtue of an execution.

11–25 Defendant demurred to declaration.

12-17 Demurrer to declaration overruled. Defendant filed ten pleas. *First*, not guilty. *Second*, property in defendant. *Third*, property in Arnold Goodheart. The *fourth*, *fifth* and *sixth* pleas aver, in substance, that the note in question was placed in the hands of defendant, while acting as Sheriff of Woodford county, as collateral security for an execution in the hands of defendant, in favor of Arnold Goodheart and against Fisher & Haines, that the amount of execution was not paid, &c.

17 *Seventh* plea to third and fourth counts avers that defendant erased levy on execution as he had a right to do.

18 *Eighth*, *ninth* and *tenth* pleas are to the fifth count.

22 Plaintiff demurs to fourth, fifth, sixth, seventh, ninth and tenth pleas, and
26 assigns as cause of demurrer, that said pleas amount to general issue, &c. The Court sustains demurrer to the third plea, and overrules the demurrer to all others —and carries the demurrer back to fifth count of the declaration.

27 Venue changed to Peoria county.

28 Proceedings at June Term, A. D. 1863, Peoria Circuit Court:

37 Plaintiff withdraws demurrer to fifth, sixth and seventh pleas, and leave is given to reply double to each of said pleas. Plaintiff replication denying property in de-
20 fendant. Issue joined.

29 Replication to fifth plea.

30 Replication to sixth plea.

32 Replication to seventh plea.

34 Second replication to fourth plea.

35 Rejoinders to replications.

Issues made up.

39 Proceedings at February Term, A. D. 1864:

Cause continued.

40 Proceedings at June Term, A. D. 1864:

41 Jury empannelled; cause tried.

42 Verdict for defendant—motion for new trial—motion overruled, and judgment for defendant.

BILL OF EXCEPTIONS.

45 Deposition of TILTON HOWARD read in evidence by plaintiff. Howard testified
48 substantially as follows:

My name is Tilton Howard; 49 years of age; a farmer; lives in Washburn, Woodford county; knows the parties; Fisher & Haines, in 1858 were selling goods in Washburn. They sold out their stock of goods to a Mr. Ackey, and Ackey afterwards sold out to Phelps & Way. The defendent was Sheriff of Woodford
49 county in 1858 and 1859. Plaintiff had a note against Phelps & Way about 1859; can't give the exact date of the note; don't remember the exact amount, but it was over $700—from $700 to $750; note was payable from two to four months from
50 date. The note was left in my hands by Mr. Haines, one of the plaintiffs, for collection. It belonged to the plaintiffs. I received the note from plaintiff in January, 1859; I gave the note to defendant about the last of February or first of March,
57 1859; I gave said note to defendant to hold; the reason I gave it to him was to show him that I was acting in good faith between the parties. The defendant came

to me with an execution against Fisher & Haines, and in favor of Arnold Goodheart, and wanted money or property from me. I was then collecting money for Fisher & Haines. I gave defendant about $150 in money. I told him I thought the money could be collected to pay the balance of said execution from the note in question, or from other note I held belonging to Fisher & Haines. I told defendant that I thought I could collect money enough to pay him before the execution would die. I voluntarily handed defendant the note in question, to show him I was acting in good faith for the parties. He took the note, and the money as fast as I could collect it on that note, or on other notes, I was to pay to said Meek until said execution was paid. There was nothing said between Meek and myself at the time, as to the time when said Meek should hand the said note over to me. The note was merely given to him to show that I was acting in good faith in the matter. Meek was to hold said note, and endorse on it the money I paid him, collected from Phelps & Way. I paid Meek $155 00 to apply on said execution, and so my books show. There was nothing said at the time I handed the note to Meek about the note being turned out
52 as collateral security, and I did not authorize Meek to levy upon the note. Before I gave Meek the note I told him not to levy on it. There was nothing said about the note being turned out as collateral security for the payment of said debt.

Afterwards, in May, A. D. 1859, at Metamora, I had a conversation with Meek, and I then and there demanded said note of Meek, and offered to turn out my own property, forty acres of land, for him to levy on.

Meek in reply said he had levied on the note by virtue of execution in favor of Goodheart *vs.* Fisher & Haines, and refused to give up said note.

Mr. Way, two or three times, in his store, wanted me to get the said note, and
53 said that he would turn out other notes to satisfy said note. He tried several times to get that note back by giving other notes for it.

My impression was that if defendant had given me the note at the time, I could have secured it with other notes. At the term of the Woodford County Circuit Court immediately following the conversation already given, I had another conversation with the defendant, in which I asked him for the note again. I wanted it because Phelps had agreed to confess judgment on it at that term. Defendant refused to give it up, and said that he had levied upon it. I then notified him not to advertise said note for sale; that if he did I would enjoin the sale.

If the note had been given me at that time, I am unable to say whether I could have made the money or secured the payment of it. But Phelps proposed to confess judgment and to turn out goods to satisfy the judgment; but refused to do either unless I could get possession of the note. The goods Phelps proposed to turn out at that time were in litigation, and I don't know whether I could have made the money or not. The goods, however, after that time, fell into the possession of Phelps, and he was sole owner of them.

Phelps & Way I considered at that time good and amply able to pay that note. That was the reason I was anxious to get it, and Phelps was anxious to settle it if I could get it in my hands. The note I refer to is the same note levied upon by the
54 defendant, and the note belonged to Fisher & Haines, as I supposed; at least they claimed it, and I have no reason to doubt but that they owned it. They handed it to me as their property; it was payable to them, and was not assigned.

I gave the note to the defendant at my house in Washburn. Haines was with the defendant at my house at the time I gave the note to defendant. Haines was

55 one of the firm of Fisher & Haines. Haines did not object to my giving the defendant the note I asked Haines if he had any objection to my giving defendant the note to hold until I could make the money, which I expected to do in three or four weeks, and Haines assented to my giving defendant the note.

The defendant did not give me any receipt for the note; at least I do not remember that he did, and I have hunted my papers through and failed to find any.

I have no recollection as to any bargain between myself and defendant that he should hold the note for any definite period.

I merely gave defendant the note to receipt the payment of money on it, the same as it was given to me, and the defendant was to endorse any money he might receive on the execution, and also on the note, if collected from Phelps and Way.

56 I was interested in the payment of that execution because I endorsed the judgment note upon which said execution was obtained.

At the time the note was given to me it was not specified that I was to hold said note to secure me against the note I endorsed for Fisher & Haines, but I was authorized to use the money collected upon said note, and upon other notes, to satisfy said execution.

57 Besides the payment of the execution, I was authorized to pay about $100 to some firm in Chicago. I do not remember the name. I was authorized to pay forty or fifty dollars in Peoria, perhaps to Mr. Willard. I do not remember of any other claims that I was to pay, except to Mr. Gregg, and I do not remember the amount. I held notes of Fisher & Haines sufficient to pay all debts against them in my hands.

I cannot tell how much money I realized out of the claims; but I did not get enough to pay all the claims against Fisher & Haines that I was authorized to pay. I had in my hands claims against Fisher & Haines to the amount of three or four hundred dollars for collection. At the time I gave defendants the said note, Haines was in the harness business at Washburn, and I think Fisher was in St. Louis.

58 Fisher & Haines sold out in 1858, and I question very much whether any money could have been made off of them at the time the said note was given to the said defendant.

At the time defendant had the execution in favor of Goodheart I think Fisher had property liable to execution: a house and lot in the village of Washburn. But I do not know of any property that they owned jointly at that time liable to execution. And at the time I gave the note to defendant, no offer was made to turn out the house and lot, or any other property, upon the execution.

59 In a conversation that I had with the defendant afterwards, at Metamora, that if the Goodheart execution was returned not satisfied, that I was authorized to turn him out a house and lot in Atlanta, Logan County, the deed was left with me for that purpose, and the defendant replied that it would not come under his jurisdiction. I think this conversation was in the Spring of 1859, and in the life-time of the execution held by the defendant against Fisher & Haines.

60 I can't say that at the time I put the note into defendant's hands I understood or felt that I had a right to demand it from defendant at any time; but I know that subsequently I thought I had a right to demand the note. I put the note into defendant's hands to show him that I was acting in good faith, and not for the purpose of securing him or the execution he held in favor of Goodheart *vs.* Fisher & Haines. I considered that I had the control of said note. I held and controlled said note as the agent of Fisher & Haines.

61 Mr. McCulloch called on me once to know if I was the man that endorsed a judgment note held by Goodheart against Fisher & Haines. I told him that I was. He asked me what I was going to do about it. I told him that I had exhausted all the means in my hands belonging to Fisher & Haines, and I then told Mr. McCulloch that if I could have had that note, that my impression was that I could have secured the amount and have satisfied said execution. I do not think that I stated
62 to Mr. McCulloch that I gave defendant said note as collateral security, to secure the payment of said execution, nor words to that effect. If there was any such conversation between Mr. McCulloch and myself I do not remember it.

I never made any demand to said defendant for the note without making some offer or proposition to him to satisfy the execution.

I demanded the note of the defendant twice. The first time I demanded the note I offered to turn out my own land. Defendant replied that he had no execution against me, and that he had levied upon the note. At the same time defendant said that if I would show him property belonging to Fisher & Haines, he would levy on it. I did not give him the numbers of my land, but offered to turn out
63 forty acres. At the time I made the other demand for the note I offered to turn out Fisher's property in Logan County. This was during the life of the execution. The reason I say it was in the life of the execution is because at that time defendant had the execution and demanded property to be turned out on it.

64 I demanded the note the first time for the purpose of exchanging it with Way, of the firm of Phelps & Way, for other notes. The second time I demanded the note, I did so because Phelps, of said firm, had agreed to confess judgment on the note. For these reasons I demanded the note. I thought, in both instances, there was a show to get the money on said note.

The reason I thought I could get the pay on said note was, Way gave me the names of several persons that he held notes and accounts against that I thought I could collect. I suppose the defendant could have been secured as well as myself, if Phelps & Way had been disposed to secure him; but Phelps told me that he would not pay or secure said note till I could get it in my hands. Way did not
65 show me any notes, but he named several persons that I knew to be trading with him that he held notes and accounts against that I thought good. I know personally that two persons were indebted to the firm of Phelps & Way at that time; as to the others, I only know what they told me. I do not remember that those two were named. Those he did name I supposed to be good, and I knew that they were trading at the store, and I was willing to take them because I believed that I could get the said note settled—and that was the reason I demanded the note. I felt satisfied that I could secure the note out of the notes and accounts Way proposed to give me, but I was not sure at the time that I could get the note of Meek. I con-
66 sidered Phelps & Way solvent at that time, and the reason that I was willing to exchange for smaller notes and accounts was, that I thought they could be more easily and speedily collected.

I do not know why said Phelps & Way did not pay the note to Fisher & Haines at maturity. Phelps & Way never paid me anything on the note after I gave it to the defendant.

Phelps, of the firm of Phelps & Way, offered to confess judgment on said note at the May term of the Woodford Circuit Court in 1859, provided I could get the note from the defendant.

67 As to Phelps & Way having property to satisfy such judgment, I only know what they told me. They told me that the property he, Phelps, had, consisted of accounts and goods to an amount sufficient to pay such judgment.

The whole stock of goods in the store occupied by Phelps & Way was mortgaged to Cushing & Jenkins.

I know of no other property in the possession of Phelps & Way at that time except the goods and accounts. I don't remember when Fisher left Washburn.

68 The defendant never offered to return the note to me.

At the time I gave the note to defendant I thought I would collect the money to pay it off in a few weeks, and I was to send the money collected to defendant by mail. Defendant did not call on me at all for the money.

69 Fisher had but one house and lot in Washburn, and at the time I told defendant he could levy on it, the house was vacant. Fisher had no other house and lot in Woodford County.

70 The Phelps & Way note was placed in my hands for collection, together with some others, for the purpose of satisfying the Goodheart judgment.

The defendant did not agree, when I offered to turn out the property in Logan County, to return the execution unsatisfied.

I made the first demand for the note, I think, in April, 1859, and the second demand was made in the latter part of May of the same year. The defendant each time declined returning the note.

Fisher's house was worth about $300 at the time I offered to turn it out, and I think was vacant.

The stock of goods owned by Phelps & Way was worth, at a low estimate, a thousand dollars more than they were mortgaged for.

72 At the time Phelps & Way made the proposition to secure the said note the goods were not mortgaged, they were unincumbered; and at the time the proposition was made to secure the note, Way had sufficient means in his possession and under his control to have settled and secured the note.

73 Phelps left Washburn about the first of August, 1859, and Way left about six months after.

About the first of June Phelps had goods to the amount of $2,500 00, and at that time I should think Phelps & Way had goods, notes and accounts to the amount of about $3,000 00, and they were owing about $2,000 00.

I have been engaged in selling goods, and I think I could judge about the amount they had on hand.

74 I don't think any money could have been made out of Phelps & Way, or either of them, since June or August, 1859. I do not know of any property they left.

During the years 1858 and 1859 I was justice of the peace in Woodford County, Illinois.

75 The defendant never demanded anything of me but a satisfaction of the Goodheart execution, but always refused to give up the note because he said that he had levied on it; and I told him not to advertise it, if he did, that I would enjoin the sale.

The only ground that defendant held the note upon, and the only reason he ever gave me for not returning it to me, was that he had levied upon it.

And the plaintiffs further, to maintain the issues on their part, read in evidence the deposition of HENRY A. PHELPS, as follows, to-wit:

78 My name is Henry A. Phelps; am thirty years of age, and reside in the city of Chicago, and am keeping a boarding house.

I know the parties to this suit. In 1858, and during part of 1859, I was engaged in selling goods in the town of Washburn, Woodford county, Illinois, and was associated with Amos F. Way. The name of the firm was Phelps & Way.

79 Fisher & Haines held a note against our firm for about $700 00, on which we had paid about $200 00. The note was given for the goods in our store purchased of M. Ackey, who had purchased from Fisher & Haines, and the note was given to Fisher & Haines for the goods bought of Ackey. We had enough notes, accounts and other assets during the months of April and May, A. D. 1859, to satisfy the said note given to Fisher & Haines. I talked about settling the said note during the months of April and May, A. D. 1859, with Tilton Howard and with Haines, and I offered to pay the note if they would take notes and accounts, and goods, or all goods at cost prices. I offered this to Mr. Howard, with whom the note had been left for collection, and also to Haines. When I found that Howard had not the note, I called on Haines and told him I would pay the note if he would get it. He said the Sheriff, Meek, had it, and he could not get it. This was in the spring of 1859, in May or April. I did
81 not pay the note, and the reason I did not settle it was, it was in the hands of the defendant, and not in the hands of Howard, where it had been left for collection, and not in the hands of Haines, and I could not get it to pay it. Phelps and Way were in debt at that time from $2,000 to $2,500 00, and our property, notes and accounts would amount to from $3,600 00 to $3,800 00. The notes and accounts
81 would amount to $600 00 or $700 00; about $90 00 or $100 00 was in money, the balance was goods and merchandise; the usual assortment found in a country store.

I did not pay Haines or Howard the note, because they did not have it. I would have paid anybody if they had come there with the note, the same as I proposed to Haines. I did not see Meek; I don't think he ever spoke to me about the note. He might have done so, but I do not remember of his ever saying anything to me about it.

We commenced business in Washburn in the summer of 1858, and continued till next May or June.

82 We gave the note to Fisher & Haines about a month after we went there; can't say precisely when, and do not remember when it was payable. We bought about $2,000 00 worth of goods of Ackey. The $700 00 note was given in part payment, and other paper for pretty much all the balance. Before the first of May, 1859, we paid Ackey about $100 00, and Cushing & Jenkins about $400 00 on one note and part of another.

While there we bought goods every day or two; we bought $600 00 or $700 00 worth of goods from Greenleaf, in Lacon, and besides that about one thousand dollars worth from other parties.

83 On goods purchased from Greenleaf we owed about $200 00, and on the balance from other parties about the same.

We owed Cushing & Jenkins about $1,200 60. I do not remember that we owed any one else.

Way had a family; I did not. The debt to Cushing & Jenkins was secured by mortgage on all our stock; this mortgage, I think, was given in the winter of 1858, 1859.

84 They seized the goods in the spring of 1859; they claimed they seized them on the mortgage. I understood the goods were sold; but don't know; neither do I know the amount they brought.

Before the goods were seized by Cushing & Jenkins, Way attempted to assign the goods, but I did not submit to it. After that my partner did not come near me and I transacted business in the store by myself, until Cushing & Jenkins seized the goods.

85 Our partnership liabilities have never been paid that I know of. Meek was not present during any conversation I had with Haines or Howard. I had the conversation with Haines & Howard after Way had attempted to assign the goods. Howard told me that Meek had the note, I think, before the assignment.

87 Cushing & Jenkins seized the goods after the spring term 1859 of the Woodford Circuit Court. It may have been as late as the last of June. I was anxious to pay Fisher & Haines. I thought that my partner and Cushing were trying to cheat me and the creditors too, and I wanted to pay Fisher & Haines rather than any of the others.

89 The plaintiff, to further maintain the issue on his part, read in evidence the
91 deposition of H. L. HASKEL, as follows:

92 My name is Henry L. Haskel; I am 45 years of age; reside in Woodford county; am a farmer; knows the parties to this suit; knew plaintiffs as merchants, in Washburn, about 1859. Have known defendant since 1856; he was Sheriff in 1858 and 1859; at that time I was practicing law in that county.

93 I had a conversation with defendant about a note in favor of plaintiffs and against Phelps & Way; the note was in the hands of defendant. I received an order from Tilton Howard, through Haines, one of the plaintiffs, requesting me to demand of defendant the note in his possession in favor of plaintiffs and against Phelps & Way, for the purpose of suing it in the Circuit Court of Woodford county. I went with Mr. Haines, one of the plaintiffs, and made a demand of the Sheriff (Meek), the defendant in this cause, for said note. The defendant refused to deliver it to me, and said that he had levied on the note by virtue of an execution in his hands, as Sheriff, in favor of Goodhart as plaintiff, and Fisher & Haines as defendants, in the execution. Defendant said he was going to sell the note to satisfy said execution. He said it was by the direction of the plaintiffs in said execution, that he was going to do it. I took a copy of the note in defendant's hands at the time I made the demand; it was as follows:

94 The note was dated December 15, 1858. It was for the sum of $727 37-100, payable two months and fifteen days after date, and was signed H. A. Phelps and Amos F. Way, and payable to the order of Fisher & Haines, with ten per cent. interest from date. It is the same note which defendant levied on. The only reason defendant gave me for not delivering the note to me was, that the plaintiff in said execution had directed him to levy on it, and sell it. The demand was made on or
95 about the 11th day of May, 1859. I demanded the note for the purpose of suing it in the Circuit Court of Woodford county. The note at that time had been due two months and ten days.

I went to defendant when I received the order from Tilton Howard, with Haines, one of the plaintiffs; I showed defendant the order which I had from Tilton Howard, and told him to deliver me the note described in my answer to seventh interrogatory in chief, so that I could sue it, at next term of Court. Defendant said

he should not deliver it to me, for he had levied on it by virtue of said execution, and he was going to sell it. I told defendant that he had no right to sell the note, and that he had better secure himself if he meant to do so. He said the plaintiff in execution had directed it, and he was going to do it.

96 Meek never told me that Howard had turned the note out to secure Goodhart execution.

A day or two afterwards, I went to the defendant in company with Tilton Howard, and Haines, one of the plaintffs in this suit, and again demanded the note again. I told him I had examined the law, and was of the opinion he had no right
98 to sell the note on execution. He said he was going to sell it. At the time I made the demand I was acting as the attorney of the plaintiff; am not an attorney in present case.

99 The plaintiffs, further to maintain the issue on their part, read in evidence an execution and indorsement, and levy covered up, issued from Circuit Court of Peoria county, directed to Sheriff of Woodford county, as in favor of Arnold Goodhart, and against Fisher & Haines, dated February 3, 1859, for $380 50.

Copy of said execution.

101 Copy of indorsements on said execution, as follows:

"Came into hands February the 12th, 1859, at 10 o'clock A. M.

N. B. MEEK, Sheriff W. C."

Indorsement on same execution, which was read through a piece of white paper pasted over the same, as follows:

"By virtue of the within writ, I have levied on the following property, to-wit: One certain note of hand, in favor of Fisher & Haines and against Phelps & Way, and worded as follows:

"WASHBURN, December 16, 1859.

"Four months and fifteen days after date, we promise to pay to the order of Fisher & Haines, seven hundred and twenty-seven dollars 37-100 dollars, value received, with ten per cent. interest from date. H. A. PHELPS,
AMOS F. WAY.

"On which note there is credited, January 24, 1859, $245 96-100, taken as the property of Allen D. Fisher and Jonathan G. Haines, to satisfy said writ.

"April 30, 1859. N. B. MEEK, Sheriff W. C."

Also, indorsement as follows:

102 "Received on the within, per T. Howard, $150 00.

"March 18, 1859. N. B. MEEK, Sheriff W. C."

Also, "I cannot find any property in my county belonging to the defendant.

"May 3, 1859. N. B. MEEK, Sheriff W. C."

And the plaintiffs, further to maintain the issue on their part, read in evidence an execution issued by the Circuit Court of Peoria county, in case of Arnold Good-
103 hart, *vs.* Fisher & Haines, dated September 30, 1859, directed to Sheriff Woodford county, on the same judgment.

104 Said execution came to hand of defendant, as Sheriff, Oct. 3, 1859

Defendant levied on E½ Lots 3 and 4, Block 6, in Washburn, as the property
105 of A. D. Fisher, Nov. 2, 1859. November 26, 1859, said lot sold to Goodhart for $125 00. No other property found, and execution returned.

105 The defendant, to maintain the issue on his part, called E. P. SLOAN, the Clerk of the Peoria Circuit Court, who testified that the first execution offered in evidence was returned into his office by the defendant, with the paper pasted over the indorsement of the levy on the note.

106—9 The defendant then offered in evidence the papers and judgment in Circuit Court, Peoria county, in case of Arnold Goodhart, *vs.* Fisher & Haines, consisting o Declaration, Power of Attorney.

October 21, 1858. Judgment confessed by A. L. Merriman, for Fisher & Haines for $1,380 50, in favor Goodhart—(objected to by plaintiff—objection overruled, and exceptions taken.)

111 The defendant, further to maintain the issue on his part, called TILTON HOWARD, who testified as follows:

I am the Tilton Howard whose deposition was read by the plaintiff. I am the indorser of the note upon which the judgment was rendered in favor of Arnold Goodhart, *vs.* Fisher & Haines. I never gave more than one note to the defendant. I wrote, signed, and addressed to the defendant the letter now shown me as given below:

The defendant thereupon offered in evidence the letter referred to by Howard, as follows:

WASHBURN, ILL., January 25, 1859.

MR. N. B. MEEK—*Dear Sir:*

I received yours of 20th, last night, in reference to the Fisher & Haines matter. The note spoken of that Haines offered to turn out as collateral against Phelps & Way, was turned out to me yesterday, and I called on Phelps & Way, and they turned over small notes to me to the amount of the indorsement on said note, for the express purpose of getting it to apply on said execution you have against Fisher & Haines, for which Haines has my receipt. I called on Haines this morning, and he authorized me to send the note to you as collateral, trusting you would not take any advantage—for they will hold my receipt for the same till I either return the note or the receipt of the judgment you now have. Enclosed please find said note, and remit receipt for same, specifying it as security.

Respectfully yours, TILTON HOWARD.

113 To the introduction of which the plaintiffs then and there objected. Objection overruled, by the Court, and the same was read to the Jury, and the plaintiff then and there excepted..

And the defendant, further to maintain the issue on his part, called SAMUEL D. CUSHING, who testified as follows:

I live at Monunk, Woodford county. Knew Phelps & Way. Phelps & Way owed me about $2,000; March 1, 1859, they paid me about $400; May 11, 1859, I took a mortgage from them on all their stock of goods. They owed a man in Chicago about $200. They owed Fisher & Haines a note of over $700. Their goods were worth about $1,500; about June 1, 1859. They would invoice about $3,300; at forced sale they would not bring over $1,500.

They had notes and accounts in April and May, 1859. I took possession of ½

PEORIA, May 14, 1859.

N. B. MEEK, ESQ.,

Dear Sir: I doubt of your authority to sell the note you have levied upon. If they offer to turn out real estate you are bound to take it first. But my understanding is that you took the note as collateral security. If so, hold it until the judgment is paid. If they offer real estate, make the levy, and file certificate of levy, and await further orders. Enclosed please find *alias* against Richardsons. Please bring their matter to some kind of terms before long. Yours truely,

DAVID McCULLOCH.

117 The Court admitted said letters in evidence, to which the plaintiff then and there excepted.

The defendant, further to maintain the issue on his part, read in evidence the note in question as follows:

$727.37 WASHBURN, December 15, 1858.

Two months and fifteen days after date we promise to pay to the order of Fisher & Haines seven hundred and twenty-seven and 37-100 dollars, value received, with ten per cent. interest from date.

H. A. PHELPS.
AMOS F. WAY.

The plaintiff then recalled TILTON HOWARD, who testified as follows:

118 I never was authorized by the plaintiffs to write the letter read in evidence from me to the defendant; and never had any authority from the plaintiffs to turn the note in question over to defendant as collateral security.

This was all the evidence offered on the trial of said cause.

The plaintiff then asked the Court to instruct the Jury as follows:

119 The Court instructs the Jury that if they believe from the evidence that the defendant received the note in question for a particular purpose, and that he afterwards claimed to hold the same for another purpose, they will find for the plaintiff. (*Refused.*)

The Jury are further instructed, that if they believe from the evidence that the note in question was left with the defendant as a pledge that the money due on the same, as fast as collected should be applied in payment of an execution in the hands of the defendant, as Sheriff, against the plaintiffs, and that he afterwards levied upon the note, without the consent of the plaintiffs, it would be a waiver of any lien the defendant might have had by reason of such pledge, and a conversion of the note, and if the Jury so believe from the evidence, they will find for the plaintiffs, and assess their damages. (*Refused*)

120 The Court further instructs the Jury that if they believe from the evidence that the note in question was placed in the hands of the defendant as a pledge that the money due them, as fast as collected should be applied on an execution in the hands of defendant, as Sheriff, against plaintiffs, and when the defendant was applied to, to return said note, he claimed the same on a different ground than that for which the note was placed in his hands, it was a waiver of the lien he may have had by reason of the pledge, and would be a conversion of the note; and if the Jury so believe from the evidence, they will find for the plaintiff. (*Refused.*)

The Court further instructs the Jury that if they find for the plaintiffs, the measure of damages should be for the full value of the note at the time of conversion, with interest from that time to the finding of the verdict. (*Refused.*)

The Court instructs the Jury that although they may believe from the evidence that the note in question was given to defendant as collateral security to secure the payment of said execution, yet if the defendant levied upon said note and claimed only to hold the same by virtue of such levy, and not by virtue of such collateral, it would be a waiver of the lien by reason of the collateral, and a conversion. (*Refused.*)

Which instructions the Court refused, to which refusal the plaintiff then and there excepted.

121 The plaintiff also asked the Court to instruct the Jury as follows:

9TH.—The Court further instructs the Jury that if they believe from the evidence that the letter to D. McCulloch, written by Tilton Howard, was written without the authority of the plaintiff (" *and that Tilton Howard was not the agent of Fisher & Haines* "), they will wholly disregard said letter.

Which instructions the Court modified by interlining, inserting the words "*and that Tilton Howard was not the agent of Fisher & Haines,*" to which modification the plaintiff then and there excepted.

121 Instructions given for plaintiff, to which no exceptions were taken.

123 Instructions asked and given for the defendant.

127 Verdict for defendant.

127 Motion for new trial. Reasons: The Court erred in refusing plaintiff instructions, and modifying instructions. The verdict of the Jury was contrary to evidence and contrary to law.

128 Motion for new trial overruled.

Certificate of Clerk.

Errors assigned of Record.

I.—The Circuit Court erred in allowing the letter of Tilton Howard to defendant to be read in evidence to the Jury. (See page 111 of Record.)

II.—The Court erred in allowing the letters from David McCulloch, dated January 17th, 1859, to defendant, (page 115 of Record) and letter from defendant to David McCulloch, dated January 26th, 1859, (page 115 of Record,) also, letter dated May 14th, 1859, from David McCulloch to defendant, (page 116 of Record), to be read in evidence to the Jury.

III.—The Circuit Court erred in refusing the plaintiffs instructions.

IV.—The Circuit Court erred in modifying the 9th instruction asked by the plaintiff.

V.—The Circuit Court erred in overruling the motion for new trial.

VI.—The Circuit Court erred in rendering judgment for the defendant.

S. D. PUTERBAUGH, Att'y for Plaintiff in Error.

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In Supreme Court,

TO APRIL TERM, A. D. 1865.

FISHER & HAINES, *vs.* NOEL B. MEEK.	Error to Peoria.

Abstract

Filed April 5. 1865
L Leland Clk

D. S. PUTERBAUGH,
Attorney for Plaintiffs in Error.

Emery & Andrews, Printers & Blank Book Manufacturers, Peoria, Ill.

Be it remembered that heretofore to wit on the 26th day of March in the year of our Lord One thousand Eight hundred and Sixty three there was filed in the office of the Clerk of the Circuit Court in and for the County of Woodford in the State of Illinois in a certain cause wherein Alex D. Fisher and Jonathan Haines partners under name & style of Fisher & Haines were sue for the use of Elias Fisher plaintiffs against Noel B. Meek, which said declaration is in the words and figures following, to wit:

"State of Illinois } ss. Circuit Court.
Woodford County } April term 1863.

In this action the plaintiff Alex D Fisher and Jonathan G Haines partners, under name and style of Fisher & Haines who sue for the use of Elias Fisher, Complain of Noel B Meek, the defendant in a plea of trespass on the case For that whereas the said plaintiff heretofore to wit on the 3d day of February A.D 1863, at the County and State aforesaid were lawfully possessed as of their own property of a certain promissory note in writing made and drawn by Henry A Phelps (signed as H A Phelps) and Amos F Way, whereby said Henry A Phelps, and Amos F Way promised to pay to the said plaintiff in their firm name of Fisher & Haines or their order a certain sum of money, to wit the sum of seven hundred and twenty seven 37/100 dollars, with ten per cent interest from the date thereof, which said promissory note bore date December 15th A.D. 1858, and due and payable two months

and fifteen days after date thereof of great value to wit: of the value of One thousand dollars, and being so possessed, the said plaintiffs afterwards to wit, on the day and year first above mentioned, at the County and State aforesaid casually lost the said promissory note out of their possession and the same aforesaid afterwards to wit; on the day and year last refered to at to wit, the county and State aforesaid, came to the possession of the said defendant by finding,

Yet the said Defendant well knowing the said promissory note to be the property of the said plaintiffs, and of right to belong and appertain to them, but, contriving and fraudulently intending, craftily and subtly to deceive and defraud the said plaintiffs in this behalf, hath not as yet delivered the said promissory note to the said plaintiffs although often requested so to do, and hath hitherto wholly refused so to do, and afterwards to wit; on the day and year last refered to at to wit: the county and State aforesaid converted and disposed of the said promissory note to his own use.

And for that whereas on to wit the 1st day of April A.D. 1859 at the County and State aforesaid, the said plaintiffs were possessed of a certain other promissory note which was in substance in the words and figures following to wit: $ 727.37. Washburn Ill Dec 15th/58.

Two months & fifteen days after date we promise to pay to the order of Fisher & Harris $ 727 37/100 dollars value received with ten per cent interest from date

H. A Phelps

Amos F Way

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of great value to wit: of the value of One thousand dollars, as of their own goods and chattels, and being so possessed thereafterwards on the same day casually lost the same, and the same thereafterwards, on the same day, at the County aforesaid came into the hands and possession of the said defendant by finding, Yet the said defendant, though he well knew the same to belong to said plaintiffs yet intending to injure and defraud them thereof refused to deliver the same to said plaintiffs though thereto often requested, but afterwards to wit; on the same day, at the County and State aforesaid converted the same to the use of the defendant.

And for that whereas, before the committing of the grievances hereinafter next mentioned, to wit: On the 3rd day of February A. D. 1859, an execution was issued out of the office of the Clerk of the Circuit Court of Peoria County in the State of Illinois, directed to the Sheriff of the said County of Woodford in said State, by which said execution the said Sheriff was commanded that of the goods and chattels land and tenements in his County of the plaintiffs he cause to be made the sum of three hundred and eighty dollars and fifty cents damages and the sum of two dollars and fifty five cents costs of suit, which by the Judgment of the said Circuit Court held at Peoria, in and for the County of Peoria in the 21st day of October A. D. 1858, Arnold Jordhart recovered against the said plaintiffs together with interest thereon at the rate of six per centum per annum from the time of recovering the same as aforesaid until paid, and also the further sum of two dollars and five cents accruing costs on said Judgment, and that he have the said execution ready to render unto the said Arnold Jordhart according to law, and that he should make due return of the writ with his proceedings in ninety days to the date thereof, and which said execution afterwards to wit, on the 12th day of February A. D. 1859 at 10 o'clock A. M. came into the hands of the said defendant, who, then and from thence until and at, and after the return of said execution was Sheriff of said County of Woodford to be executed in due form of law by virtue of which said execution said defendant, as Sheriff of said County of Woodford as aforesaid

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afterwards and before the return day of said execution to wit: on the 30th day of April 1859, within said County as such Sheriff as aforesaid, at the said County of Woodford seized and took as the property of said plaintiffs and levied upon the same under and by virtue of said execution a certain promissory note dated December 15th 1858 for the sum of Seven Hundred and twenty Seven 37/100 dollars with ten per cent interest from date, and due two months and fifteen days after the date thereof, said note being executed and delivered to said plaintiffs by Henry A Phelps and Amos F Way, of great value to wit: of the value of One thousand dollars, and although the said defendant so being Sheriff as aforesaid then and there well knowing that said plaintiffs did not turn out said note so to be levied upon as aforesaid and that the same was not subject to levy & sale under execution refused and neglected to return said promissory note to the plaintiffs to enable them to collect the money due upon the same from the payers, who offered and were willing and anxious to pay the ammount of said note to said plaintiffs yet the said defendant, so being Sheriff as aforesaid contriving wrongfully and unjustly intending to injure, oppress, impoverish and wholly ruin the said plaintiffs afterwards to wit: on the day and year last aforesaid under color and pretence of the said execution wrongfully and injuriously did levy said execution on said promissory note as aforesaid

and deprived said plaintiffs of the use and possession of the same, and continued to hold the possession of the same until the said Henry A Phelps and Amos F May the makers of the said promissory note became insolvent and worthless, to said plaintiffs and the said promissory note became wholly worthless, And the said defendant as Sheriff, as aforesaid contriving further to injure and defraud said plaintiffs and to impoverish and wholly ruin said plaintiffs afterwards to wit on the 2nd day of May A.D 1859, at the County and State aforesaid, fraudulently, wrongfully and craftily obliterated and erased upon the indorsement of the levy of the said execution as aforesaid on the said promissory note as aforesaid without the consent of said plaintiffs and on the day and year last aforesaid, indorsed and returned said execution as follows. "I cannot find any property in my County, belonging to the defendant May 2d 1859

P B Peck Sheriff W.C."

And fraudulently and wrongfully returned the same to the office of the Clerk of the Circuit Court of Peoria County Illinois from whence the said execution was issued, and still retained the said promissory note in his possession, by means whereof the said plaintiffs have been and wholly deprived of the use of the said promissory note, and the money due on the same, and have been and are by means of the premises aforesaid greatly injured and damnified, to wit, at Woodford County aforesaid.

And for that whereas, also, before the committing of the grievances hereinafter next mentioned to wit: on the 8th day of February A.D. 1859, one other execution was issued out of the office of the Clerk of the Circuit Court of Peoria County in the State of Illinois, directed to the Sheriff of said County of Woodford to execute according to law said execution being issued on a judgment rendered in the Circuit Court of said Peoria County Illinois in favor of one Arnold Gardhart and against the said plaintiffs for the sum of Three hundred and Eighty 50/100 dollars and costs of suit on the 21st day of October A.D. 1858, which said execution came into the hands of the said Defendant, who then, and from thence until after the return of said execution, was Sheriff of said County of Woodford, on the 12th day of February A.D. 1859, at 10 o'clock A.M., to be executed according to law, and the said defendant, as Sheriff as aforesaid, afterwards and before the return day of said execution to wit, on the 1st day of March A.D. 1858 at said County of Woodford, as such Sheriff as aforesaid seized and took as the property of said plaintiffs a certain other promissory note dated December 15th A.D. 1858, for the sum of Seven Hundred and twenty Seven 37/100 dollars due two months and fifteen days after date, with ten per cent interest from date, made and executed by Henry A. Phelps and Amos F. May and payable to the order of said plaintiffs of great value to wit: of the value of One

thousand dollars, and levied upon the same under and by virtue of said execution, and took and retained the possession of said promissory note under such levy and prevented the said plaintiffs from having the use and benefit of the same until after the said Henry A Phelps and Amos F Way the makers of said promissory note became wholly insolvent and the said note wholly worthless,

And the said defendant as Sheriff, as aforesaid, continuing further to injure and defraud said plaintiffs and to impoverish and wholly ruin them afterwards to wit; on the 2nd day of May A.D 1859, at the county and State aforesaid, fraudulently, wrongfully and craftily obliterated and erased up the indorsement of the levy of the said execution as aforesaid on the promissory note as aforesaid without the consent of said plaintiffs so made and indorsed as aforesaid on said execution, and returned the said execution to with on the day and year last aforesaid, so obliterated and falsely defaced to the Office of the Clerk of the Circuit Court of said Peoria County, and State wrongfully and unjustly returned the said promissory note in his possession. By reason whereof the said plaintiffs were unable to collect the amount due on the said promissory note from the said Henry A Phelps and Amos F Way, and were defrauded wholly of the use of the money due on the said promissory note, as aforesaid, and have been and are by means of the premises otherwise greatly injured and damnified to wit; at the County and State aforesaid,

And for that whereas, heretofore to wit on the 21st day of March A.D 1859, at Wexford County aforesaid, the said plaintiffs at the special instance and request of the said defendant, delivered to the said

9 defendant a certain promissory note bearing date to wit: the 15th day of December A. D. 1858. for the Sum of Seven Hundred and twenty seven 37/100 dollars, due and payable two months and fifteen days after that date, with ten per cent interest from date, made and executed by Henry A Phelps and Amos F Way and payable to the plaintiffs of great value, to wit: of the value of One thousand dollars, the property of said plaintiffs to be by the said defendant held as a pledge that the money due on the same should be applied, when collected to pay an execution then in the hands of said defendant as Sheriff of Bradford County Illinois in favor of Arnold Gerhart and against said plaintiffs and the said defendant then and there seized the said note for the purpose aforesaid.

Yet the said defendant not regarding his duty in that behalf aforesaid to wit: on the day and year last aforesaid, at the County and State aforesaid with the intention of injuring and defrauding said plaintiffs as Sheriff, as aforesaid pretended to by the execution above described upon the said promissory note aforesaid without the consent of the said plaintiffs and held the same under such pretended levy until the said Henry A Phelps and Amos F Way, the makers of said note became wholly insolvent and the amount due on said promissory note became wholly lost to said plaintiffs, and although requested by said plaintiffs to return said promissory note, said defendant refused so to do, but still wrongfully retains the same, whereby the amount due on said promissory note has become wholly lost by reason of the insolvency of the makers of the same, whereby the plaintiffs have been greatly damaged to wit: at Bradford County aforesaid. All which is to

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the damages of said plaintiffs of One thousand dollars and therefore they bring suit &c,

By Peters baugh & Gibson
Atty's for Plff's

Fishis & Hanna
vs
N B Mudge

In Peoria Circuit Court.
Feby Term A. D. 1864.

And the said defendant as to the said plaintiffs second amended replication to the plea by said defendant secondly above pleaded says actio non because he says he did not waive his lien upon the said note in manner and form as the said plaintiff hath in his said replication alleged and this he prays may be enquired of by the Country.

McCulloch & Taggart.
Atty's for Def't.

And the plff
doth the like
S C Peters baugh
plff's Atty

On the 13th day of April A.D. 1863 there was filed in said cause defendants demurrer to plaintiffs declaration, which is in the words & figures following, to wit:

11

State of Illinois }
Woodford County } ss

In Woodford Co Circuit Court
April Term 1863.

Allen & Fisher et al }
vs. }
Noel B Neal }

And the Defendant comes and demurs to the declarations of the Plaintiffs to each count thereof severally & Specially for cause of demurrer shews the following:

1 Neither count shows any cause of Action.
2. No time is alleged when Judgment was made
3 No sufficient demand shown
4 No demand made after they had right to redeem
5 Shows on[illegible] counts
6 That is & superfluous matter charged in each count
7 The whole does not shew that the note was given as a pledge
8 Other reasons

Grove & Capell
Att'y for Def't

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And for further plea to said fifth count said defendant says actio non, because he says that the said Plaintiffs did not during the lifetime of the said execution or at any time since pray the said sum of money so due from said Plaintiff to said Godhead on the execution in said Court mentioned, but to pray the same have hitherto wholly failed & refused & still do neglect & refuse.

Wead & Cassell

Mc Culloch & Taggart

Attys for Deft.

On the 21st day of April A.D. 1863 there was filed in said Cause pleas of defendant which are in the words and figures following, to wit:

Rod B Wells
vs
Allen D Fishes
Jonathan G Haines

In Woodford Circuit Court
April Term A.D. 1863.

1 And now comes the said ~~H said~~ defendant by Geo & Cassell his Attorneys and defends the wrong & injury when &c and says he is not guilty in manner & form as the said Plaintiff hath in his first, second, third and fourth counts of his said declaration alleged, and of this he puts himself upon the country &c.

And the said
Plaintiffs with the like
S D Peterbaugh. Atty for Plff

Geo & Cassell.
Attys for Deft.

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2 And for further plea in this behalf said Defendant as to the first & second counts says Actio non, because he says that the Goods Chattels and property in said counts mentioned at the said time when, were the goods Chattels & property of said Defendant and not of the said Plaintiff and this he is ready to verify wherefore he prays Judgment &c

Grove & Cassell.

Attys for Deft.

3 And for a further Plea in this behalf said Defendant as to said first and second counts, says Actio non, because he says, that the said Goods, chattels, & property in said counts mentioned, were the Goods Chattels and property of One Arnold Gerhart and not of the said Plaintiff, and this he is ready to verify. wherefore he pray Judgment &c

Demurrer sustained

Grove & Cassell

Attys for Defe.

4 And for a further plea in this behalf said Defendant as to the said first, second, third and fourth counts says Actio non, because, he says that the said several supposed causes of Action in said counts mentioned are one and the same and are not other or different

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that after the issuing of the said supposed executions in said third & fourth counts mentioned, which said supposed executions said Defendant avers are one and the same, had come into the hands of the said Defendant as Sheriff of said County of Woodford to execute, they the said Plaintiffs delivered to and pledged with the said Defendant the said note in the said several counts mentioned to be by him held and kept in pledge as collateral security for the payment of the sum of money due and payable from the said Plaintiffs to the said Arnold Goodhart on the said execution so held by the said Defendant, as Sheriff as aforesaid until the same should be wholly paid and satisfied, and in pledge that the said Defendant should receive the money to become due on said note in payment and satisfaction of the same due upon the said execution, and said Defendant avers that the said Plaintiffs as well as the said Phelps & Clay, have wholly failed and refused and still do neglect and refuse to pay to said Defendant or to the said Goodhart the said sum of money due on the said execution but the same yet remains wholly unpaid and the said execution wholly unsatisfied without this, that the said Defendant levied upon the said note by virtue of said execution as in said third & fourth counts alleged, and this he is ready to verify wherefore he pray Judgment &c.

Grove & Cabell

Attys for Deft.

15

5 And for further plea in this behalf said Defendant as to the said third and fourth Counts, says Actio non, because he says, that the said promissory note in said counts mentioned are one and the same and not other or different, and that the said supposed executions in said counts mentioned are one and the same execution, that after the issuing of the said execution and after the same had come into the hands of said Defendant as Sheriff of said Wexford County to execute, they the said Plaintiffs delivered to the said Defendant the note in said last named counts mentioned, to be by him held and kept in pledge as collateral security for the payment of the said sum of money so due from the said Plaintiffs unto the said Gerhart on the said execution until the same should be paid and that the said Defendant should apply the proceeds of said note when paid to the satisfaction of the said execution; yet the said Defendant avers that the said Plaintiffs and the said Philip Hoar have wholly failed & refused to pay to the said Defendant or to the said Gerhart the said sum of money so due on said executions but the same yet remains wholly unpaid and unsatisfied without this that the said Defendant levied upon the said note as in said counts alleged and this he is ready to verify wherefore he pray judgment &c.

Geo. H Cobb

Atty for Deft.

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6 And for a further plea in this behalf the said Defendant as to the said third and fourth counts of said declaration says Actio non, because, he says that the said supposed cause of Action alleged in said Counts are one and the same, that the said several note in said Counts described are one and the same note and that the said several executions in said Counts are one and the same execution, that after the said execution had come into the hands of said Defendant as Sheriff of said Bradford County to execute, they the said plaintiffs caused the said note to be delivered unto him the said Defendant to be by him held and kept in pledge as collateral security for the payment of the said sum of money so due from said Plaintiffs to the said Arnold Gerhart on the said execution, and to appear so much money to be paid on the said note as might be necessary for that purpose to the payment and satisfaction of the sum of money due on said execution as aforesaid; Yet the said Defendant avers that the said Plaintiffs during the life time of the said execution wholly failed to pay the amount due on said execution as aforesaid or any part thereof and although the said note became due and payable during the life time of said execution, yet they the said Phelps & Ellas then and there wholly failed to pay any part thereof to said Defendant to be by him applied to the payment & satisfaction of the sum of money so due on said execution as aforesaid, but they, the said Phelps & Ellas became, and were, and ever after the maturity of said note continued to be wholly insolvent, and the said Defendant further avers that after the expiration of the life of said execution & the return of the same, he, the said Defendant offered to deliver up the said note, and surrender the same to them the said Plaintiffs, which

17.

they the said Plaintiffs then and there wholly refused to receive & thereof this, that he the said Defendant hereof upon the said note as in said Counts alleged and this he is ready to verify, wherefore he prays Judgment &c.

Grove & Cofell

Attys for Defdt.

7 And for further plea in this behalf said Defendant as to said third & fourth Counts says Actio non, because, he says that after the endorsement of the law as in said Counts alleged he the said Defendant erased the said endorsement on said execution as he lawfully might and offered the said Plaintiffs to deliver up &c. & surrender the said note to them which they then & there wholly refused to receive & this he is ready to verify, wherefore he prays Judgment &c.

Grove & Cofell

Attys for Defdt.

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On the twenty first day of June in the year of our Lord one thousand Eight Hundred and fifty three there was filed in said office & rise said cause defendants plea to fifth count of plaintiffs Narr. , which are in the words and figures following, to wit:

"Noel B Meek

ads

Fisher & Haines

8 And for plea to the fifth count in said plaintiffs declaration said defendant says actio non because he says he did not pretend to levy the Execution in said count mentioned upon the note therein described without the consent of said plaintiffs and hold the same under such pretended levy until the said Henry A Phelps and Amos F. Way became insolvent and the amount due on said note became wholly lost to said plaintiffs as in said count alleged and of this he puts himself upon the country &c

Read & Cassell

McClelland & Taggart

attys for defts

And plaintiff doth the like

J. D. Richardson atty Pltff

9 And for further plea to said fifth count said defendant says actio non because he says he did not refuse to return said note as in said count alleged

& of this he puts himself upon the country &c

Read & Cassell

McCulloch & Taggart

Attys

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10 And for further plea to said fifth count said defendant says actio non because he says that the said plaintiffs did not during the lifetime of the said Execution or at any time since pay the said Sum of Money ~~to~~ due from said plaintiffs to said Goodheart on the Execution in said Count mentioned but to pay the same have heretofore wholly failed refused & still do neglect & refuse.

Read & Cassell

McCulloch & Taggart

Attys for Deft.

And afterwards, to wit: on the 22nd day of April A. D. 1863 there was filed in said clerks office in said cause plaintiffs replication to 2nd Plea which is in the words and figures following, to wit;

State of Illinois }
Woodford County } Circuit Court April Term A. D. 1863.

Fisher & Harris }
vs }
Noel B. Mack } And the said plaintiffs come and by way of replication to the said plea by the said

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defendant Secondly above pleaded & say precludi non because they say that the said promissory note in the said several counts mentioned at the time &c when &c were the property of said plaintiffs, and not of the defendant as alleged in said plea &c and this the said plaintiffs pray may be Enquired of by the County &c.

S. D. Puterbaugh
atty for Pffs.

And the said defts doth the like
by Read & Hascall
McCulloch & Taggart attys for defts.

And on the same day, to wit: on the 22nd day of April A. D. 1863 there was filed in said clerks office in said cause plaintiffs replication to defendants fourth plea (Demurer sustained) which is in the words and figures following, to wit;

State of Illinois }
Woodford County } Circuit Court To April Term 1863
Fisher & Haines }
vs }
Stacy B. Mack }

And the said plaintiffs come and by way of replication to the said plea by the said defendant fourthly (4th) above pleaded & say precludi non because they say that the said several causes of action in said counts mentioned are not one and the same, and

Replication to 4th Plea

that the said promissory note was only delivered by the said plaintiffs to the defendant to be held as a pledge that the money due on the same should be applied when collected in payment of said Execution and for no other purpose whatever

And plaintiffs aver that after the said promissory note came into the hands of said defendant for the purpose aforesaid, the said defendant claimed his lien on the said promissory note for the purpose aforesaid, and pretended to levy upon the said promissory note by virtue of said Execution, without the consent of said plaintiffs, and held the same under such pretended levy until the said Henry A Phelps and Amos F. Gray became insolvent, and the amount due on the said promissory note became wholly lost to said plaintiffs and thus said plaintiffs are ready to verify, wherefore &c they pray judgment &c

By S. D Interbaugh
atty for Plffs

And on the same day to wit: on the 22nd day of April A. D. 1863 there was filed in said Clerks office in said cause Plaintiffs demurrer to the 3rd, 4th, 5th, 6th 7th, 9th & 10th pleas of the defendant which are in the words and figures following to wit:

State of Illinois, Woodford County, Circuit Court

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Apno Term 1863

Fisher & Harris
vs
Noel B Meek

And the said plaintiffs come and say the said plea by the defendant 3rdly thirdly above pleaded is not sufficient in law &c Wherefore &c

I. D. Vanderbaugh
atty for Pffs.

And the said plaintiff comes and says that the pleas by the said defendant fourthly, fifthly, sixthly, seventhly, ninthly and tenthly (4th, 5th, 6th, 7th, 9th & 10th) and Each and Every one of them, are insufficient in law, and demur to them, and Each of them generally and not specially &c Wherefore they pray judgt &c.

I. D. Vanderbaugh.

And to said demurrer the said plaintiffs show following special cause to Each of said counts 1st Neither of said pleas present a defense to the Counts the undertake to answer

2. The material facts set forth in said pleas can be given in Evidence under the general issue

3rd The plea do not answer the material allegations of the declaration.

4th. The only amount to the general issue

5. They are otherwise insufficient

S. D. Peterbaugh
atty for Peffs "

And afterwards, to wit: on the Second day of June in the Year of our Lord One thousand Eight hundred and Sixty three there was filed in said clerks office & in said cause the demurrer of defendant to the to plaintiffs replication to defendants fourth plea which is in the words and figures following to wit:

"State of Illinois }
County of Peoria } ss. Peoria Circuit Court
June Term A.D. 1863

Fisher & Hamed }
vs } Venue from Woodford County
Stock & Meek }

And now Comes the said defendant and defends the wrong and injury when &c and files this as his demurrer to plaintiffs replication to defendants plea fourthly above pleaded, filed in this cause and Says that the same is not sufficient under the law for him to answer unto &c wherefore defendant prays judgment &c

by McCulloch & Taggart attys for deft

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And afterwards to wit: on the 30th day of May in the year of our Lord one thousand Eight hundred and Sixty three there was filed in the office of the clerk of the circuit court of Peoria County in the State of Illinois a certified Transcript of proceedings in said cause as follows, to wit:

Page 1

Transcript of the proceedings at the April Term A D 1863 of the Woodford County Circuit Court in a certain cause wherein Fisher & Haines for the use of Elias Fisher were Plaintiffs and Fred B Truck Defendant.

United States of America
State of Illinois } ss
Woodford County }

At a regular term of the Circuit Court of the twenty third Judicial Circuit of the State of Illinois began and held at the town of Metamora within and for the County of Woodford on the thirteenth day of April in the year of Our Lord One thousand eight hundred and Sixty three.

Present the Honorable Samuel L Richmond Judge. James O Perry Clerk. Lewis H Bullock Sheriff. James St C Bear States Attorney

attest James O Perry Clerk

Monday April 20th 1863.

Allen O Fisher and Jonathan G Haines Partners under name & Style of Fisher & Haines For the use of Elias Fisher
Vs
Fred B Truck

} Trespass on the case } No 628

} Now on this day comes the Plaintiff by

} Now on this day comes the Defendant Fred B Truck by

Mr. Culloch & Ward his attorneys, and the plaintiffs Allen M Fisher and Jonathan G Haines partners under name & Style of Fisher & Haines for the use of Elias Fisher, being three times solemnly called come not nor comes any one for them, but they make default herein. It is therefore ordered by the Court that this suit be dismissed for want of prosecution,

Tuesday April 21st 1863.

Allen M Fisher and Jonathan G Haines partners under name & Style of Fisher & Haines, for the use of Elias Fisher } Trespass on the case No 638

vs

Noel B Mack } On this day came the said plaintiffs by Peterbaugh & Gibson their attorneys and move the Court to set aside the default heretofore entered in this cause, and to reinstate said cause on the docket. And the Court being fully advised in the premises it is ordered and adjudged that the said default be and the same is set aside and this cause reinstated, And thereupon this cause came on to be heard upon the demurrer of the Defendant to the Plaintiffs declaration filed in this cause, And the Court being fully advised in the premises does order that the said demurrer be and the same is overruled. And thereupon came the said Defendant by his attorneys and moves the Court for leave to plead, which motion is upon consideration by the Court

allowed and leave is given the said Defendant to plead.

Wednesday April 22nd 1863.

Allen D Fishes and Jonathan G Haines partners under name & Style of Fishes & Haines for the use of Elias Fishes.
vs
Rod B Mack
} Trespass on the case No 628

On this day came the parties the said plaintiffs by Butterworth & Gibson their Attorneys and the said Defendant by McCulloch & Wead his Attorneys and this cause came on further to be heard on the demurrer of the Plaintiffs to the Defendants third, fourth, fifth, sixth, seventh, ninth and tenth pleas filed herein, and the Court being fully advised in the premises it is ordered and adjudged that said demurrer be sustained as to Defendants third plea, and overruled as to Defendants fourth, fifth sixth and seventh pleas and it is further ordered by the Court that the Plaintiffs demurrer to said ninth and tenth pleas be carried back and sustained to the fifth count of Plaintiffs declaration, whereupon the said Plaintiffs moved the Court for leave to reply to Defendants fourth plea which motion by the Court allowed and leave given to reply to said plea. And thereupon the Plaintiffs abide by their demurrer to said fifth, sixth

seventh, ninth and tenth pleas, and the Defendant abides by the said third plea, And now again come the said Plaintiffs by Peterbaugh & Gibson their Attorneys and enter their motion for a change of Venue, which Motion is by the Court allowed and it is ordered that the venue in this cause be changed to the adjoining County of Peoria in this State, It is further ordered that the Clerk of this Court transmit to the Clerk of the Circuit Court of Peoria County the papers in this cause, together with a Transcript of the proceedings in this Court properly certified

State of Illinois
Woodford County } ss. I James M Perry Clerk of the Circuit Court in and for said County do hereby certify that the above and foregoing on pages one, two and three is a correct transcript of the proceedings in said Court in the above cause wherein Allen M Fisher and Jonathan G Haines partners under name & style of Fisher & Haines for the use of Elias Fisher are Plaintiffs and Noel B Meek is Defendant I further certify that the papers herewith numbered 1. 2. 3. 4. 5. 6. 7. 8. 9. 10. 11. 12. 13. 14. 15. 16. 17. & 18, are all the papers now on file in said cause, In testimony whereof I have hereunto set my hand and affixed the seal of said Court at my Office in Metamora in said County this nineteenth day of May A. D. 1863.

(Rev Stamps 5 cents) Seal

James M Perry Clerk.

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And afterwards, to wit; on the 2d day of June A. D. 1863 there was filed in the office of the clerk of the circuit court of Peoria county in the State of Illinois to which the venue in this cause had been changed defendants demurrer to plaintiffs replication to defendants fourth plea, which is in the words and figures following, to wit;

State of Illinois }
County of Peoria } ss. Peoria Circuit Court
June Term A. D. 1863

Fisher & Haines }
vs } Venue from Woodford county
Noel P. Meek }

And now comes the said defendant and defends the wrong and injury when &c and files this as his demurrer to plaintiffs replication to defendants plea fourthly above pleaded, filed in this cause and says that the same is not sufficient in law for him to answer unto &c

Wherefore defendant prays judgment &c

by McCulloch & Taggart
attys for deft

And afterwards to wit: on the third day of June in the Year of our Lord One Thousand Eight hundred and sixty three there was filed in said clerks office in said cause the replications of the plaintiffs to the 5th, 6th and 7th pleas of the defendant which are in the words and figures following, to wit:

"State of Illinois } ss. Circuit Court to June Term
Peoria County, } A. D. 1863

Fisher & Harnies }
vs }
Noel B. Meek }

And the said plaintiffs by S. D. Puterbaugh their attorney come and by way of replication to the said plea by the said defendant fifthly above pleaded and say precludi non because they say, that that they did not deliver the said note in said counts mentioned to said defendant to be by him held and kept in pledge as collateral security for the payment of a sum of money due from plaintiffs to said Goodheart — and that the said defendant did buy upon said note as charged in said declaration &c and this they pray may be Enquired of by the Country &c.

1st Replication to 5th plea

S. D Puterbaugh
Atty for Plffs.

And deft doth the like by McCulloch Taggart & Lucas his attys

2 Replication to 5th plea stricken from files June 4. 1863

And for further replication to the said plea by the said defendant fifthly above pleaded, leave of court first being had, plaintiffs say *precludi non* &c because they say, that the said promissory note was only delivered to said defendant as a pledge that the money due on the same when collected should be paid on said Execution, and not as collateral security for the payment of the money due said Goodheart, and plaintiffs aver that the said defendant waived the said lien by reason of the pledge aforesaid, and afterwards levied upon said note by virtue of said Execution and held the same under such levy until said makers of said note became wholly insolvent and the amount due on said note became wholly lost to plaintiffs &c and this plaintiffs are ready to verify &c. Wherefore &c

S. D. Puterbaugh
Atty for Pltff.

1 Replication to 6th Plea

And for replication to the said plea by the said defendants fifthly above pleaded to the said 3rd & 4th counts, plaintiffs say *precludi non* because they say &c that the said note was not delivered to said defendant to be by him held and kept in pledge as collateral security for the payment of the said sum of money due from plaintiffs to said Arnold Goodheart, and that said Phelps & Way did not become wholly insolvent until long after said note became due, and that said defendant did levy upon said note as charged in said

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declaration and kept and detained the same until said Phelps & Way became wholly insolvent, and said note became wholly lost to said plaintiffs &c and this said plaintiffs pray may be enquired of by the country &c Wherefore &c.

S. D Puterbaugh
atty for Plffs.

And the defr doth the like
by McCulloch & Taggart & Mead
his attys.

2 Replications to 6 plea

Strickenfrom files June 4 1863

And for further replication to the said plea by said defendants Secondly above pleaded, leave of court first being had plaintiffs say precludi non &, because they say that the said note was not delivered to said defendant as collateral security for the payment of the sum due said Arnold Goodheart but as a pledge that the money due on said note, when collected should be applied in payment of said Execution then in defendants hands and plaintiffs aver that said defendant waived the lien he had by reason of said pledge, and afterwards levied upon said Execution as alleged in said counts and kept and detained the same &c until the said makers of said note became wholly insolvent and lost to said plaintiffs - and that said Phelps & Way were during the life time of said Execution, after said note became due were solvent, and able to pay said note but afterward

became insolvent, and this said plaintiffs are ready to verify &c Wherefore &c

S. D. Puterbaugh
Atty for Pltffs.

Replication to 7th plea

And for replication to the said plea by said defendants Seventhly (7th) above pleaded, plaintiffs say Prochdi non because they say, that the said levy was made and continued on said note, and plaintiffs were deprived of the possession and control of the same, until after the said Phelps & Way became wholly insolvent and the money due on same was wholly lost to plaintiff - and that said defendant did not if ever offer to return said note until long after the same became wholly worthless and lost - and that when the note came into the said defendants possession the money could have been collected and amount due paved to said plaintiff, if said defendant had not wrongfully levied as aforesaid
And this plaintiffs are ready to verify &c.
Wherefore &c.

S. D. Puterbaugh
Atty for Pltff.

And afterwards to wit: on the 26th day of June in the Year of our Lord One thousand Eight hundred

and Sixty three there was filed in said clerks office and in said cause plaintiffs Amended Replication by leave of Court to defendants fourth plea which is in the words and figures following, to wit:

State of Illinois,
Peoria County. } Circuit Court
To June Term 1863.

Fisher & Haines
vs
Noel B. Meek

And the said plaintiffs by way of replication to the said plea by the said defendants fourthly above pleaded say precludi non because they say, that the said several causes of action in said counts mentioned are not one and the same, and that the said promissory note was not delivered to said defendant as collateral security for the payment of the sum of money due from plaintiffs to said Goodheart, and that said defendant did levy upon said promissory notes as charged in said declaration, and this they pray may be Enquired of by the country &c

By S. D. Puterbaugh
Atty for Pffs

And the defendant doth the like by
McCulloch & Taggart
his attys.

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State of Illinois,
Peoria County. } Circuit Court
To June Term 1863

Fisher & Hamer's
vs
Noel D. Meek

2 And the plaintiffs come and by way of replication to the said plea by the defendants fourthly above pleaded and say precludi non because they say that the said several causes of action in said counts mentioned are not one and the same, and that after said promissory note was delivered to the defendant as a pledge as in said plea mentioned, the said defendant married his lien or the said pledge, and that he did levy upon the same as charged in the said 3rd and 4th counts of said declaration, and converted the same to his own use, and this the said plaintiffs are ready to verify &c wherefore they pray judgment &c &c.

By S. D. Puterbaugh
Atty for Pffs.

And afterwards to wit: on the fifth day of February in the Year of our Lord One Thousand Eight Hundred and Sixty four there was filed in said Clerks Office and in said court the defendants

rejoinder to the plaintiffs replication to the defendants Seventh plea which is in the words and figures following, to wit:

"Fisher val
vs
Meek

In Iowa Circuit Court
Feby Term 1864.

And the said defendant as to the said plaintiffs replication to the Seventh plea by said defendant above pleaded says actio non because he says that the money due on the said promissory note did not ~~becom~~ become wholly lost unto said plaintiff by reason of the said levy as in said plea alleged and of this he puts himself upon the country.

McCulloch & Taggart
Ingersoll Mead for deft

And the plaintiff doth the like
S. D. Puterbaugh
atty for pltff.

And on the same day to wit: on the fifth day of February in the Year of our Lord One thousand Eight hundred Eight hundred and Sixty four there was filed in said clerks office and in

Said Cause defendants rejoinder to plaintiffs amended replication to defendants fourth plea, which is in the words and figures following to wit;

Fisher & Hamer
vs
N B Meek.

In Ecra Circuit Court
Feby Term A.D. 1864.

And the said defendant as to the said plaintiffs Second amended replication to the plea by said defendant fourthly above pleaded says acte now because he says he did not make his lien upon the said note in manner and form as the said plaintiff hath in his said replication alleged and this he prays may be inquired of by the country

McCulloch & Taggart
Attys for Defts.

And the pltff. doth the like
I. D. Puterbaugh
Pltffs atty.

Proceeding at a term of the Circuit Court began and held at the Court House in the City and County of Peoria, State of Illinois on the first monday in the month of ~~June~~ June in the year of our Lord One thousand eight hundred and Sixty three it being the first day of said month. Present J A J Murray Sheriff and Enoch D Sloan Clerk to wit:

Wednesday June 3rd A.D. 1863.

Allen & Fisher et al

vs

Trespass on the case on premises

Nick B Nick

This day came the plaintiff by Puterbaugh their attorney and on their motion leave is given them to withdraw their demurrer to defendants 5th 6th & 7th pleas & leave is also given them to reply double to each of said pleas, and it is ordered that said plaintiffs pay the costs of this term:

Wednesday June 3rd A.D. 1863.

Allen & Fisher et al

vs

Trespass on case on premises

Nick B Nick

This day came Defendant by McCulloch his attorney and moved the Court to set aside the order heretofore made herein, Striking replications (all except to application 4th plea) from

the files,

Thursday June 4th A.D. 1863

Allen H. Fisher et al

vs Trespass on the case

Noel B. Buck.

This day this cause came on to be heard on the motion to set aside former order herein striking certain replication from the files, and the court being fully advised in the premises, the court modified said order so as to strike from the files only the 2d replication to 5th & 6th pleas. This cause was then heard on the demurrer to replication to 5th plea, and on consideration, the court sustained said demurrer. On motion Plaintiff has leave to amend his replication.

Friday June 5th A.D. 1863

Allen H. Fisher et al

vs Trespass on the case on promises

Noel B. Buck

This day came the Plaintiffs by Pettengill

their attorneys and files his amended replication, and on motion, leave is given him to file double replication to 4th plea.

Proceedings at a term of the circuit court began and held at the Court house in and for the City and county of Peoria and State of Illinois on the first Monday in the Month of February in the year of our Lord One thousand Eight hundred and sixty four, it being the first day of said Month, Present the Honorable Marvin Richardson Judge of the 16th Judicial circuit in said State, Wm A J Murray Sheriff and Enoch P. Moore, Clerk to wit;

Friday March 4th A D 1864.

Allen D Fisher &
Jonathan G Harris use
of Elias Fisher.
vs Trespass on case on Promises
Noel B Mack.

On motion of Defendant this cause is continued at his costs, Therefore it is considered by the court that said Plaintiffs have and recover of the said Defendant their costs and charges by them about their suit in this behalf expended at this term of court, and that they have execution therefor.

Proceedings at a term of the Circuit Court of Peoria County Illinois, begun and held at the Court House in the City and County of Peoria in said State, on the first monday in the month of June in the year of Our Lord One thousand eight hundred and Sixty four, it being the Sixth day of said month. Present, Honorable Marin Williamson Judge of the 16th Judicial Circuit in said State John A J Murray Sheriff and Ennis O Sloan Clerk to wit;

Friday June 10th A.D. 1864.

Allen M Fishstae.

vs. Trespass on the case on promises

Noel B Meek.

This day this cause came on to be heard on Defendants motion to suppress portions of the Deposition of H A Phelps, on consideration the Court Sustained and overruled said motion as marked on said deposition by the Court.

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Friday June 17th 1864.

Allen M Fishes
Jonathan G Haines for use &
Elias Fisher
vs
Noel B Mills

Trespass on case on promises

This day came the plaintiffs by Pritchard & Pritchard their attorneys, and the defendant by Wm McCulloch & Taggart, Gros and Ingersoll, and it is ordered by the court that a Jury be impannelled to try this cause, whereupon came a Jury of twelve good and lawful men to wit, John McCongal, Elijah Hancock, H B Fraylee, Silas Chappell, S Meals, A Vantassell, Richard Taylor Wm E McBain, Wm Elsworth, A Hall, D Meeker, and Thos Alward, who were duly chosen, tried and sworn to well and truly try this cause and a true verdict give according to the evidence. The said Jury not having heard the evidence &c in the case were adjourned to meet the court at 9 o'clock tomorrow morning.

Saturday June 18th A.D. 1864.

Allen L Fisher
Jonathan G Haines for
use of Elias Fisher
vs
Noel B Meek

Trespass on the case on promises

This day came the parties to this suit and also came the Jury sworn to try this cause, and the said Jury having heard the evidence &c, do say, We the Jury find the defendant not guilty; The said plaintiff by attorney, moved the Court for a new trial

Monday 20th A.D. 1864.

Allen L Fisher
Jonathan G Haines for use
of Elias Fisher
vs
Noel B Meek.

Trespass on the case on promises.

This day this cause came on to be heard on the motion of plaintiff for a new trial, and the Court being fully advised in the premises do overrule said motion, Whereupon it is considered by the Court that said Defendant

43 have and recover of the said plaintiffs his costs and charges by him about his defense in this behalf expended and that he have execution therefor.

And afterwards, to wit: on the 21st day of June A. D. 1864 there was filed in the office of the clerk of said circuit court of Peoria and in said ~~court~~ Cause the plaintiffs Bill of Exceptions which is in the words and figures following, to wit:

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State of Illinois }
Peoria County }

In Circuit Court
In June Term 1864

Fisher & Haines }
vs }
Noel B Buck }

In Error - Bill of Exceptions

Be it remembered that on the trial of this cause the Plaintiffs to maintain the issue on their part read in evidence the deposition of Tilton Howard as follows,

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State of Illinois }
Peoria County } ss

Circuit Court
To September Term A.D. 1863

Allen D. Fisher & Jonathan G. Haines.
partners under name & Style of Fisher & Haines &c
vs
Rock B. Mack.

The Defendant in the above entitled cause will please take notice that on the 28th of August A.D. 1863 between the hours of Nine Oclock A.M. and Five Oclock P.M. of said day at the office of the Clerk of the Circuit Court Peoria County Illinois in the City of Peoria in said County before the Clerk of the Circuit Court of said County of Peoria or some other person authorized by law to take depositions, we shall proceed to take the deposition of Tilton Howard and H. L. Haskell residents of Woodford County Illinois, to be read in evidence on the trial of the above entitled cause now pending and undetermined in said Circuit Court, on the part and in behalf of the said Plaintiffs, when and where you can attend and

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cross examine said witness if you see proper.

S. D. Puterbaugh

Atty for Plff.

McCulloch & Taggart

Attys for Defts.

It is hereby agreed that at the time and place mentioned in the foregoing notice either party may produce & examine such witness as they may deem proper & that their depositions may be read on the trial without objection for want of notice

McCulloch & Taggart

Aug 17. 1863.

S. D. Puterbaugh

for A. D. Fisher.

We acknowledge the receipt of copy of within notice this 17th day of August 1863

McCulloch & Taggart

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Deposition of Tilton Howard, of the County of Woodford Illinois, a witness of lawful age, produced, sworn and examined upon the oath, on the 28th day of August A.D. 1863, at the Office of the Clerk of the Circuit Court in and for said County and State in the City of Peoria in said County by me Enoch P Sloan Clerk of said Court in pursuance of a notice hereto attached. The said Tilton Howard being first duly sworn by me as a witness in the said cause wherein the said Allen H Fisher et al are Plaintiffs and Ira D Pulo is Defendant proceeds to the commencement of his examination to testify the truth touching in relation to the matter in Controversy between said parties, so far as he should be interrogated, testified and deposed as follows.

Int 1 What is your name, age, occupation and place of residence?

Ans My name is Tilton Howard, am about 49 years of age, am a farmer & reside in Lynn Township in Woodford County Illinois.

Int 2 Do you know the parties Plaintiffs & Defendants in this action, how long have you known them & where have you known them

Ans I know the parties to this suit, have known them since 1858 Known Fisher & Haines in Washburne in Woodford County since 1858. Known Ira Pulo for several years before I knew Fisher & Haines.

Int 3 State what was the occupations of Plaintiffs & Defendants in 1858 & 1859

Ans. Fisher & Haines in 1858 were selling goods in Washburn, they continued selling goods in Washburn about a year and perhaps over a year. They sold out their Stock of goods to one Ackley and Ackley sold to Phelps & Way.
Mr Meeks the Defendant in 1858 & 9 was acting as Sheriff of Woodford County.

Int 4 Do you know whether the Plaintiffs had a note against Phelps & Way about the years 1858 & 9. If so state the date, amount & when the same was payable as near as you can recollect.

Objected to by Defts atty.

Ans I know plaintiffs had a note against Phelps & Way about that time, Cant give the exact date of the note, the amount of said note I dont recollect distinctly, but it was over $700. The note I think was for from $700 00/100 to $750 00/100. I have no recollection of the date of the note, the note was drawn for 2 to 4 months, dont know when the note was payable

Int 5 Did you ever have possession of a note given by Phelps & Way to Fisher & Haines, if so state where said note now is & describe the note as near as you can and by whom it was left in your hands and what became of said note, and state all the particulars in relation thereto.

Objected to by Defts atty.

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Ans I had in my possession a note given by Phelps & Way to Fisher & Haines, Said note the last time I ever saw it I handed to Mr Meek Defendant, Sheriff of Woodford County; the note called for something over $700 00, there was an endorsement on the back of it of near $240 00, I think the endorsement was made in the latter part of the winter 1859. I think the endorsement was made in the month of January 1859, The note was left in my hands by Mr Haines for the firm of Fisher & Haines, the note belonged to Fisher & Haines as I understood it, the note was left in my hands for collection, I handed the note to Mr Meek.

I handed the note to Mr Meek so that when I could collect money that was due from Phelps & Way, I would pay it over to said Meek to apply on an execution held by Meek as Sheriff in favor of Arnold Gundhart and against Fisher & Haines, Said execution I think was issued from the Circuit Court of Peoria County Illinois. I cant give the date of the execution unless I could see it.

Int 6 State if you know about what time you received the note given by Phelps & Way to Fisher & Haines, and what you did with said note, and if you answer that you gave it to the Defendant, State how you came to give it to him and for what purpose.

Ans I think in January 1859 I received said note from Fisher & Haines for collection, I gave said note to the Defendant

Mucks about the last of February or first of March 1859, I gave said note to said Muck to hold, the reason I gave it to him was, to show that I was acting in good faith between the parties, Mr Muck came to me with an execution against Fisher & Haines and in favor of Arnold Goodhart, and wanted money or property from me I was then collecting money for Fisher & Haines, I gave said Muck in money about $150 00, I told him I thought the money would be collected to pay the balance of said execution, from the note in question or from other notes I held belonging to Fisher & Haines, I told Mr Muck I thought I could collect money enough to pay him before the execution would die, I voluntarily handed him the note in question to show to him that I was acting in good faith for the parties, he took the note and the money as fast as I could collect it on that note or on other notes, I was to pay to said Muck until said execution was paid, there was nothing said between Muck and I at the time, as to the time when said Muck should hand over to me said note, The note was merely given to him to show that I was acting in good faith in the matter. Muck was to hold said note and endorse on it the money I paid him, collected from Phelps & Way. I paid Muck $155 00 to apply on said execution so my books show.

Int 7 Was there any thing said at the time the time the note was given to the Defendant about its being returned to said execution to be levied upon, or did you authorize said Muck to lay upon said note, or was there any thing said about said note being given as

5-2. collateral Security for the payment of said debt from Fishes & Haines to said Goodhart.

Ans There was nothing said about said note being turned out for any such purpose. I did not authorize said Meek to levy upon said note, I, subsequently to my giving him the note, told him not to levy on said note, that was nothing said about said note being given as collateral Security for the payment of said debt

Int 8. State whether you, subsequently to that time had any conversation with said Meek in regard to said note, if so, state what said conversation was.

Ans- I had a conversation with Mr Meek about in May 1859 in Mr Spurs hotel in Matamoras, and I demanded said note from him and offered to turn out my own property 40 acres of land for him to levy on. Mr Meek the defendant said he had levied on the note by virtue of execution in favor of Goodhart against Fishes & Haines. He refused to give up said note.

Int 9 State whether you could have collected or secured the Amount due on said note from Phelps & Way at that time, if said note had been returned to you at the time you demanded the said note.

Ans. Mr Way, two or three times in this store wanted me to get

Answer objected to by dfts atty

the said note = said that he would turn out other notes to satisfy said note. He tried several times to get that note back by giving other notes for it. My impression was that if dfendant had given me the note at the time, I could have secured it with other notes. At the term of the Woodford County Court ~~Court~~ (August) following ~~following~~ the conversation with the dfendant just mentioned, I had another conversation with ~~said~~ dfendant. I asked him for the note again, I wanted it because Phelps had agreed to confess judgment on it at that time. His answer was the same as before that he could not give it up that he had levied upon it. I told him not to advertise said note for sale, that if he did I should put an injunction upon the sale

Int 10 If the note had been delivered to you at the last time you demanded it could you have made the money on it or secured the payment of it.

Ans— I am unable to say, Phelps professed to confess judgment and that he would turn out goods on the judgment, but that he would not confess judgment nor pay the note unless I would get said note in my possession, The goods Phelps professed to turn out at the time was in litigation, I dont know whether I could make the money or not, the goods I never after that time got into his (Phelps) possession and he was ~~sole~~ owner of them. Phelps ~~Phelps~~ Way ~~claiming~~ at the time I considered good, and amply able to pay that note, that was the reason I was anxious to get it. Phelps was anxious to settle it if I could get it in my hands.

Answer objected to by dfts atty

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Int 11 State whether the note of which you have been speaking was the same note levied upon by Defendant by virtue of said execution

Ans. It was.

Int 12 State to whom the note spoken of by you belonged to during all that time.

Ans— The note belonged to Fisher & Haines as I supposed, they claimed the note and I have no reason to doubt but they owned it, they handed it to me as their property, it was payable to them and never assigned.

Cross Examination by Defendant

Int 1 When was the note spoken of in your direct examination given to the Defendant, Who went with the defendant at the time the note was delivered to defendant by you.

Ans The note was given to Defendant at my house in Washburn. Mr Haines was with defendant at my house at the time I gave the note to Defendant. Mr Haines was one of the firm of Fisher & Haines

Int 2 Did Haines assent to the disposition of the note you was about to make of it.

Ans Mr Haines did not object. I asked Haines if he had any objection to my giving Defendant the note to hold until I could make the money, which I expected to do in the course of 3 or 4 weeks, Mr Haines assented to my letting Defendant have the note.

Int 3 Did Arnold give you a receipt or memorandum of the note at the time you gave it to him.

Ans He did not. If he had given me receipt, I would have it yet, I have hunted my papers all over, I have no recollection of ever having a receipt for said note.

Int 4 Was it not the understanding betwen you, and Arnold & Haines at the time the note was delivered to the Defendant, that the Defendant was to retain said note until the execution which he held in favor of Arnold Gerhart against Fisher & Haines was satisfied,

Ans I have no recollection of making any bargain as to the definite time Defendant was to hold said note.

Int 5 If the note was not given to the Defendant to hold until the execution in favor of Gerhart vs Fisher & Haines was satisfied, for what purpose was it given to Defendant.

Ans- It was merely given to him to receipt money on the same as if it was

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given to me,

Int 6 What was the Defendant to do with the money which he might receive on said note.

Ans- He was to endorse it on that execution and also on that note if collected from Phelps & Way,

Int 6 Was you at that time in any way interested in the payment of that execution

Objected to by Plffs.

Ans. Yes Sir I was, I endorsed the Judgment note on which, said execution was obtained.

Int 7 Was not the note you delivered to the Defendant given to you by Fisher & Haines to secure you against the payment of the note which you endorsed for them, and were you not Authorized to use the money collected upon said note to satisfy said execution in favor of said Grahart vs said Fisher & Haines,

Ans. It was not specified at the time the note was given to me that I was to hold said note to secure me against the note I endorsed for Fisher & Haines, I was authorized to use the money collected upon said note and other notes to satisfy said execution.

Int 8 What other indebtedness of Fisher & Haines were you authorized to pay out of any notes belonging to them which you had in your hands for collection,

Objected by Deft,

Ans— I was authorized to pay $100 00/100 more or less to some Chicago firm, name I dont remember. I was authorized to pay some $40 or $50. Due in Peoria, perhaps to Mr Willard, I dont remember the name, dont recollect of any other demand I was authorized to pay. On reflection I was also authorized to pay Mr Gregg some money but dont know the amount. I held notes of Fisher & Haines sufficient to pay all debts against them in my hands,

Int 9 How much did you realize out of the notes left with you by Fisher & Haines for collection

Objected to by Pltff

Ans I cant tell.

Int 10 Did you realize enough out of the notes of Fisher & Haines to pay the debts you were authorized to pay against Fisher & Haines

Ans I did not,

Int 11 Were not Fisher & Haines largely in debt at the time said note was given to Defendant by you?

Objected to by Pltff

Ans— At that time there was some 3 or 4 hundred dollars of claims owned by other parties against them in my hands for collection

Int 12 Was Fisher & Haines in any business at the time you gave Defendant said note.

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Ans— I think Mr Haines was in the harness business in Washburn, I cant know where Mr Fisher was. Fisher I think was in St Louis.

Int 13 Is'nt it true that Fisher & Haines failed in business in 1857 or 8? and were they not notoriously insolvent at the time you delivered said note to the Defendant

Objected to

Ans— It is true that Fisher & Haines sold out in 1858. Question very much whether any money could have been made off of them at the time this said note was given to said Defendant.

Int 14 Do you know of any property which Fisher & Haines had in their possession in Wmsford County liable to execution, at the time the Defendant had the execution against them in favor of Goodhart.

Objected to

Ans— I think Mr Fisher had property liable to execution = a house & lot in the Village of Washburn; but frankly, I didn't know of any property they owned liable to execution,

Int 15 Was there any offer or proposition made by Fisher & Haines at the time said note was delivered to the Defendant to turn out the house and lot of said Fisher in Washburn or any other property of said Fisher & Haines in Wmsford County to satisfy said execution.

Objected to

Ans—

Ans— There was not.

Int 16. Did not the Defendant say at the time the note was delivered to him that unless property was turned out upon the execution the Sheld in favor of Goodhart against Fisher & Haines, or the payment of said execution secured, that he would return said execution unsatisfied, or words to that effect.

Ans- I dont recollect that conversation at that time,

Int 17 What was said about the satisfaction of said execution at that time or any other
objected to time subsequent to the time said note was delivered to the Defendant,

Ans I told Defendant in a Conversation I had with him in Metamora that if that execution was returned not Satisfied, that I was authorized to turn him out a House and lot in Atlanta in Logan County, the Deed was left with me for that purpose, His reply to me was, that it would'nt come under his jurisdiction,

Int 18 What time did this conversation take place between you and Defendant,

Ans I cant fix the time exactly but it was in the Spring of 1859. I think it was previous to the Spring term of the Court in Woodford County and it was in the life time of the execution held by Defendant against Fisher & Haines

Int 19 Was there ever at any time any proposition made by you or by Fisher & Haines to secure the execution in favor of Goodhart

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vs Fisher & Haines by giving any other property of Fisher & Haines in Woodford County, except the note which you gave to the Defendant?

objected to by plff

Ans- There was nothing put into the hands of Meek, nor was there any proposition made to turn out any property for any such purpose that I know of - except as I have heretofore stated.

Int 20 When you gave the Defendant the note on Phelps & Way, did you understand that you had a right to demand the return of said note to you before the execution which the Defendant held in favor of Goodhart and against Fisher & Haines was satisfied

objected to by plff

Ans I cant say that I had any understanding or feeling in the matter at that time, but subsequently I thought I had a right to demand the note, I put the note into Defendants hands to show to him that I was acting in good faith, and not for the purpose of securing him or the execution he held in favor of Goodhart vs Fisher & Haines, I considered that I had controll of said note,

Int 21 In your answer to the last interrogatory, you say that you had the right to controll the Phelps & Way note, if that is true, was it not placed in your hands to prevent the Defendant returning said execution unsatisfied and to indemnify you against the payment of the judgment in favor of said Goodhart against said Fisher & Haines?

Ans- I still say that I considered I had controll of said note,

and did not give it to Defendant for any such purpose as stated in the interrogatory. I held and controlled said note as Agent for Fisher & Haines.

Int 22 Did you not state to Mr McCulloch in Matamoras during the April term of the Circuit Court of Wexford County 1863 that you had given the Phelps & Way note to the Defendant as collateral security for the payment of the debt due on the said execution in favor of said Gerhart and against Fisher & Haines or words to that effect,

Ans Mr McCulloch called on me to know if I was the man that indorsed a judgment note held by Gerhart against Fisher & Haines. I answered him that I was. He then inquired of me what I was going to do about it. I replied in substance this, that I had exhausted all the means in my hands belonging to Fisher & Haines, and I then stated to Mr McCulloch that if I could have had that note, that my impression was that I could have secured the amount and satisfied said execution. I dont think I stated to Mr McCulloch that I gave Defendant said note as collateral security to secure said execution nor words to that effect. If there was any such conversation between Mr McCulloch and myself I dont remember it.

Int 23. Did you ever demand said note of Phelps & Way & Fisher & Haines from the said Defendants without making some offer or proposition to him to satisfy said execution.

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Ans I did not.

Int 24. How many times did you demand said note from the Defendant.

Ans- My impression is that I demanded it twice of him.

Int 25 What conversation did you make to him (the Defendant) the first time you demanded said note?

Ans I cant say that I offered him to turn out any land, the first or second time, I demanded the note; the Defendants reply was that he couldnt give up the note because he had levied upon it, and that he couldnt levy on my land because he had no execution against me. The Defendant told me at the same time, that if I would show him property, the title of which was in Fisher & Haines, he would take said property, but he would not give up the note, on any consideration because he had levied on it,

Int 26 When was this Conversation?

Ans- I dont remember whether it was the first or second time we had conversation, One conversation I think, was previous to May 1859, And the other conversation I think was at the May term of the Windsor Court of that year.

Int 27 Did you mention any particular piece of land that you were willing to turn out to the Defendant to be levied on by virtue

of said execution.

Ans I mentioned to him that I would turn out 40 acres of my new land. I gave him no number of the land. I showed him no title.

Int 28. Where was it that you offered to turn out said 40 acres of land to the Defendant,

Ans- It was at my House in Washburn Woodford County,

Int 29 What proposition did you make to the Defendant at the time you made the other demand for said note.

Ans- I have no distinct recollection of making him any other proposition, During one of the conversations with him I wanted him to return said execution and get another execution & I would turn out Fishes property in Logan County, I think I also told him that Fishes property in Washburn was unoccupied and subject to execution,

Int 30 When and where did this last conversation take place

Ans. I think the conversation about turning out the House and lot in Washburn was had with Defendant in Washburn and it was during the life time of the execution,

Int 31 How do you know that this last conversation took place in Washburn and during the life time of said execution,

Ans- I base my knowledge upon the fact of his having the execution and demanding property from me.

Int 32 For what purpose did you demand the Phelps & Way note of the Defendant.

Ans The first time I demanded it I did so for the purpose of exchanging it with Mr Way of the firm of Phelps & Way for other notes; the second time I demanded the note I did so because Mr Phelps of said firm proposed to confess judgment on said note; for these reasons, I demanded said note. I thought there was a show in both instances to get the pay on said note.

Int 23 What reason had you to suppose that you could secure the note, and why could not the note have been as well secured in the hands of the Defendant.

Ans- Way gave me the names of several persons he held notes and accounts against that I thought I could collect, I suppose the Defendant could have been secured as well as myself if Phelps & Way had been disposed to secure him. But Phelps told me that he would not settle or secure said note until I could get it in my hands.

Int 24 Did Way exhibit to you any notes or accounts that he proposed to turn out to you in settlement of said note, if so, what amount of notes and accounts did he exhibit to you.

Ans— He did not exhibit any, but he named over several persons that I knew to be trading with him, that he held notes & accounts against, that I thought good,

Int 35 Do you know of your own knowledge that any of the persons against whom Way represented that Phelps & Way held notes & accounts were really indebted to said Phelps & Way?

Ans— I only know from what the firm told me, I have personal knowledge of the fact that two persons were indebted to the firm at that time. I dont remember that those two were named by Way. Those he did name I supposed to be good and knew that they were trading at his store, and I was willing to take them because I believed I could get the said note settled, and that was the reason I demanded the note. I felt satisfied that I could secure the note out of the notes & accounts Way proposed to give me. I was not sure at the time that I could get the note of Melk.

Int 36 Did you regard Phelps & Way as solvent and able to pay the Fisher & Haines note at the time you delivered it to the Defendant, and if so what reason had you for believing that you could more easily collect the amount of said note by exchanging it for the notes & accounts proposed to be given you by Way.

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Ans— I did consider Phelps & Way solvent at that time, the reason was, the small notes & accounts in my opinion could be more speedily and easily collected than larger amounts.

Int 37 If Phelps & Way were solvent and able to pay the Fisher & Haines note why was not said note ~~not~~ paid at maturity

Ans— I cant answer that,

Int 38 Was there any thing paid on the Fisher & Haines note by Phelps & Way, after the time you gave said note to defendant.

Ans— Not a dollar was paid to me,

Int 39 At what time and in what court did Phelps & Way propose to confess judgment on said Fisher & Haines note;

Ans— I think it was during the May term of the Wadford County Circuit Court in 1859, that Phelps of the firm of Phelps & Way proposed to me to confess judgment on said Fisher & Haines note against said Phelps & Way, provided I could get said note from Defendant Meek.

Int 40 Do you know of any property unincumbered which Phelps & Way owned or had in their possession out of which a judgment

for the amount of the Fisher & Haines note could have been made, if so, State of what such property consisted.

Ans— I know of their having property only from what Phelps told me, & he told me that the property he had, consisted in accounts and goods of the amount sufficient to pay such judgment.

Int 41 Do you not know that all the goods in the Store then occupied by Phelps & Way were mortgaged to Cushing & Jenkins.

Objected to

Ans— They were; the whole Stock of Goods was mortgaged to Cushing & Jenkins.

Int 42 Do you know of any personal property besides the stock of goods referred to in the previous Interrogatory, or real estate which Phelps & Way owned or had in possession at the time Phelps proposed to confess Judgment on said Fisher & Haines note.

Ans— I do not.

Int 43 When did Fisher leave Washburn, and when did his family cease to reside there?

Ans— I dont remember.

Int 44 Did the Defendant ever at any time offer to return said Fisher & Haines note to you or to Fisher & Haines,

Ans- I dont think he ever did to me, I dont know what he offered to Fisher & Haines.

Int 45 Did you ever have any conversation with the Defendant in which he said to you that you owned have the note or that Fisher & Haines ~~owed~~ owned, or words to that effect.

Objected to

Ans I had a conversation with Defendant in Metamora during the April term 1863, but no conversation before the commencement of this suit, except those already related by me

Int 46 At the time you delivered the Fisher & Haines note to the Defendant did you set any time, or was any time fixed in which you promised to pay money on the execution in favor of said Goodhart vs Fisher & Haines, and did the Defendant go back to you at any time for the purpose of receiving money on said execution,

Ans- There was no positive time fixed by me, but I told him I expected to have the money in the course of 2 or 4 weeks. I dont think he came to see me again about that execution, he might have gone and seen Haines. My impression is, that I was to forward him the money by mail, and dont think he called upon me at all. I thought at the time, I owned

have money to settle said execution all off in a short time

Int 47. What house and lot was it that Fisher owned in Washburn that you proposed to turn over to the Defendant on said execution?

Ans— It was the house in which Fisher formerly occupied, I told the Defendant that said house was vacant, and I supposed the same was liable to execution. Fisher had no other house & lot in Medford County that I knew of

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Direct Examination
Resumed.

Int 1st Was the note placed in your hands by Fisher & Haines for the purpose of praying the indebtedness of said Fisher & Haines or for collection generally.

Ans – The several notes including the Phelps & Way note placed in my hands, were so placed for collection, for the purpose of collecting money to satisfy the Gardhart execution, and other claims which I held in my hands against said Fisher & Haines,

Int 2 When you had the conversation with Defendant in Metamora about the return of the execution wherein you made propositions to him to turn out property in other counties, did the said Defendant accept your proposition and agree to return said execution unsatisfied,

Ans – He did not,

Int 3 Fix just as near as you can the date you first demanded the note of Defendant & the date you made the 2d demand,

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Ans- The first time was, I think in April 1859, & the next time was I think in the latter part of May of same year.

Int 4 At the time you made the demand for the note and made the proposition spoken of was there any agreement by the Defendant that he would return said note, if you complied with your propositions,

Ans- No Sir, the Defendant declined delivering up the note.

Int 5 How much was Fishers property in Washburn, his house & lot, worth, at the time,?

Ans- I should think at that time it was worth $300 in cash, Fisher I dont think was occupying the house at that time.

Int 6 How much do you consider the Stock of goods owned by Phelps & Way was worth above the amount due upon the mortgage spoken of.?

Objected to by defr

Ans I should calculate as a low estimate, that the goods were worth $1000 more than the mortgage called for,

Int 7 At the time Phelps & Way made the proposition for the settlement and securing the note from them to Fisher & Haines, had the mortgage spoken of been executed

Objected to by

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Ans- No Sir, there was no incumbrance at that time upon the Goods.

Int 8 objected to — At the time the propositions for securing the note were made by Way, had he sufficient means in his possession & under his controll to have settled and secured the note in question as proposed by said Way?

Ans- He had

Int 9 objected to — At the time said Phelps proposed to confess Judgment on said note in question had he sufficient accounts or other assets out of which said Judgment might have been made

Ans- All I know about that is what he informed me; he said he would turn out notes & goods to settle said Judgment.

Int 10 — At what time did Phelps & Way leave Washburn or Woodford County.

Ans- Phelps left sometime in last of July or first of August 1859 Way left about 6 months afterwards.

Int 11 — When Phelps left did he not carry away a large amount of goods with him?

Ans— I dont know.

Int 12 objected to — Do you know whether Phelps was in possession of a large ammnt of goods up to about the first of June 1859.

Ans— About that time I considered he had goods to the ammnt of about $2500 00/100.

Int 13 objected to — Do you know of Phelps & Way having property, notes, accounts & goods about the 1st of June 1859, enough to pay all their indebtedness, and if so how much more than enough.

Ans. objected to — I should think they had goods, ~~notes~~ & accounts to the ammnt of about $3000; they were owing about $2000, as near as I could gather from their stories.

Int 14 — Was you ever engaged in the mercantile business, in the sale of Dry goods, groceries &c, so as to form a reasonable idea of the value of the Stock of goods in the possession of Phelps & Way,

Ans— I have been so engaged, so as to think that I am able to form a tolerably correct estimate of the ammnt of goods owned by that firm

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Int 15 After Phelps left Woodford County in July or August 1859, was there any property belonging to Phelps & Way in that County and could any money have been made off of them on execution after that time.

Ans- I dont think any money could have been so made off Phelps and Way or either of them at that time, or since then.

Int 16 Did you during the years 1858 & 1859 hold any public office in the County of Woodford Illinois,

Ans I was Justice of the Peace, my term of office expired in the Spring of 1859.

Cross Examination Resumed.

Int 1 Did the Defendant at any time demand of you or of Fisher & Haines any thing more than the satisfaction of the Goodhart Execution, and did he not retain the note in controversy for the purpose of getting same satisfied.

Ans- All I know about it Muck came to me and wanted the money on that execution. He made no other demand of me, other than the money or settlement of the execution. The reason Muck retained the note was because he had it levied on it, Such was the reason he gave me.

Int 2 Do you know of any reason why the Defendant refused to
Objected to give up to you Fisher & Haines note except that the execution he held in favor of Gerhart was not satisfied by you or by Fisher & Haines.

Ans We gave no other reason than that he could not give up said note, because he had it levied upon, by virtue of said execution, I told him not to advertise, if he did I would enjoin the sale.

Direct Examination Resumed.

Defendant objected to any further examination of the witness

Int 1 At the time you made the demand of the Defendant, on what ground did he claim the right to retain the note in controversy.

Ans- The ground was, that he had it levied upon by virtue of said execution.

Tilton Howard

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State of Illinois Peoria County ss.

I Enoch P Sloan, Clerk of the Circuit Court in and for said County and State, duly authorized to take the deposition of Tilton Howard, a witness whose name is subscribed to the foregoing deposition, do hereby certify that previous to the commencement of the examination of the said Tilton Howard, as a witness in the said suit between the said Allen D Fisher et al, Plaintiffs, and the said Noel B. Buck, Defendant. He was duly sworn by me as said Clerk, to testify the truth in relation to the matters in controversy between the said Arnold D Fisher, et al, Plaintiffs & the said Noel B Buck Defendant, so far as he should be interrogated concerning the same; that the said deposition was taken at my office in the City and County aforesaid on the 28th 29th days of August A. D. 1863, and that after said deposition was taken by me, as aforesaid, the interrogatories and answers thereto as written down was read over to the said witness and that thereupon the same was signed and sworn to by the said deponent Tilton Howard before me, the oath being administered by me as Clerk as aforesaid, at the place and on the day and year last aforesaid.

Given under my hand and the seal of said Court, at Peoria, this 29th day of August A.D. 1863

Enoch P Sloan Clerk

Rev Stamps 3 Seal C.
Five cents 3

Clerks fees for taking this dep $7.00

Rec'd same from plff = E. P. Sloan, clk

Witness fee = Tilton Howard = 2 days (from Woodford Co.) 60m. - $3.00

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And the plaintiffs further to maintain the issue on their part, read in evidence the deposition of Henry A Phelps as follows.

State of Illinois } ss. In Circuit Court June term A.D. 1864
Peoria County }

Allen D. Fisher & Jonathan G. Haines
partners under name & style of Fisher & Haines &c,
vs
Noel B Meek

State of Illinois Cook County } ss.
City of Chicago }

I Lavius B Hilliard Clerk of the County Court of Cook County in the State aforesaid, do hereby certify that on the Second day of June A.D. 1864. I was attended by Allen D Fisher

one of the plaintiffs in the above entitled cause, and by Mr Stuwe as counsel for defendant and by Henry A Phelps a witness produced on the part of the plaintiffs, who being duly cautioned and sworn to tell the truth, the whole truth and nothing but the truth, did depose, testify and say-

My name is Henry A Phelps, I am thirty years of age, I reside in the City of Chicago, I keep a boarding house,

1 Int — Do you know the parties to this Suit?

Ans- — I do.

2 Int'y — What was your occupation and place of business in 1858, and 1859, and with whom were you associated in business, and state the style of your firm during that time,

Ans- — I was selling goods and trading in 1858, and part of 1859 in Washburn Woodford County Ills; I was associated with Amos F Way, the name of the firm was Phelps & Way.

3 Int'y — Were you and Amos F Way in any manner indebted to Fisher & Hamlin in 1859, if so state the nature and amount of such indebtedness as near as you can now remember.

Ans— We well, They held a note against me frim of abut $700= on which we had paid abut $200, the note was given for the goods in the Store purchased by us of Mr Achey, who had purchased from Fisher & Haines, the note was given to Fisher & Haines for the goods bought of Achey.

4 Intg Please State whether you had notes and accounts and other effects during the months of April & May 1859, sufficient to satisfy said indebtedness. (objected to)

Ans We had.

5 Intg Did you ever have any conversation with Fishes & Haines or Tilton Howard or either of them abut the time referred to in the last interrogatory, about settling the note given by you and Amos F. Way to Fisher & Haines, if so State what proposition you made, to whom, and where the conversation took place. (objected to)

Ans (I talked with Haines and Howard often about it, I do not know that I ever did with Mr Fisher or not). I offered to pay this note if they would take notes and accounts and goods at cost price, or all goods at cost price, I offered this to Mr Howard with whom the note had been left for collection and also to Mr Haines (When I found Howard had not the note, I called on Mr Haines and told him I would pay the note if he would get it, he said the Sheriff, Meeks had it, that he could not get it, this was in the spring of

1859, in May or April)

6 Intg State whether or not you paid the note.

Ans I did not,

7 Intg In whose possession was the note, and what was your reason for not making the settlement proposed (objected to)

Ans- The note was in the hands of Sheriff Mack of Woodford County. (The reason I did not pay the note was, because it was not in the hands of Howard, to whom it had been left for collection and the hands of Mr Haines, and I could not get it to pay it.)

8 Intg State the amount of indebtedness of Phelps & Way at that time as near as you can remember. Also state the amount of your assets in like manner, Giving the Amount of notes and accounts and personal property owned by you and Way,

Ans Well, I think we were in debt from about $2000, to $2500, I think our property, notes and accounts would amount to from $3600. to $3800.

I think the notes, accounts and money would amount to $600 or $700, about $90. or $100 of it was money, The balance was Goods & Merchandise, the usual assortment of a Country Store, We did not keep a grocery Store.

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9 Int. State the reason why the settlement spoken of was not consummated at that time, and your reason for not making a settlement of the note in the hands of the Defendant Meek.

(Objected to.)

Ans. I did not pay Haines or Howard the note because they did not have it. I would have paid any body if they had come there with the note, the same as I proposed to Mr Haines. I did not see Mr Meek. I dont think Meek ever spoke to me about the note he might have done so, but I do not recollect of his ever saying anything to me about it.

Cross examined by Mr Atwood.

1 Cr Int. When did you and Mr Way commence business at Washburn, and how long did you continue together in business there.

Ans. We commenced in the Summer of 1858. I dont recollect exactly when, and continued until the next May or June

2 Cr Int. When was the note to Fisher & Haines, spoken of by you given, and when was it made payable.

Ans. It was given I think within a month of the time we went there. I cant say exactly when it was given, I dont remember when it was payable

3 C Int — What ammnt of goods did you purchase of Achey, and when and how did you pay for the same,

Ans — I should think we purchased about $2000 of him in the summer of 1855. the $1200 note was, I think, given in part payment, and other paper for pretty much all the balance.

4 le Int — How much of that paper was paid prior to 1st May 1859 and if any, to whom,

Ans— I should say we paid about $600 or $650, as near as I can recollect, we might have paid more,

We paid Achey about $100.

We paid Cushnig Jenkins 400 on one note and part of another, that is my impression, but I would not swear to it,

5 le Int — During the time you were in business there did you purchase goods of other persons, and if so, of whom and to what ammnt,

Ans — We did. I could not tell the ammnt, we were buying almost every day; we bought quite an ammnt. I guess between $600 & $700 from a gentleman of the name of Grenlaf of Lacon, Marshall County Ills. I should think the purchases made by us would amount to about $ 1000, perhaps more, perhaps less, this is in addition to the $ 700 last mentioned.

6 & Int What ammnt did yow owe on the Greenleaf purchase on 1 May 1859, & what ammnt on the other purchase of Goods last mentioned.

Ans I think we owed them about $200, perhaps more, On the other purchase I dont think we owed over $200,

7 & Int What other debts did yow owe at that time and to whom,

Ans— We owed Crushing & Jenkins about $1200. I dont think it could be over $1300, I dont remember of any other one.

8 & Int Had either yow or Mr Way families.

Ans— Mr Way had, I had not,

9 & Int Was any portion of the indebtedness you have named secured by Mortgage or otherwise, if so what ammnt, to whom, and how secured,

Ans— Crushing & Jenkins had a Mortgage on the whole stock of Goods to secure what we owed them, whatever that was, which Mortgage was given sometime in the winter of 1858 and 9, I think.

10 & Int Were the Goods ever seized by virtue of that Mortgage and if so, when, what was done with the goods so seized and what ammnt was realized therefrom

Ans— They were along in the Spring of 1859 (they claimed they seized them on the Mortgage, I understood the goods were sold, but dont know of my own knowledge. I do not know the amount realized therefrom

Testimony sustained

11 Q Int Did Cushing & Jenkins leave any goods in the store, if so what amount and what became of them,

Ans— I think there were a very few things left there, I dont think they left any thing of any amount, I do not know what became of them,

12 Q Int Prior to the seizure of the goods by Cushing & Jenkins under the Chattel Mortgage as they claimed, had either yourself or partner attempted to transfer the stock of Goods bodily to any party, if so which and to whom,

Ans— I never did, Nor Way attempted to transfer the Goods to Cushing & Jenkins by Asignment. He did deliver to them money and notes. I did not Submit to the Asignment,

13 Q Int Did yourself and Partner transact business in the Store after the attempted Asignment by him.

Ans— I did; my partner did not come near me. I continued the business until the goods were taken by Cushing & Jenkins under the Mortgage as they claimed.

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14 C Int Have your partnership liabilities ever been discharged, and if so how and by whom and when.

Ans- Never by me nor any one else that I know of except of about $25. debt which I paid.

15 C Int In the conversations you state you had with Haines & Howard or either of them, was Meek present?

Ans I dont think he ever was. I dont recollect of ever seeing him at such conversations.

16 C Int Did the conversation alluded to with ~~Howard~~ Fishes & Haines take place after the attempted assignment by Way.

Ans- I think it did.

17 C Int. When did you first learn that Mr Meek had the note given to Fishes & Haines

Ans I could not say the time. Mr Howard told me, I could not say exactly when. I think it was before the attempted Assignment.

(The Counsel for Plaintiff here enters his objection to each and every one of the foregoing Crop ~~Interrog~~ answers.

Direct examination resumed,

10 Int When you bought the goods of Adey & Washburn did, or did not you and Way give your note to Adey for the amount going to him

(objected to.)

Ans- Yes Sir

11 Int. Was there or not after that a change made in the notes, and did or did not you and Way give your notes to Bushing & Jenkins for what Adey was owing them, and to Fisher & Haines for what Adey was owing them? (obj to)

Ans I think we did, I think that was the way of it, it is so long ago, I dont distinctly recollect.

12 Int Can you now State when the note was given to Adey and how long after that, the change was made in the notes as spoken of.

Ans I cannot,

13 Int. Are you certain that you are right in your answer to the third Cross interrogatory asked above, and if you are not

Redirect Examined

what to your impression, was it more or less than the amount these Stated.

(Objected to)

Ans- It is my impression that the invoice amounted to about $2000, it might have been $500, or $600, more than that.

Ruled out / Sustained

14 Inty. Will you State as near as you can remember the date when Cushing & Jenkins seized the goods under the Mortgage as referred to in your cross examination above.

Ans- I think it must have been in May or the last of April, it might not have been until June, I know it was after the Spring term of the Circuit Court of that County. It might have been as late as the last of June 1859,

15 Inty Did you know that Way had attempted to make the assignment spoken of, the first time you went to see Howard about paying the notes

Ans- I think I did. I was very anxious to pay Fisher & Haines, I thought my partner and Cushing were trying to cheat me and the creditors too. I wanted to pay Fisher & Haines rather than any of the others,

Henry A Phelps.

Sworn to before me this 2 June, 1864

L D Williams

Clerk

State of Illinois }
County of Cook } ss.

I Lannin P Halliard Clerk of the County Court of Cook County in the State aforesaid, duly appointed to take the deposition of the said Henry A Phelps, a witness whose name is subscribed to the foregoing deposition do hereby certify that previous to the commencement of the examination of the said Henry A Phelps as a witness in said suit, he was duly sworn by me to testify the truth in relation to the matters in controversy between the said parties so far as he should be interrogated concerning the same, that the said deposition was taken at my office in the City of Chicago County of Cook and State aforesaid on the second day of June A. D. 1864, and that the said deposition was taken by me as aforesaid. the interrogatories and answers thereto as written down were read over to the said witness and that thereupon the same was signed & sworn to by the said deponent before me; the oath being administered by me at the place, and on the day and year aforesaid,

Ills. Witness 1 day 1.30
Travel 4 miles 20
$1.70

Fees.
Clerk .$ 4.75
Stamps 5
$ 4.80

Paid by Plff

Given under my hand and the seal of said County this third day of June A. D. 1864.

L P Halliard
Clerk

Seal

Rec Stamps Five cents

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State of Illinois } ss
Peoria County }

In Circuit Court
3d June Term A.D. 1864.

Allen D Fisher and
Jonathan G Haines, partners
under name & style of Fisher & Haines, &c
vs
Noel B Mack

The above named defendant is hereby notified that on the second day of June A. D. 1864, between the hours of nine O'clock A. M, and four O'clock P. M, of said day, at the office of the Clerk of the County Court of the County of Cook in the State of Illinois in Chicago in said County, we shall proceed to take the deposition of Henry A. Phelps a resident of said Cook County, and before said Clerk of the County Court of Cook County, or some other officer authorized by law to take depositions, to be read in evidence on the trial of the above entitled cause, now pending and undetermined in the Circuit Court of Peoria County aforesaid, on the Common Law Side thereof, on the part and in behalf of said Plaintiffs, at which time and place you can appear and cross-examine said witness if you see fit.

Dated this 16th day of May A.D. 1864.

S. D. Puterbaugh
Atty for Plaintiffs.

To McCulloch & Taggart
Attys for Deft.

Peoria Ill. May 16. 1864.

We hereby acknowledge the receipt of a copy of the

written, and above notice.

McCulloch & Taggart
Attys for Deft.

Fisher & Haines &c
vs
Noel B Meek

In the Circuit Court of
Peoria County - February
Term A D 1864

Deposition of Henry L S Haskell taken by virtue of the agreement hereto attached before me Eugene McClure a Notary Public in & for the City of Peoria in the County of Peoria & State of Illinois on Monday the 8th day of February between the hours of Eight O'Clock A M and Five O'clock P M of said day at the office of S D Puterbaugh in the City County & State aforesaid, to be read as evidence in a certain cause now pending in the Circuit Court of Peoria County in which Allen D Fisher and Jonathan G Haines are plaintiffs and Noel B Meek is defendant on the part of the plaintiffs

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State of Illinois } ss
Peoria County }

Circuit Court
February Term 1864

Fisher & Haines, &c
vs
Noel B. Meek

It is agreed by and between the parties to this suit that the deposition of H. L. Haskel may be taken by Eugene McClure Esqr. Esq. ^ all notice and formal objections being hereby waived.

Peoria Feby 8. 1864

S. D. Puterbaugh
Atty for Plffs.
McCulloch Jaggart & Weed
Atty for Deft.

Henry L S Haskell a Witness of lawful age produced on behalf of the Plaintiff after being duly sworn upon his oath to testify the truth the whole truth & nothing but the truth in answer to interrogatories propounded to him testified as follows.

Int 1 State your name age place of residence & occupation

Ans My name is Henry L Haskill. I am forty five years

92 of age. I reside in Woodford County in the State of Illinois & am by occupation a farmer.

Int 2 Are you acquainted with the parties to this suit

Ans. I am

Int 3. How long have you known the Plaintiffs and when & where and what were their occupations in & during the year 1857.

Ans. I am not sure that I was acquainted with them in that year. I first knew them as Merchants in Washburne in Woodford County about the year 1859 or sometime before the month of May in that year

Int 4 How long have you known the defendant in this action & what was his occupation during the year 1858 and 1859.

Ans. I have known him since the year 1856 his occupation during the years 1858 and 1859 was that of Sheriff of Woodford County Ills

Int 5 What was your occupation during the years 1858 and 1859

Ans. I was engaged in the practice of law at Metamora in Woodford County.

Int 6. Did you ever have any conversation with the defendant in regard to a note in his possession belonging to the Plaintiff If yea! State fully what that conversation was

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Ans Yes. I had, a conversation with the defendant about a certain note in favor of the Plaintiffs and against Phelps & Way Merchants of Washburn in Woodford County Ills. The note was held by the Sheriff (Meek) I received an order from Tilton Howard through Haines one of the plaintiffs requesting me to demand of the defendant Meek the note in his possession in favor of the plaintiffs and against Phelps & Way. (H A Phelps & Amos F Way) for the purpose of suing it in the Circuit Court of Woodford County. I went with Mr Haines one of the plaintiffs and made a demand of the Sheriff Meek the defendant in this cause. for the note. He (Meek) refused to deliver it to me and said that he had levied on the note by virtue of an execution in his hands as Sheriff in favor Goodheart as plaintiff and Fisher & Haines as defendants in the execution & he said he was going to sell the note to satisfy said execution — He said it was by the direction of the plaintiffs in the execution that he was going to do it —

Int 7. Describe the note referred to in your answer to the last interrogatory as near as you can.

Ans. I took a copy of the note in his hands at the time I made the demand. — it was as follows. The note was dated

December 15th 1858 – It was for the sum of Seven Hundred & Twenty Seven & 37/100 dollars. Payable two months & fifteen days after date and was signed W A Phelps and Amos F Way & payable to the order of Fisher & Haines, with ten per cent interest from date.

Int 8. Please State if the note described in your answer to the last interrogatory was the one Meek said he had levied upon

Ans. It was the note he showed me and said he had levied upon it

Int 9 State if he gave any other reasn for not delivering the note to you, except, that he had levied upon it

Ans. Only that the Plaintiff in execution had directed him to levy on it & sell it

Int 10 About what time was this demand made

Ans About or on the 11th day of May 1859

Cross Interrogatories propounded by Jno J Ward Counsel for defendants

Int 1 For what purpose did you demand the note of Meek

Ans. For the purpose of suing him in the Circuit Court of Woodford County

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Int 2 How long had said note been due when you demanded it from Meek.

Ans. Two months & ten days

Int 3 State the whole conversation you had with Meek when you demanded the possession of the note.

Ans. I went to him when I received the order from Tilton Howard, with Haines one of the plaintiffs — I showed him the order which I had from Tilton Howard. & told him that I wanted him to deliver me the note described in my answer to Chief interogatory (7) Seven, so that I could bring suit on the same, at the next term of the Woodford Court. He said he should not deliver it to me, for he had levied upon it by virtue of an execution in his hands in favor of Goodheart of Peoria against Tisher & Haines — & he was going to sell it to satisfy that execution

I said he had no right to sell it & thought, and he had better secure himself if he meant to do it. He said the plaintiff in Execution had directed it & he was going to do it. I asked him if he had any objections to my taking a copy. he said no! and I did so take a Copy —

Int 4 — Did not Meek say that note had been turned out to him by Howard to secure the payment of an execution which he held in favor of Goodheart and against Fisher & Haines

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Ans. — I don't remember that he did. In the conversation he said he had it from Howard.

Int 5 — Did you at any other time after said conversation have any talk with the defendant in relation to said note — if so state such conversation.
(Objected to by Plaintiff)

Ans. — A day or two afterwards I went to the defendant Meek in company with Tilton Howard & Haines one of the plaintiffs in this suit & demanded the note again. I told him I had examined the law & I was of the opinion that he had no right to sell the note on Execution. He said he was going to sell it.

Int 6 — Did you not understand from Meek that the reason why he refused to give up said note was because the execution he held against Fisher & Haines in favor of Goodheart had not been paid

Ans. — I don't know that any such reason was given by Meek. Except as I have answered that he was going to sell that note to satisfy that execution

Int 7. Do you Know what the financial circumstances of Phelps & Way were at the time you demanded the note you have Spoken of, from Meek

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Ans. I do not. I dont think I was personally acqua-inted with them at that time

(Direct Examination resumed)

Int 1 Have you in your possession the original copy of the note taken at the time you made the demand of

8 Meek the defendant — if yea annex the same to this your deposition marked as an Exhibit and state whether it is a true copy of the original note as you saw it in the hands of Meek (objected to by defendant)

Ans. I have the original copy which I took at the time I made the demand of Meek and annex it to this my deposition & marked Exhibit "A" It also contains a copy of the Endorsment on the back of the note for Two Hundred & forty five & 96/100 dollars, which copy I now hand to the Notary before whom this my depo-sition is being taken

Int 2. At the time you made the demand were you an Attorney for the Pleintiff & are you an attorney in this suit.

(objected to by defendant)

Washburn Dec 15th 1858

$727.37/100 Two months & fifteen days after date we promise to pay to the order of Eaton & Haines Seven Hundred and Twenty Seven & 37/100 Dollars value Received with ten per cent interest from date

H A Phelps
Amos J Wing

Due March 1-1859

Exhibit 'A'

Exhibit 'A'

Recieved on the within Note
Two hundred and forty five
+ 96/100 Dollars

$245,96 Jany 24th 1859

By virtue of the within writ I have
levied on the following property to wit-
one certain note of hand in favor of
Fish & Harris & against Pelf & Ha-
ven who note it is stated Effect
245,96 Cotton as the property of
Alen & Fish & Jamaica & Delaney to
satisfy said writ April 30/59

1 W. Clerk

Ills. 98

I was the attorney for Plaintiff when I made the demand. I am not an Attorney in this present suit.

H L S Haskell

Subscribed & Sworn
to before me this 8th day
of February A D 1864

Eugene McCune

State of Illinois
Peoria County ss I Eugene McCune a Notary Public in & for the City of Peoria in the County & State aforesaid duly commissioned & Sworn do hereby certify that the Witness whose deposition is hereto attached was by me first duly Sworn to testify the truth the whole truth & nothing but the truth in relation to the Matters in Controversy in the cause hereinafter mentioned and that said Witness was examined according to law and the foregoing deposition to which this certificate is attached was reduced to writing by me & after being so reduced to writing was carefully read over to said witness who thereupon subscribed & made oath to the truth of said testimony. That said deposition was taken between the hours of Eight o'Clock A M & four o'clock P M on the 8th day of February

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Opened & filed under gen-
eral order of Court this
30 day of March 1864
L P Sloan Clk

in the year of our Lord One Thousand Eight Hun-
-dred & Sixty four at the office of S D Puterbaugh
in the City of Peoria aforesaid — That said
Depositions were taken at the time & place herein-
before Specified, to be read in evidence on the
behalf of said Plaintiffs in an action now pending
in the Circuit Court of Peoria County in the State
of Illinois, wherein Allen D Fisher & Jonathan G
Haines are Plaintiffs & Noel B Meek is defendant
on the part of said Plaintiffs, and that the said
defendant the said Noel B Meek was represented
at the taking of said depositions by his Attorney
John J Weed Esqr who propounded cross interroga-
-tories. and I further certify that the Exhibit marked
"A" and attached to said deposition is the same referred
to by witness in his answer to interrogatory 1 in the
re Examination by Plaintiffs Attorney & handed me
at that time by witness

In Testimony whereof I have hereunto
Set my hand & affixed my Seal Notarial
this 8th day of February A D 1864

Seal Notorial

5 cent Revenue Stamp

Notarys Fees $2.50

Eugene McCune
Notary Public

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And the Plaintiff further to maintain the issue on their part read in evidence an execution and indorsements and levy covered[illegible] issued from the Circuit Court of Peoria County, directed to Sheriff of Woodford County in favor of Arnold Goodhart against the Plaintiff as follows, Which said levy indorsed on said execution was read through a piece of white paper pasted over the same upon which paper was written the aforesaid return of the Sheriff of no property found

To the people of the State of Illinois

To the Sheriff of Woodford County Greeting

We command you as we have heretofore commanded you,

That of the goods and chattels, lands and tenements in your

county of Allen D Fisher and Jonathan G Harris, you cause

to be made the sum of Three Hundred and Eighty Dollars and

fifty cents damages, and the sum of Two Dollars and fifty

five cents costs of suit which, by the Judgment of our Circuit

Court at Peoria in and for the county of Peoria on the twenty first day of October in the year of our Lord One thousand eight Hundred and fifty eight. Arnold Goodhart recovered against the said Allen D Fisher and Jonathan G Haines together with interest thereon at the rate of Six per centum per annum from the time of recovering the same as aforesaid until Paid; and also the further Sum of Two dollars and five cents, accruing costs on said Judgment; and that you have the same ready to render unto the said Arnold Goodhart according to law, Hereof fail not, and make due return of this writ, with your proceedings, in Ninety days after the date hereof.

Witness Enoch P Sloan, Clerk of Our said Circuit Court and the seal thereof at Peoria this third day of February in the Year of Our Lord One thousand eight hundred and fifty nine.

Enoch P Sloan Clerk

D H

7/01

By virtue of the within writ I have levied on the following property to wit, One certain note of hand in favor of Fishes & Haines and against Phelps and Way & recorded as follows

Washburn Dec 15th 1858. Four months and fifteen days after date we promise to pay to the order of Fishes & Haines, Seven hundred & twenty dollars 97/100 value receives with ten per cent interest from date

Due March 1st 1859

H. A Phelps

Amos F. Way

On which note there is credited Jan, 24. 1859 $245 99/100 taken as the property of Allen D Fishes & Jonathan G Haines to satisfy said writ.

April 30 1859

R B Mack Shff W C

I cannot find any property in my County belonging to the Defendants.

May 3. d 1859

R B Mack Shff W C

Came into Hands Feb the 12th 1859, at 10. Oclock A M.

R. B. Mack. Shff W.C.

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Recd on the within fee $ 1 50 cc. March 18th 1859.
N. B. Buck. Shff. Woodford Co."

And the Plaintiff further to maintain the issue on their part read in evidence an execution issued from the Circuit Court of Peoria County, in a cause wherein Arnold Goodhart was Plaintiff and Fisher & Haines Defendant, directed to Sheriff of Woodford County to execute, also endorsement thereon as follows,

The People of the State of Illinois
To the Sheriff of Woodford County Greeting
We command you as we have oftentimes heretofore commanded you that of the goods and chattels, lands, and tenements in your county of Allen L. Fisher and Jonathan G. Haines, you cause to be made the sum of Three hundred and Eighty dollars and fifty cents damages, and the Sum of Two dollars and fifty five cents, costs of suit, which by the Judgment of Our Circuit Court, held at Peoria, in and for the county of Peoria, on the twenty first day of October in the year of Our Lord One thousand eight hundred and fifty eight, Arnold Goodhart recovered ~~against~~ against the said Allen L. Fisher and Jonathan G. Haines, together with interest thereon at the rate of five per centum per annum from

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the time of receiving the same as aforesaid until paid; and also the further sum of ~~Three dollars and thirty~~ Three dollars and thirty five cents, accruing costs on said Judgment; and that you have the same ready to render unto the said Arnold Gerhart according to law.

Herein fail not, and make due return of this writ, with your proceedings, in ninety days after the date hereof.

Witness Enoch P Sloan, Clerk of our said Circuit Court, and the seal thereof at Peoria this Thirtieth day of September in the year of Our Lord One thousand eight hundred and fifty nine,

Seal

Enoch P Sloan Clerk

R H

I hereby certify by virtue of the within writ, I have this day levied on the following Real Estate to wit, the E½ of lots 3 & 4 in Block Six (6) in the town of Washburn Co of ~~Woodford~~ Road and State of Ills, taken as the property A L. Fisher to satisfy said writ.

Nov 2d 1859

W B Meek Sheriff.
pr R L Sidwell Deputy

I sealed Real Estate sold to the Plaintiff per Agent Nov 26th A. D. 1859. for $125.00

W B Meek Shff W C.

~~Sheriffs~~ costs on ~~Exec~~ $11 00; receivd from Plaintiffs atty;

~~Tax on property found in our County~~ D B Meek Sh'ff W C.

No other property found in our County belonging to Defendants subject to levy and sale. Dec 29, 1859

D B Meek. Sh'ff W C.

Came to hand Oct 3rd A D 1859, at 8 O'clock and 30 mits A. M.

D B. Meek. Sh'ff. W. C."

March 18. 1859 — This Judgement is Entitled to a credit of $ 150, cts — of this date.

Enoch P Sloan clk.

Satisfaction, filed

January 9. 1860

E P Sloan, clk.

The Plaintiffs here rested their case

Said Court, and the seal thereof at Pend
ding the 21st day of October in the year of Our Lord
One thousand eight hundred and fifty eight,
Enoch P Sloan Clerk
R Ha

Ends the said Defendant to maintain the issue on his part called E O Sloan the Clerk of the Court who testified that the first execution offered in evidence was returned into his office by the Sheriff in the same condition in which it now is with the paper pasted over the key upon the note. Said Defendant then offered in evidence the papers and Judgment in case in Circuit Court of Peoria County, in case in which Arnold Goodhart was Plaintiff and Fisher & Haines were Defendants as follows—

"

$247.= Washburn Ills March 27/1858

Six months after date for value received we Allen O Fisher & Jonathan J Haines promise to pay to Tilton Howard or order the Sum of Four hundred and ~~forty~~ seven dollars with interest at ten per cent per annum.

Allen O Fisher
Jonathan J Haines.

Know all men by these presents that whereas the Subscribers Allen O Fisher & Jonathan J Haines are justly indebted to Tilton Howard upon a certain promissory note bearing even date herewith, the sum of Four hundred & forty seven dollars and — cents made payable to the said Tilton Howard or ordered, and due, Now therefore in consideration of the premises and of the Sum of one dollar to us in hand paid by the said Tilton Howard the receipt whereof is hereby acknowledged, we do hereby make, constitute and appoint A L Merriman or any

Attorney in any Court of record to be our true and Lawful Attorney irrevocably for us and in our names place and stead to appear before any Justice of the peace or in any Court of record, in term time or vacation, in any of the States or territories of the United States, at any time after the date hereof to waive Service of process, and confess a Judgment in favor of said Tilton Howard, or his or their Assigns or assignees upon the said note for the above sum, or for as much as appears to be due, according to the tenor and effect of said note with interest thereon, together with costs; also for ten dollars usual Attorneys fees to be added to the amount due on entering up Judgment; also to file a cognovit for the amount for the amount that may be so due, with an agreement therein, that no writ of error or appeal shall be prosecuted upon the Judgment entered by virtue hereof nor any bill in equity filed to interfere in any manner with the operation of such Judgment and to release all errors that may intervene in the entering up of such Judgment or issuing the execution thereon and also to consent to immediate execution upon such Judgment. Hereby ratifying and confirming all that our said Attorney may do by virtue hereof.

Witness our hands and Seals this 27 day of March A D 1856.

In presence of
P Achey.

Allen C Fisher (Seal)
Jonathan G Haines (Seal)

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State of Illinois. }
Peoria County } ss

Philip Acher being first duly sworn on his oath says that Allen H Fisher and Jonathan G Haines whose names appear Subscribed to the within and foregoing note and power of Attorney, executed the same in his presence on the day of the date thereof and that said affiant Signed the same as Subscribing witness thereto in their presence.

Subscribed and Sworn to
this 19th day of October 1858
before me
Bernard Bailey J.P.

P Acher.

On which said note & power of attorney are the following Endorsements
"$77.00 Rec'd on the within seventy seven dollars Sept 21st 1858
Rec'd on the within October 19/58 twenty five Dollars
$25
Dec 3 68 177
Fulton Howard"

State of Illinois } In Peoria Circuit Court
Peoria County } ss Vacation after May Term in the
Year of Our Lord One thousand eight hundred and
fifty eight.

Arnold Gerhart plaintiff in this suit by D McCulloch his Attorney complain of Allen D Fisher and Jonathan G Haines defendants in a plea of trespass on the case on promises; for that whereas the said defendants heretofore to wit on the twenty seventh day of March in the year of Our Lord One thousand eight hundred and fifty eight at Washburn to wit, at said County of Peoria made their certain promissory note and there and there delivered the same to said Plaintiff, in and by which said note, said defendants by the name, Style and description of Allen D Fisher and Jonathan G Haines promised to pay to Tilton Howard or order the sum of Four hundred forty seven dollars, with interest at the rate of ten per cent per annum, for value received which said note so made as aforesaid, said Tilton Howard then and there endorsed and delivered the same to Plaintiff to wit: at the County aforesaid.

By means whereof, and by force of the Statute in such case made and provided, the said defendants became liable to pay said Plaintiff said sum of money mentioned in said note, and being so liable, in consideration thereof, then and there undertook

and promised to pay the same to said Plaintiff according to the tenor and effect, time, intent and meaning of said note, to wit at the place aforesaid.

And whereas also, the said Defendant afterwards, to wit on the first day of October in the year of Our Lord One thousand eight hundred and fifty eight to wit; at Peoria in said County, became and are indebted to the Plaintiff in a large sum of money to wit Five hundred dollars, for money before that time lent and advanced to, and paid, laid out and expended for said Defendants by said Plaintiff at said Defendant's request, and for money before that time had and received by said Defendant to and for the use of said Plaintiff, and also in the like sum, for goods, wares and merchandise before that time sold and delivered by said Plaintiff to said Defendants at like special instance and request; and also in the like sum for the laborcare and diligence of said Plaintiff before that time done and performed by said Plaintiff for said Defendants, and at like instance and request of said Defendants and being so indebted, said defendants in consideration thereof, then and there undertook and promised to pay said plaintiff, said last mentioned sum of money when thereunto afterwards requested.

Yet the said defendant not regarding their said promises and undertakings, but contriving &c. although often requested so to do, have not paid said plaintiff either of said sums of money,

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or any part thereof, but so to do, have hitherto wholly neglected and refused, and still do neglect and refuse, to the damage of said plaintiff of Five hundred dollars, and therefor he brings Suit &c.

David McCulloch
Atty for Plaintiff.

Arnold Goodhart vs Allen C Fisher & Jonathan G Harris } Peoria Circuit Court
In vacation after May Term
1858.

And said defendants by A L Brinman their Attorney who appears by virtue of the power of Attorney herein annexed and confesses Judgment in favor of said plaintiff and against said defendants in the Sum of three hundred and eighty dollars & fifty cents.

Allen C Fisher
Jonathan G Harris
per A L Brinman their Attorney

Oct 21. 1858.

Proceedings in the Circuit Court in and for the County of Peoria in the State of Illinois in vacation after the May term of said Court in the Year of our Lord One thousand eight hundred and fifty-eight, to wit;

Thursday October 21st A D 1858

Arnold Goodheart

vs Assumpsit

Allen D Fisher

Jonathan G Haines

On this Twenty first day of October in the Year of our Lord One thousand Eight Hundred and Fifty Eight there was filed in the office of the Clerk of this Court the Declaration of said Arnold Goodheart plaintiff by David McCulloch his attorney. And thereupon Amos L Merriman One of the attorneys of this court on behalf of said Allen D Fisher and Jonathan G. Haines and by virtue of a power of Attorney for that purpose executed by them and now produced and filed in the Clerks office aforesaid together with the affidavit of Philip Achey thereon written proving the execution of said power of Attorney by the said Fisher and Haines, filed a plea to said declaration admitting the plaintiffs action and acknowledged that the said defendants did assume & promise in manner and form as the said plaintiff hath in his said Declaration alleged against them and

confessed that the said plaintiff had sustained Damages by reason of the non performance of said promises and undertakings in the sum of Three Hundred and Eighty Dollars and fifty cents. Therefore it is considered that the said Arnold Goodheart have and recover of the said Allen D Fisher and Jonathan G. Haines the said Sum of Three Hundred and Eighty Dollars and fifty cents his damages aforesaid in form aforesaid confessed together with his costs and Charges by him about his suit in this behalf expended and that he have Execution therefor.——

181 To the introduction of which Phelps then and there objected, which objection was overruled by the Court, and thereupon the same was read in evidence.

The defendant further to maintain the issue on his part called Tilton Howard, who being duly sworn, testified as follows.

I am the Tilton Howard whose deposition was read by the Plaintiff, I am the endorser of the note upon which the Judgment was rendered in favor of Arnold Goodhart against Fisher & Haines, I never gave more than one note to the defendant. I wrote & signed and addressed to the deft, the letter now shown me addressed to defendant as given below, the defendant thereupon offered in evidence the letter referred to by Howard as follows.

Washburn Ills Jan 25th 1859

Mr N B Mack. Dear sir. Received yours of 20th last night in reference to the Fisher & Haines matter. The note spoken of that Haines offered to turn out as collateral against Phelps & Fox was turned out to me yesterday and I called on P & Way and they turned over small notes to me to the amount of the endorsement on said note for the express purpose of getting it to apply on said Execution you have against Fisher & Haines, on which Haines has my receipt. I called on Haines this morning and he authorised me to send the note to you as collateral trusting you would not take any advantage to Enable for they will hold my kept for the same till I either return the note or the kept of the judgement you now have

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Enclosed please find said note and remit Rec't for same specifying it as security

Respectfully Yours

Tilton Howard

To the introduction of which the plaintiff then and there objected which objection was overruled by the Court, and the same was then read to the Jury and the plaintiff there and then excepted And the defendant further to maintain the issue on his part, Called Samuel D Cushing, who being duly sworn on oath testified as follows, I live at Denmark Woodford Co.; Knew Phelps & Way, Phelps & Way owed me about $2000. March 1. 1859. they paid about $400. and on the 11th of May A.D. 1859. I took a Mortgage from them on all their Stock of goods. Phelps & Way owed a man in Chicago about $2 and $300. They owed Fisher & Haines note of over $700.— Their goods were worth about $1500 about June 1. 1859. they would invoice about $3300.— at forced Sale they would not bring over $1500.— Phelps & Way had notes and accounts in April and May 1859. Dont Know about book accounts, took possession of 1/4 or 1/3 of goods under mortgage about middle of June 1859. the brought about $400 at Sale, the balance of the goods had been taken away. Phelps Kept open the Store till June 11. 1859

And the said Defendant further to maintain the issue on his part called E D. Davidson, who being duly Sworn testified as as follows. I Know Phelps & Way, Know about them purchasing goods of Cushing & Jenkins, they purchased of them about $2000. worth before this, they had the tail end of an old Stock worth about $1000.— Never took an invoice of the goods, only

Know from general observation. Phelps & Way bought some other goods, in Chicago and Peoria. Some time in June 1859 I was called upon to close Chattel Mortgage in favor of Cushing & Jenkins on the Stock of goods of Phelps & Way. We commenced in the evening & the next Morning most all the goods were gone. I dont think any money could have been made on execution against them June 1. 1859. they have been notoriously insolvent ever since that time; they may have had some notes and accounts. I am an attorney The may term of the Woodford Court commenced the 1st Monday of May 1859. And the defendant further to maintain the issue on his part offered in evidence a letter from David McCulloch, Atty for Arnold Goodheart to Defendant dated Jan 17. 1859. and a letter from Defendant to said McCulloch dated Jan 26. 1859. and one from said McCulloch to Defendant dated May 14. 1859; and the execution & receipt of the Same being admitted, the Court permitted the Same to be read in evidence to the Jury. — as follows

115

Peoria Jany. 17th.

Sheriff of Woodford Co

Dr. Sir

Mr Goodheart has handed me your letter of the 14th. inst. in reply to which I would say that if there is any certainty that the money will forthcoming in the manner you state it would be more satisfactory than proceeding to the sale of real estate. Cannot you get him to turn out the $700. note to you as collateral and let the money be paid directly to you or so much thereof as will satisfy the execution.

Yours. &c

D. McCulloch

Metamora Jan the 26th 1859

Mr McCulloch:

Dear Sir I received yours of the 17th inst a few days ago in relation to the Matter of Goodheart vs Fisher & Haines, and immediately wrote to Esq Howard & Haines relative to the contents of your letter: and he (Howard) by the order of Haines sent me the note calling for near Seven hundred dollars in favor of Fisher & Haines and against Phelps & Way, as security for the payment of the fees of the Execution in favor of Goodheart --- I have confidence in the candor and honesty of the men to be satisfied

that it will be paid by the 1st of March as they said ---

You will please have an alias Execution issued and sent to me at once if you think that you can rely on the payment in the manner that I here stated --- let me hear from you when you send the Alias, if you send it if not write to me and let me know what course you are going to pursue yours &c

N. B. Meek Shff. W Co

Peoria May 14th 1859

N B Meek Esqr

Dr. Sir

I doubt of your authority to sell the note you have levied upon. If they offer to turn out real estate you are bound to take it first. But my understanding is that you took the note as collateral security. If so hold on to it until the judgement is paid. If they offer real estate make the levy and file certificate of levy & await further orders.

Enclosed please find alias against Richardsons; please bring their matter to some kind of terms before long

Yours truly

David M'Culloch

The Court Stated to the Jury that the letters were admitted only for the purpose of showing that the Defendant took & held the note in controversy by the consent or direction of Goodheart or his Attorney, to which the Plaintiffs then and there excepted.

The Defendant further to maintain the issue on his part read in evidence the note in question as follows

$ 727.37. Washburn Dec 15th 1858.

Two months & fifteen days after date we promise to pay to the order of Fisher & Hanes, Seven hundred and twenty Seven & 37/100 Dollars Value Received, with ten per cent inst from date

Due March 1. 1859 H A Phelps.

Amos F Way

~~118~~

118 The Defendant has rested. And the Plaintiff called Tilton Howard who testifies as follows.

I never was authorized by the Plaintiffs to write the letter read in evidence from me to Defendant, and never had any authority from the Plaintiffs to turn the note over to Defendant as a collateral security.

This was all the evidence offered on the trial of said cause,

~~105~~

119 The Plaintiff then moved the Court to instruct the Jury as follows,

Fisher & Harris
Vs
Noel B Muse

The court instructs the Jury that if they believe from the evidence that the Defendant received the note in question for a particular purpose and that he afterwards claimed to hold the same for another purpose, they will find for the Plaintiff.

Refused 1

5 The Jury are further instructed that if they believe from the evidence that the note in question was left with the Defendant as a pledge that the money due on the same, as fast as collected should be applied in payment of an execution in the hands of the Defendant, as ~~Plaintiff~~ against the plaintiff and that he afterwards levied upon the note without the consent of the Plaintiffs it would be a waiver of any lien the Defendant might have had by reason of such pledge and a conversion of the note, and if the Jury so believe from the evidence, they will find for the plaintiff and assess their damages.

Refused 2

6 The court further instructs the Jury that if they believe from the evidence that the note in question was placed in the hands of the

Refused 3

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defendant as a pledge that the money due them, as fast as collected should be applied on an execution in the hands of Defendant as Sheriff, against Plaintiff, and when the Defendant was applied to, to return said note, he claimed the same on a different ground than that for which the note was placed in his hands; it was a waiver of the lien he may have had by reason of the pledge and would be a conversion of the note, and if the jury so believe from the evidence they will find for the Plaintiff.

7 Refused.

The Court further instructs the Jury that if they find for the Plaintiffs, the measure of damages should be for the full value of the note at the time of conversion, with interest from that time to the finding of their verdict

8 Ref'd as modified.

The Court instructs the Jury that although they may believe from the evidence that the note in question was given to Defendant as collateral security to secure the payment of said execution, yet if the Defendant levied upon said execution and claimed only to hold the same by virtue of such levy, and not by virtue of such collateral, it would be a waiver of the lien by reason of the collateral and a conversion.

Which the Court refused to give, to which the Plaintiff then and there excepted

12(The Plaintiffs also asked the Court to instruct the Jury as follows

~~12~~

9 The Court further instructs the Jury that if they belive from the evidence that the letter to ~~Defendant~~ D. McCulloch written by Tilton Howard ~~and that Tilton Howard was not the Agent of Fisher & Haines~~ was written without the Authority of the Plaintiffs" they will wholly disregard said letter.

Given

Which instruction the Court modified by interlining the same inserting the words, "and that Tilton Howard was not the agent of Fisher & Haines" to which modification the plaintiffs then & there excepted, the Court at the instance of the plaintiffs instructs the jury as follows

2nd The Court further instructs the Jury that any tortuous act which deprives the owner of Goods of the possession either wholly or for a time is a conversion.

Given.

3d The Court further instructs the Jury that the Defendant as Sheriff had no right to levy on the note in question, and if the Jury belive from the evidence that the Defendant did levy on the note in question, it would be a tortuous act, and he would be liable to the owners thereof, for the amount of damages sustained by reason of such wrongful act.

Given.

4 The Court further instructs the Jury that if they belive from the evidence that the note was placed in the hands of the Defendant for a Special purpose, and that Defendant afterwards applied

Given

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~~18~~

it to another purpose, it was a waiver of the purpose for which it was left, and was a conversion, and the Defendant would be liable for the damages which the plaintiff may have sustained,

Given. 10 The Court further instructs the Jury that there is no legal evidence before them of any chattel Mortgage, or an assignment of the goods, and chattels of Phelps & Way,

Given. 11 The Court further instructs the Jury that they are to disregard all parol evidence of incumbrance by chattel mortgage or assignment made by Phelps & Way,

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The Defendant then asked the Court to instruct the Jury as follows—

Fisher & Haines
vs
Melk.

Instructions for Defft,

1 This suit is brought by the Plaintiff to recover the value of the promissory note executed by Phelps & Way to the Plaintiffs and if the Plaintiffs are entitled to recover they can only recover what the note was worth at the time the Defendants converted it to his own use.

Given

2 The value of the note must be what it was worth in money at the time the Defendants converted it to his own use, if he did so convert it,

Given.

3 In determining the value of the Phelps & Way note the Jury may and ought to properly consider all the evidence as to the responsibility or insolvency of Phelps & Way at the time of the wrongful conversion, if such wrongful conversion has been proved.

Given

~~40~~
102 4

4 If the note executed by Phelps Way was placed in the hands of the Defendant as collateral Security on the debt or demand that Goodhart held against Fisher & Harris, and on which Tilton Howard was liable as endorser and Goodhart assented to it, or directed it to be done; then the Defendant was authorized to keep & retain the note until the judgment against Fisher & Harris in favor of Goodhart was fully paid,

Given,

5 The Jury are further instructed that the records, Executions & returns thereon offered in evidence show a ballance now remaining due from Fisher & Harris to Goodhart,

Given.

6 If the jury belive from the evidence that the note in controversy was delivered to the Defendant as collateral Security for the payment of the execution in his hands in favor of Arnold Goodhart, and if the Jury further belive from the evidence that while it was in the hands of the Defendant as Sheriff of Wordford County, he endorsed a levy on the execution he held against the Plaintiffs of the note in controversy but made no sale under such levy. Such levy did not and does not constitute a cause of action against the Defendant,

Given

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7 If the Jury further believe from the evidence that the Plaintiffs in this suit executed their note to Tilton Howard, and that Howard endorsed said note to Goodhart, and the latter received a Judgment against the Plaintiffs in the Circuit Court of Peoria County, and that when such Judgment an execution was issued to and delivered to the Defendant, and if the Jury believe from the evidence that while said execution was in the hands of the Defendant, Howard sent the note in controversy to the Defendant in the letter from Howard to him, read in evidence to the Jury and for the purposes and uses in said letter mentioned, and if the Jury further believe from the evidence that Goodhart either by himself or his Attorney assented to the Defendants accepting said note until the Judgment or execution in favor of Goodhart and against the Plaintiffs was satisfied or paid, then the Defendant was bound in law to hold said note until the Judgment is satisfied & he is not liable for damages for so holding it,

Given

8 The Court instructs the Jury that what a man does by his agent, he does himself, and if the Jury believe from the evidence, that Howard the Agent of Fisher & Marie placed the note in the hands of the Defendant as Collateral security for the payment of the execution, then Fisher & Marie are bound by what Howard did the same as though they had done it themselves.

Given

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126
9

If the Jury belive from the evidence that the note in controversy was delivered to the Defendant as collateral Security for the payment of the execution in favor of Goodhart, then unless there was some promise or agreement made by the Defendant to bring suit on the note against Phelps & Way, at the time he accepted the note the Defendant was not bound to incur the costs & expenses of recovering Judgment and if in the meantime Phelps & Way became insolvent and the note remained unpaid, this would not amount to a conversion of the note,

Which instructions were given by the Court, to which the plaintiffs then and there excepted. The defendant asked the following instructions which were refused by the Court

If the Jury belive that Fisher & Haines turned out the note to Howard to secure him as indorser on the note to Goodhart, then he Howard had the right to turn the same over to Deft as collateral security for the payment of the execution against Fisher & Haines,

Refused

If the Jury should find for the Plaintiff they could only find the amount that the note has been proven to be worth at the time the Plaintiff converted the note to his own use, if he did convert it, and the Court further instructs the Jury if they belive from the evidence that Phelps and Way the makers of the note were, at the time the note was converted by the Defendant, if he did convert it, wholly insolvent and worthless, and so remained up to the

Refused

commencement of this suit, then the Jury should find for the Defendant.

The Jury returned a verdict for the Defendant whereupon the Plaintiffs moved for a new trial as follows —

State of Illinois } In Circuit Court.
Peoria County } ss June Term 1864

Fisher & Haines
vs
Orrel B Meek. } Motion for new trial.

And now comes the Plaintiffs by S. D. Puterbaugh their attorney, and move the Court for a new trial, because,

1st The Court admitted improper evidence of the part of Defendant.

2d The Court erred in refusing the 1. 5. 6. 7 & 8. instructions asked by the Plaintiffs

3d The Court erred in modifying the 9th instruction asked by the Plaintiffs by inserting the words. "And that Tilton Howard was not the agent of Fisher & Haines",

4th. The Court erred in giving the 1st. 2. 3. 4. 5. 6. 7. 8. & 9th instructions asked by the Defendant

5 The verdict of the Jury was contrary to the evidence,

6. The verdict was contrary to law. 7th other reasons.

S. D. Puterbaugh. Atty for Plffs

Which said motion the court overruled to which Plaintiff then and there excepted, the court thereupon rendered judgment for the Defendant, to which Plaintiff then and there excepted, and inasmuch as the matters aforesaid do not appear of Record the Plaintiff present this bill of exceptions and pray that the same may be signed and sealed by the Court, and made part of the record in this cause and it is accordingly done.

M. Williamson Judge [Seal]

State of Illinois }
County of Peoria } ss. I, Thomas Mooney Jr. Clerk of the Circuit Court in and for the said County of Peoria do hereby certify that the foregoing is a true copy from the Records of the proceedings had in the Circuit Court of Peoria County in said State in a certain cause therein pending wherein Allen D Fisher and Jonathan G. Harris who sue for the use of Elias Fisher are Plaintiffs and Nod B Meek is defendant as the same appear of Record and on file in my office.

In witness whereof I have hereto set my hand and affixed the seal of said court at office in the City of Peoria this 27th day of February A.D. 1865.

Thomas Mooney Jr Clerk

Rec'd Fees $38.50/100. for the record
Thos Mooney Jr Clerk

State of Illinois } In Supreme Court,
Third Grand Division } To April Term A.D. 1865,

Fisher & Haines Plaintiff in Error }
v. } Error to Peoria
Noel B. Meek, Deft. in Error }

And now the said Plaintiffs in Error, come and say, that in the record and proceedings aforesaid, there is manifest error in this, to wit:

II. The Circuit Court erred in allowing the letter of Tillon Howard to defendant to be read in evidence to the jury. (See page 111 of Record)

III. The Court erred in allowing the letter from David McCulloch dated Jan. 17, 1859 to defendant, (page 115 of record) and letter from defendant to David McCulloch, dated Jan. 26, 1859, (page 115 of record), also letter dated May 14, 1859, from David McCulloch to defendant, (page 116 of record) to be read in evidence to the jury.

IIII. The Circuit Court erred in refusing the plaintiffs instructions

IV The Circuit Court erred in modifying the 9th instruction asked by the plaintiff

V. The Circuit Court erred in overruling the motion for a new trial.

VI VII. The Circuit Court erred in rendering judgment for the defendant,

VIII Other reasons.

By reason whereof the plaintiff pray that said judgment of the Circuit Court may be reversed,

By S. D. Puterbaugh
Atty for Plff in Error.

State of Illinois } In Supreme Court
This Grand Division } To April Term A.D. 1865

Fisher & Haines
vs
Noel B. Meek } Bonds in Error.

And the said Noel B. Meek, defendant in Error, now comes and enters his appearance in said Cause, and says that there is no error, either in the record and proceedings aforesaid, or in giving judgment aforesaid, in manner and form as above assigned; And therefore he prays that the said judgment may be affirmed, and that his costs may be

adjudged to him.

By McCulloch & Cagle
Attys for Deft in Error

2534 lines
10 words to line
25340 words
10 cents per word

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38.50
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$12.43

Filed April 5th 1865
L. Leland
Clerk