No. 14770

Supreme Court of Illinois

Ballow

vs.

Jones et al

71641

STATE OF ILLINOIS,

SUPREME COURT,

THIRD GRAND DIVISION.

No. 22

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

McCann

vs.

[illegible]

1877

SUPREME COURT OF THE STATE OF ILL'S,

3rd GRAND DIVISION,

April Term, A. D., 1863.

WILLIAM S. BALLOU,
vs.
LUCRETIA JONES, AND
JOSEPH RETTENMEYER,
} Error to Bureau Co.

1 On the 25th April, A. D., 1861, the plaintiff, WILLIAM S. BALLOU, by ALVIN BALLOU, his agent, filed with the Clerk of Bureau Co. Circuit Court his affidavit for the replevy from Defendants, JONES & RETTENMEYER, of certain personal property specified in said affidavit, and described as a bakery shop and dwelling house situated on the part of lot No. 40, in the original town of Princeton, in said County, commencing at south east corner of said lot, running thence west 100 feet, thence north 30 feet, thence east 100 feet to east line of said lot, thence south 30 feet to place of
2 beginning. The affidavit is in the usual form, complying with the provisions of the statute, and also further states that said buildings are strictly personal property, and do not compose any part of the realty; that they are temporary erections owned by Plaintiff, who was at the time merely a tenant of the above described part of lot 40, and whose lease of said part of lot 40 is not yet expired; that said buildings are not permanently attached to the real estate, or annexed to the freehold so as to become part thereof, but are so situate that the owner thereof has the right to remove them off from said lot, and are susceptible of being easily so removed; that the owner of the freehold has no right to them, nor does he set up any such right; that neither the Plaintiff nor said Defendants own any part of said lot.

2, 4, 5 & 6 On the same day Plaintiff filed with the Clerk of said Circuit Court his "plaint" therein, alleging substantially the same facts as set forth in his said affidavit, as also that the Plaintiff being the owner of said buildings and entitled to the possession thereof, the Defendants, on the 17th January, A. D., 1861, wrongfully and unlawfully detained the same in their possession and from the Plaintiff, and that the same are of the value of $500. On the same day a writ of replevin
6, 7 & 8 was issued out of said Circuit Court against Defendants, returnable to the August Term, A. D.,
1861, of said Court, which was duly executed and served upon Defendants on the 1st of May,
9 & 10 1861, Plaintiff having given bond and security to the Sheriff according to law.

11, 12, 13 & 14 At the Aug. Term A. D., 1861 of said Court, Plaintiff filed in said Court his declaration therein, averring substantially the same facts in relation to the character of the property as contained

in the affidavit and plaint. The cause was then continued to the next term of said Court at Plaintiff's costs on motion of Defendants, for want of declaration filed ten days before first day of that term.

At the Dec. Term A. D., 1861 of said Circuit Court, Defendants filed six pleas, 1st, Non detinet, 2d, property in defendant, LUCRETIA JONES,—3d, property in the heirs of WILLIAM JONES, deceased, to-wit: LUCRETIA JONES, CEDILIA JONES, LAURA E. JONES, GEORGE M. JONES, and WILLIAM J. R. JONES, heirs of WM. JONES, deceased—4th, property in OWEN LOVEJOY—5th, property in the heirs at law of BUTLER DENHAM, deceased—6th, that the property mentioned is not personal property, that the buildings are firmly attached to the real estate, and placed on permanent foundations, upon which issues were joined.

On the 4th day of Dec. Term, 1861, a Jury was empannelled for trial of the cause, and on motion of Plaintiff's Attorney, the Court gave leave for Plaintiff to substitute M. T. PETERS as security on the replevin bond, in place of M. BALLOU, a witness in the cause, which was accordingly done.

On the 5th day of said Dec. Term, Defendant's Attorney moved the Court to dismiss the suit on account of the alteration of the security in the replevin bond, which motion the Court overruled. The cause was then tried before the Court and a Jury. The Jury returned a verdict for Defendant, and Plaintiff moved the Court for a new trial. On the 8th day of said Dec. Term, 1861, by and with the consentof both Tlaintiff and Defendants a new trial was ordered by the Court.

At the March term A. D. 1862 of said court, a jury was empanelled on the 3d day of said term and the cause tried, and the jury on the 4th day of said term returned into court the following verdict: "We of the jury do find the Defendants not guilty as alleged in Plaintiff's declaration, and do also find the property in controversy in this suit in the Defendant," whereupon Plaintiff's Attorney moved the Court for a new trial, which motion for new trial, was on the 9th day of said March Term overruled by the Court; and Plaintiff, then and there excepted, thereupon judgment was entered by the Court against Plaintiff for costs, and order entered for return of property replevined, to which orders of the Court in entering said judgment and ordering return of property, Plaintiff then and there excepted.

On the 11th day of said March Term, the Court gave Plaintiff leave to file his bill of exceptions herein within ten days as of this day, which was accordingly done.

The bill of exceptions shows, that the Plaintiff on the trial proved the execution of, and gave in evidence a lease from EUNICE S. LOVEJOY as guardian of LUCY S. DENHAM, MARY B. DENHAM and ELIZABETH S. DENHAM, minors, and OWEN LOVEJOY her husband, to WILLIAM JONES dated January 1st 1853, whereby said LOVEJOYS leased to said WILLIAM JONES the aforesaid described part of lot 40, for the term of three years from the date thereof, which lease also stipulates "that said WILLIAM JONES may erect and put upon said leased premises during said term any building or buildings he may think proper, and take and remove the same away at the expiration of said lease," and also that "said WILLIAM JONES shall have the privilege or preference at the expiration of said lease to then have the same for two years longer if the parties shall then agree upon the terms of such further lease."

Plaintiff further proved by M. BALLOU that at the date and execution of said lease to JONES, the leased premises were vacant and unoccupied, and that shortly thereafter said WM. JONES

erected a temporary wooden building thereon for a dwelling and grocery shop, and afterwards attached a bakery and built an oven ; that said main buildings are 16 or 18 feet wide by 18 or 20 feet long, one and a half story high, the additions one story, that the buildings rest on wooden blocks or posts set either upon or in the ground, and was erected in 1853; that afterwards said
31 Wm. Jones erected a bakery oven at the west end of the buildings, the foundation of three sides of the oven being set on blocks or posts extending some two or three feet above ground with timbers lying on top of these posts on which timbers the brick oven is built, that a part of the east end or mouth of the oven is built up with brick from the ground and even with or forming
31 part of the side wall of the bake room. That Wm. Jones occupied said buildings under said lease from time of their erection until some time between the Fall of 1857 and Spring of 1858
32 when he removed to Bloomington in this State, where he resided a while, then removed to Mendota and there resided a while, then removed to Princeton near the depot and lived there for some time before he died.

32 By said witness, Plaintiff proved the signature of said Wm. Jones to the promissory note and chattel mortgage executed by said Wm. Jones to Alvin Ballou dated Sept. 12th 1857, said note being for $348.80 payable to Alvin Ballou, or order one year after date with ten per cent interest.
35, 36, 37 & 38 Also, the signature of Wm. Jones to the promissory note and chattel mortgage executed by said Jones to Enos C. Matson dated Sept. 2nd 1857, said note being for $400, payable to said Matson three months after date with ten per cent. interest.

39 On cross examination, said witness stated that the posts are from 8 to 12 inches in diameter and extend from 8 to 12 inches above ground ; that properly there is not a cellar but only a hole or shallow space dug out for a cellar ; not walled ; that the buildings all stand on blocks or posts.

Plaintiff having here released the interest of Alvin Ballou in this suit, he was then sworn, and
39 by whom Plaintiff proved that Wm. Jones executed the said promissory note and chattel mortgage to Alvin Ballou, and Plaintiff having proved to the Court that the Justice of the Peace, who took the acknowledgment of said Jones to said chattel mortgage, had at the time of said acknowledgment duly entered in his Justice's docket a minute of said acknowledgment with a
40 description of the mortgaged property, the Plaintiff then read in evidence to the jury the said note and chattel mortgage, the mortgage is upon the property replevied, and is described as "goods and chattels," and is in the usual form with power of sale upon default in payment of the note, and provides for said Jones to retain possession until such default, acknowledged, and duly recorded
40 September 17, 1857. That said last named note and mortgage were executed by Wm Jones to Alvin Ballou to secure the sum of $348,80 indebtedness of said Jones to Alvin Ballou. That no part of the debt in said note and mortgage specified, has ever been paid ; that the buildings specified in said chattel mortgage, and now replevied, are of wood set upon blocks or posts ; that
41 the brick oven at the back end of buildings stands on posts or blocks, some two or three feet above ground, except a small space under the front or mouth of the oven where the brick is built on the ground. That the first building was erected in 1853, and said Wm. Jones occupied the buildings from that time until the fall of 1857, when he went to Bloomington. That said A. Ballou did not know that Matson held a mortgage until about the time Matson advertised the property for sale under his mortgage.

Plaintiff having proved that the Justice of the Peace who took and certified the acknowledgment of the chattel mortgage from Wm. Jones to said Matson, had at the time of such acknowl-

edgment duly entered in his Justice's docket a minute of such acknowledgment with a description of the mortgaged property, the Plaintiff read in evidence to the jury the note and chattel
42 mortgage from Wm. Jones to said Matson. This chattel mortgage describes the property as "goods and chattels," and is also in the usual form with power of sale upon default in payment of the note, and provides for Wm. Jones to retain possession of the property until such default, was acknowledged Sept. 2d, 1857, and same day filed for record, and recorded, and includes the property replevied.

Plaintiff further proved by A. Ballou that said Matson sold the property under Matson's mortgage at public auction on the 31st July, A. D., 1858, to said Alvin Ballou for $336,66; that the sale was made at the premises; that said A. Ballou executed his notes to Matson for that sum, which notes said Ballou afterwards paid in full. That at the sale Matson gave said Ballou possession of the property, as also the key belonging to the building, and notified the occupants that the property then belonged to said A. Ballou; that at the sale Matson claimed the sum of $436,66 as due him on the mortgage, but Matson said he held notes for the rent of the buildings to the amount of $100, that were collectable, which would reduce the amount due him to $336,66 and that the property must bring that amount; that at the time of the sale, O'Hare & Hyde were occupying the buildings, as witness understood, under a lease from Wm. Jones, which lease had a month or two to run. That when O'Hare & Hyde's lease from Wm. Jones expired in the fall
43 of 1858, said A. Ballou leased the property to O'Hare for one year; that O'Hare assigned this lease to Pliny F. Morton and O'Hare & Morton occupied the property that year, and Morton paid A. Ballou the rent for that year. On the expiration of A. Ballou's first lease to O'Hare said A. Ballou again leased the property to O'Hare for another year, and O'Hare occupied the property this second year, and paid A. Ballou the rent up to the time A. Ballou sold to Plaintiff, and O'Hare paid the rent afterwards to Plaintiff or to said A. Ballou for Plaintiff. O'Hare then left the premises about September or October, 1860.

That after O'Hare went away, the property remained vacant and unoccupied until in November, 1860, when as witness was passing by the premises he discovered that Mrs. Jones, one of the Defendants, widow of Wm. Jones, was in possession, and had apparently just moved in. That after the Matson sale Wm. Jones was back here in Princeton, in 1859, but he never set up any claim to the property to the witnesses knowledge, and never said anything to witness about any claim to the property.

That on the 2d Sept., 1858, said A. Ballou leased the ground on which the buildings stand
44 from Owen Lovejoy for two years from January 1st, 1859, and in the spring of A. D., 1860, said A. Ballou sold the property in question to Plaintiff for the amount witness bid on the Matson sale, and the amount of the note and mortgage witness held against Wm. Jones, and thereafter the Plaintiff had the care of the property, and received the rents until Defendants got in possession of the property. Plaintiff further proved by said A. Ballou that on the 17th January, 1861, he served written notice from Plaintiff upon each of Defendants, demanding possession of said premises, by delivering to each Defendant the original notice, a copy whereof is contained in the bill of exceptions, and which notice was read in evidence to the jury.

Plaintiff also proved by said A. Ballou that defendants were occupying said buildings when
45 he so served said notice and also until and at the time of the service of the writ of replevin in this cause.

46 On cross examination witness stated he never saw the notes given for rent which MATSON alleged he held at time of sale—that witness tried to prevent MATSON from selling—that MATSON said he would take witness' note for a time for the purchase, if witness bought. It was finally understood that witness would bid $336.66 and if no higher bid should be made, the property would be struck off to witness at that sum. When said A. BALLOU sold the property to Plaintiff,
47 witness was indebted to Plaintiff in some $1400, or more, that he transferred the property to Plaintiff toward said indebtedness, and delivered to Plaintiff the key of the building, and Plaintiff received the rents since that time. After the MATSON sale said A. BALLOU claimed the property both under that sale and under the chattel mortgage from JONES to said A. BALLOU.

Plaintiff then called CHARLES BALDWIN by whom he proposed to prove that in Sept. 1858, OWEN
48 LOVEJOY leased the ground on which said buildings stand, to ALVIN BALLOU for the term of two years from January 1st 1859, and that afterwards in Dec. 1860 said LOVEJOY leased said ground to Plaintiff for three years then next ensuing, but Defendants objected thereto, and the Court sustained their objection and excluded the evidence, to which ruling of the Court, Plaintiff then and there excepted.

Plaintiff proved by ENOS C. MATSON that he, MATSON, gave written public notice of the time and place of the sale under his said mortgage and that he sold the property described at public sale on the 31st July 1858, to ALVIN BALLOU for $436.66 being amount of his mortgage and interest, but at that time he, MATSON, held two $50 notes given by tenants for the rent of the property, payable to and belonging to WM. JONES, which MATSON kept in so much reduction of the amount of BALLOU's bid, and took said A. BALLOU's notes for the $336.66, that said sale was
49 & 50 held at the premises in pursuance of said notice,—that MATSON then gave A. BALLOU possession of the property as also the key belonging to the building, and he, MATSON, notified the tenants that the property then belonged to A. BALLOU. MATSON afterwards traded off the notes said BALLOU gave him on the sale. Copies of the Lease from LOVEJOYS to WM. JONES,—of the notes and chattel mortgages from WM. JONES to MATSON and BALLOU respectively—of the notice from Plaintiff to Defendants, demanding possession—and MATSON's notice of sale, are contained in the bill of exceptions.

Plaintiff proved by MRS. ELIZABETH HARRIS that when O'HARE went away in the fall of 1860
50 the key of the building in question had been left with her to be given to BALLOU, and that after the building was so vacant, Defendant MRS. JONES called at MRS. HARRIS' house and asked for the key, nnd witness not suspecting any harm let MRS. JONES (one of Defendants) take the key. MRS. JONES then said nothing but immediately left with the key. The next that witness heard was that MRS. JONES was occupying the building. Plaintiff here closed.

51 Defendants proved by H. M. HYDE that said HYDE & O'HARE leased the property in question of WM. JONES Sept. 20th 1857 for one year, at the expiration of which time said HYDE left the premises.

Defendants proved by P. F. MORTON that said MORTON went into the building in Sept. 1858, that O'HARE had rented the property of ALVIN BALLOU for one year, and O'HARE assigned his
51 lease to said MORTON, that said MORTON & O'HARE occupied the property from Sept. 1858, till Sept. 1859, under lease from said A. BALLOU, and MORTON paid the rent that year to said A. BALLOU. At the expiration of that lease, O'HARE again leased the property of A. BALLOU another year, and O'HARE occupied the property the second year and paid the rent that year to said A. BALLOU.

Defendants proved by H. Richards that the main building is about 18 by 20 feet, with addition extending back, the whole building near 40 feet in length, and are on blocks or posts, set in the ground, the corners spiked down to the posts, that the oven is built on posts, set two feet in
52 the grouud and extending some three feet above ground, the timbers on which brick work on three sides of oven was laid are set on these posts and spiked together. The brick work at the end of oven next the building for a space of about five feet is laid about two feet in the ground, that the plate of the side of the bake room next the oven rests on the brick work above the mouth of oven, that under the bakeroom is a cistern arched over top with brick, the brickwork of mouth of cistern extends up even with underside of floor. One joice on which floor rests was cut off where it passes the brickwork of mouth of cistern, and the two ends of joice where so cut off are laid in the brickwork. The building first put up was erected in 1853—oven built in 1854—that could not move the building without taking off the brick of mouth of cistern. On cross-examination witness stated that the buildings could be easily removed without much
53 damage, that said Lucretia Jones is the widow of Wm. Jones.

Defendants proved by J. Huntington that the first building erected in 1853 was afterwards moved back in rear, and the main building put up in front. Witness stated that the buildings are placed on blocks or posts from three to five feet in length, and set in the ground from three to five feet. The four corners of the timbers are spiked to the blocks, that Wm. Jones died in September, 1860.

This was all the evidence in the case.

The Court was requested by Defendants to instruct the Jury in their 3d, 4th and 5th instruc-
57 tions, as follows, to-wit: "3d, Before the property becomes perfect under a chattel mortgage, the mortgagee must reduce the property to possession, hence, unless Matson reduced said property to his possession by virtue of his chattel mortgage, he had no legal title to the property, and conferred none on Ballou by virtue of his sale, unless Ballou or Plaintiff took possession under such sale, before Defendants gained possession thereof." "4th, If the Jury believe from the evidence that the premises in controversy are not personal property, the Plaintiff cannot recover
58 in this form of action." "5th, The tenant cannot deny the title of the landlord, and if the Jury believe from the evidence that O'Hare & Hyde were in possession of the property in controversy as the tenants of Jones, then no arrangement entered into between Matson and Ballou with O'Hare & Hyde could divest Jones of his title and possession to the property without the consent of Jones." The Plaintiff objected to the giving said instructions. The Court overruled the objections and gave said instructions, and Plaintiff then and there excepted.

ERRORS ASSIGNED.

1st.—Rejecting proper evidence offered by Plaintiff.

2d.—Giving the instructions asked by Defendants.

3d.—Overruling Plaintiff's motion for new trial.

4th.—Rendering judgment against Plaintiff for costs and ordering return of property replevined.

M. BALLOU,

Attorney for Plaintiff in error.

ty could divest Wm. Jones of the title or possession thereof, without the consent of Jones—or, in other words, that the purchaser at a sale under a chattel mortgage, after forfeiture, in order to become legally entitled to such property as against the mortgagor, or even to the possession thereof must thereafter obtain the consent of the mortgagor; and consequently the mortgagor's refusal of such consent would virtually annul and destroy all the effect of the mortgage and of the sale under it; which is not the law, and is also in conflict with the instructions given for Plaintiff.—3 M. and S. 516, 2 Stark 230, 4 Scam. 90, 13 Ills. 241, 3 Saund. 418, note, 2 Wils. 143, 4 Term R. 683, 8 Term R. 187, 4 Rep. 54, 6 Rep. 15 "a".

8 The Court below should have awarded a new trial on Plaintiff's motion. Where there are strong probable grounds to believe that injustice has been done, as there were in this case, a new trial should have been granted.—2 Scam. 351, 2 Caines 90, 3 John 532, 5 John 138.

In cases where the verdict has been given contrary to the evidence, or where there is no evidence at all to support the verdict, the Court will grant a new trial.—1 Gilm. 70, 13 Ills. 697, 2 Gilm. 595.

Where it is apparent that the jury either mistook the evidence, or misunderstood the law as applicable to the evidence, as it was in this case, a new trial will be granted.—11 Ills. 142.

Misdirection on the part of the Court, is sufficient ground to reverse the judgment.—4 Gil.129.

9 The Court below ought not have rendered judgment against the Plaintiff for costs, and ordered return of the property, as there was no evidence to support the verdict, the evidence all showing conclusively that the property belonged to Plaintiff, and that he was entitled to its possession.—The fact as shown that after Alvin Ballou purchased the property at Matson's sale under the Matson mortgage, and after Alvin Ballou's chattel mortgage had become forfeited by non-payment, Alvin Ballou, Sept. 20th, 1858, leased the property to O'Hare as his tenant for one year next ensuing, who occupied the property and paid the rent under that lease to Alvin Ballou for the term; that at its expiration Alvin Ballou again leased the property to O'Hare for the second year, who occupied the same as his tenant and paid the rent for second year to Alvin Ballou, till the spring of 1860 when said Alvin Ballou sold the property to the Plaintiff, who received the rent till O'Hare's lease expired in the fall of 1860, is conclusive evidence of possession in Plaintiff and his vendor from Sept. 20th, 1858, until the Defendant, Mrs. Jones, wrongfully and in a clandestine manner, got into possession. On the whole evidence in the case the Plaintiff in error insists that the Supreme Court ought to reverse the judgment below, and enter the proper judgment in this Court for the Plaintiff in Error, for the recovery of the property and for his costs.

M. BALLOU,

Attorney for Plaintiff in error.

22 147

William S. Ballou

v.

Lucretia Jones et. al.

Pltffs. Abstract, Points and Authorities &c.

Filed April 21. 1863

L. Soladen Clk

STATE OF ILLINOIS, SUPREME COURT. } ss. The People of the State of Illinois,

To the Sheriff of Bureau ——— County, GREETING:

Because, In the record and proceedings, and also in the rendition of the judgment of a plea which was in the Circuit ——— Court of Bureau County, before the Judge thereof, between William S. Ballou ———

plaintiff—, and Lucretia Jones & Joseph Rettenmeyer

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

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

that they ——— be and appear before the Justices of our said Supreme Court, at the next term of said Court, to be holden at Ottawa, in said State, on the first Tuesday after the third Monday in April A.D. 1863 ~~next~~, to hear the record and proceedings aforesaid, and the errors assigned, if they shall see fit; and further to do and receive what said Court shall order in this behalf; and have you then there the names of those by whom you shall give the said Lucretia Jones & Joseph Rettenmeyer ———

——— notice, together with this writ.

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



L. Leland

Clerk of the Supreme Court.

G. B. Rice Dep't

118

William S. Ballou

vs.

Lucretia Jones et al

SCIRE FACIAS.

FILED April 21 A. D. 1863

L. Leland Clerk.

Sheriff Fees
Sum 50
Com 10
Rets 10
70

Sheriff's Office
18th Day of April 1863 I received
the within writ and in obedience
thereto served the within named
Lucretia Jones the within named
Nancy Joseph Ketemeyer personally
in Ray County
Silas Bailey Sheriff
by Truman Conway

Know all Men by these Presents, That We, William S. Ballou of the County of Bureau and State of Illinois ——— as principal, and ——— as security, are held and firmly bound unto Lucretia Jones and Joseph Rettenmeyer ———

in the penal sum of Two Hundred Dollars good and lawful money of the United States, for the payment of which, well and truly to be made, the said William S. Ballou and ——— himself ——— his ——— heirs, executors and administrators, jointly, severally and firmly by these Presents.

Witness, Our hands and seals ———

this thirteenth day of April A. D. 1863.

The Condition of the above Obligation is such, That, whereas the above named Lucretia Jones and Joseph Rettenmeyer did, at the March Term of the Circuit Court, held in and for the County of Bureau in the State of Illinois, A. D. 1862 recover a judgment against the above bounden William S. Ballou in an action of Replevin in said Circuit Court, with Costs expended therein and that writ of returno habendo issue therein for the return of the property replevied ~~for the sum of~~ ——— to reverse which said judgment, the said William S. Ballou has sued out a Writ of Error from the Supreme Court, within and for the Third Grand Division of said State, which Writ of Error is made a Supersedeas. Now if the said William S. Ballou shall duly prosecute said Writ of Error, and pay, or cause to be paid, the amount of said judgment, and all judgments, costs, interest and damages which the said Supreme Court shall adjuge against William S. Ballou and abide the order and judgment of said Supreme Court in this behalf, then this obligation is to be void, otherwise to remain in full force and effect.

William S. Ballou [SEAL.]

W. C. Lewis [SEAL.]

[SEAL.]

[SEAL.]

State of Illinois }
County of Bureau } ss.

Benjamin S. Ferris named as security for William S. Ballou in the within Bond and who executed the same, being first duly Sworn deposes and says, that affiant is the owner of Real and personal Estate in said County of Bureau of the value of at least the sum of more than One Thousand Dollars over and above all affiants liabilities and exclusive and over and above the amount of Estate affiant may be entitled to under the Homestead and other Exemption laws of this State

Benjamin S. Ferris

Sworn to and subscribed before me this 14th day of April A. D. 1863

Geo. M. Radcliffe clerk of the Circuit Court of Bureau County aforesaid

By Cairs D. Trimble Dpty

No. 142

SUPREME COURT,

THIRD GRAND DIVISION.

vs.

SUPERSEDEAS BOND.

Filed April 20 1863

R. Leland Clerk.

STATE OF ILLINOIS, } ss. The People of the State of Illinois,
SUPREME COURT,

To the Clerk of the Circuit Court for the County of Bureau Greeting:

Because, In the record and proceedings, as also in the rendition of the judgment of a plea which was in the Circuit Court of Bureau County, before the Judge thereof, between William S. Ballou

plaintiff, and Lucretia Jones and Joseph Rettenmeyer

defendants, it is said manifest error hath intervened, to the injury of the aforesaid plaintiff

as we are informed by his complaint and we being willing that error should be corrected, if any there be, in due form and manner, and that justice be done to the parties aforesaid, command you that if judgment thereof be given, you distinctly and openly, without delay, send to our Justices of the Supreme Court the record and proceedings of the plaint aforesaid, with all things touching the same, under your seal, so that we may have the same before our Justices aforesaid at Ottawa, in the County of La Salle, on the first Tuesday after the third Monday in April next, that the record and proceedings, being inspected, we may cause to be done therein, to correct the error, what of right ought to be done according to law.

Witness, The Hon. JOHN D. CATON, Chief Justice of our said Court, and the Seal thereof, at Ottawa, this 20th day of April in the Year of Our Lord One Thousand Eight Hundred and Sixty three

L. Leland
Clerk of the Supreme Court.

by J. B. Rice Deputy

William S. Ballew

No. vs.

Lucretia Jones et al

WRIT OF ERROR.

This Writ of Error is made a Supersedeas, and as such is to be obeyed by all concerned.

L. Leland

by J. D. Rice Deputy Clerk.

FILED April 20th A. D. 1863

L. Leland

Clerk.

Supreme Court of the State of Illinois
3rd Grand Division
April Term 1864

William S. Ballou }
vs. } Error to Bureau County.
Lucretia Jones et }
Joseph Rettenmeyer }

Martin V Ballou being first duly sworn according to law deposes and says, that he affiant is attorney for William S. Ballou the plaintiff in above entitled cause now depending in the said Supreme Court, affiant further says, that soon after the service upon said defendants of the original writ of Replevin which was issued out of the Circuit Court of said Bureau County in said cause, which service of the said original writ was had on or about the 1st day of May A.D. 1861 the said defendant Joseph Rettenmeyer removed and departed from said Bureau County Illinois, (where he had previously resided) to parts unknown, and said Rettenmeyer has ever since his aforesaid removal and departure been in parts unknown, that affiant has made due and diligent inquiry for the whereabouts of said Rettenmeyer but that he can not be found, so that process cannot be served upon him. affiant further says that he verily believes said Joseph Rettenmeyer is not now nor has he been at any time within the last two years a resident of the State of Illinois.

Martin V Ballou

State of Illinois }
Bureau County } ss

Before me George M. Radcliffe Clerk of the Circuit Court in and for said County in said State subscribed and sworn to this 26th day of January A.D. 1864 Witness my hand and the seal of said Court this day

Geo. M. Radcliffe Clk
By Chas L. Smith Dep.

147 48

William S. Ballou

vs.

Lucretia Jones &

Joseph Kettenmeyer

Appeal &c for Pub.

Filed January 27. 1854

L. Leland

Clerk

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

William S. Ballou
Plaintiff in Error
vs
Lucretia Jones &
Joseph Rittenmeyer

Error to Bureau

It appears by the Record in this Case, that two Juries have passed upon it with the same result towit, a verdict in favour of the defendants.

A new trial will not be granted on the ground that it is contrary to the evidence unless in cases where the verdict of the jury strikes the minds at first blush as palpably and manifestly contrary to evidence. Dawson vs Robbins 5th Gil 72 Johnson vs Moulton 1st Scam. 532 and 3d Scam. 97.

Courts are much more reluctant to set aside a verdict on the ground that it is contrary to evidence, when one new trial has been awarded, and a second Verdict rendered the same way as in the case at bar. "It is for the interest of the State that an end should be put to litigation" and two verdicts

ought to have this effect 24th Ill 381.

A Chattle Mortgage can only embrace Chattles Cresson vs Stout 17 Johnson 116 Heaton vs Finley 2 Jones 304, Harlan vs Harlan 3 Harris 507. — 7th Cowen 321.

The Mortgage from Jones to Matson under which the Plaintiff claims embraces a household estate, which is not the subject of Chattle Mortgage.

The doctrine of ~~estoppel~~ estopel as claimed by the Plaintiff in Error does not apply to this case; it certainly cannot be seriously claimed, that if the property in Controversy is not Real Estate, that the Mortgagor or his heirs could be divested of their rights, by vertue of a chattle Mortgage which the Mortgagor had executed on said premises. This Court has decided that the Law presumes that a building is Real Estate and belongs to the owner of the land on which it stands 16th Ill 150, 151 — and certainly the calling of a building in a Chattle Mortgage "goods & chattles" does not of itself make it so. But whether that be so or not the Plaintiff alleged in his declaration, that the House in question was personal property thus tending an issue on that point,

ab 2
2(18–19)

The defendants denied that allegation by their 6th Plea, on which an issue to the country

was joined. Even if that was an improper question to submit to the jury, defendants in Error insist that by joining issue on that plea, the Plaintiff in Error waived his right to object to an investigation of that question by the Jury - he made it one of the issues in the case. Testimony was introduced on that point by the Defendants, without objection by the Plaintiff. See testimony of A. Richards - Also testimony of Joseph Huntington. We think this is a sufficient answer to all that has been urged against the defendants 3rd & 4th instructions

4 L 6
R 52
266. R 53

All of Defendants instructions announce correct principals of law, and the Jury could not have been misled, for the reason that the Plaintiffs instructions given by the Court, fully explained qualified and restricted the defendants instructions to the facts in the case

This Court has decided that it will presume the Circuit Court decided correctly in receiving or rejecting testimony unless the reasons, for such receiving or excluding be preserved in the bill of Exceptions. This Court cannot tell from what appears in the Bill of Exceptions whether the Leases which were excluded were proper testimony to be received in

the case or not, except in this; that the Mortga-
gor Jones held a Lease from Eunice Lovejoy
Guardian of the minor heirs of Butler Dur-
ham, while the Lease, which was excluded
was signed by Owen Lovejoy. It does not
appear that Owen Lovejoy had acquired any
title to said premises, and hence he had
no right to Lease the same; besides the Lease
to William S. Ballou, was executed by
Charles Baldwin, as the Attorney in fact
of Owen Lovejoy, and it nowhere appear-
=ed that said Charles Baldwin, had a
power of Attorney to make such an instrum-
=ent, By an examination of the Record
that Chattle Mortgage was given to Matson
by Jones to indemnify him against loss
in consequence of Matsons becoming his
Security on his bond as Constable,

The proof fails to show that Matson
ever suffered any loss in consequence
of his becoming such Security, indeed
Matson admits that Jones did not owe
him. It is a well settled Rule of Law that
the Vendor cannot convey a greater title
than he possesses 2 Kent (380-1) Note "C"
Hence if the Mortgage was only given as an
indemnity in consequence of his being
Security for Jones, and there being no
proof that Matson, ever suffered any

loss, then said Mortgage never was forfeited and Matson acquired no right in the Mortga=ged premises, and never having any rights in the Mortgaged premises he could convey none to Ballou.

The whole arrangement on the part of Matson & Ballou was a fraud and that is the reason the jury found a Verdict for the Defendants.

The proof shows that Alonzo Ballou received the rents for said building to the amount of about Four Hundred Dollars and yet he never thought of giving William Jones credit with a cent on his Note. It also shows that he sold the premi=ses to the Plaintiff for about Three Hundred and fifty Dollars or rather turned it out to him on a debt, and yet he never took a receipt for said amount, nor inqui=red whether the Plaintiff had ever given him credit with a cent of said amount.

Men do not ordinarily transact busines in that way, unless there is fraud at the bottom of it. Alonzo Ballou being satisfied that he could not maintain an action for the premises, made a pretended Sale to the Plaintiff, but he could give the Plaintiff no better title than he possessed

The Testimony in this Case already shows that the buildings in question was erected by William ~~S. Ballou~~ Jones the Mortgagor on Land Leased from Eunice Lovejoy - Guardian of the minor heirs of Butler Durham - it was therefore a Leasehold Estate - It further appears that William Jones was living in said House at the time said Mortgage was given & executed that he subsequently left said building after having Rented it to O. Hare & Hyde

It further clearly appears that William Jones died, and immediately thereafter his widow Lucretia Jones one of the Defendants in this Case entered into possession of said premises and continued in such possession actually occupying said building until she was thrown out of such possession by the writ of Replevin herein. It further already appears that said Chattle Mortgage was executed after the passage of the amendatory Homestead Law of 1857, and that she now executed said Mortgage. Lucretia Jones the widow of the Mortgagor is clearly entitled to the benefit of the provisions of said act - This Court has decided that the "owner of an Estate in a Lot and dwelling house occupied by him need not own an Estate in fee to secure the benefit of the Homestead Laws a less Estate

will protect him Deen vs Chapman 25 Ill 610.

It is true the case alluded to, was in relation to a life Estate, but the reasoning of the Court applyes to Estates for a term of years, with as much force as to a life Estate.

It may be suggested that the Lease Held Estate had terminated, but the Court will bear in mind, that the Lease from Eunice Loorjoy, Guardian &c provided that William Jones should have the privilege of renewing Such Lease, and as he continued in possession, the Law presumes he did it with the consent of the owner; but the objection if a good one would only apply to a case between the Lessor & Lessee which is not the case at bar

Neither said Guardian nor the heirs of Butler Denham have instituted any proceedings for the recovery of said premises either against the said William Jones in his life time, nor against his Widow or heirs, since his death

So far as the claims of the Plaintiff in Error are concerned the Homestead Laws clearly apply - the aid of which Lucretia Jones the Defendant in Error invokes and asks this Court to extend to her - It constitutes her all she has no other property on which to rely. There never was a case which called more loudly or appealed more earnestly to the protecting shield of the

of this Court to be extended to the defendant than this case It is a cool attempt through the forms of Law to divest this poor widow of all her property she has in the world and place it ~~in the pocket~~ of this Plaintiff

If this Court should feel called upon to reverse the judgement in this case it is earnestly called upon by the defendant in Error Lucelia Jones to remand to this County for another trial, as she is very certain with the proof she can now ~~produce~~ procure, she can maintain her right to said property beyond the peradventure of even a reasonable doubt.

Eckels & Keyle
Attys for Dft in Error

22

William S. Ballou
Plaintiff in Error

vs

Lucretia Jones &
Joseph Rettenmyer.

Brief & Argument
of the appellees

Filed May 10th 1865
L. Leland Clerk

M. Ballou }
Vs. Error to Bureau
Loretia Jones & }
Joseph Rettenmeyer }

And now comes the Plaintiff and says, that there is manifest error in the record and proceedings of the Court in this, to wit.

1st Rejecting proper evidence offered by Plaintiff.
2nd Giving the instructions asked by Defendants.
3rd Overruling Plaintiff's motion for new trial.
4th Rendering judgment against Plaintiff for Costs and ordering return of property replevied.

M. Ballou
Atty for Plaintiff.

Let a Supersedeas issue on filing Cause Bond two hundred dollars Benjamin S. Ferris Surety
April 18. 1863. J. D. Caton

South thirty feet to the place of beginning.

State of Illinois }
Bureau County } ss In the Circuit Court
of said County in the State aforesaid,
to wit, on the 25th day of April, A.D. 1861,
came William S. Ballou, by Alvin Ballou
his agent, and filed his affidavit for
Replevin, in the words and figures following:
State of Illinois }
Bureau County } ss Alvin Ballou as
the Agent of and in the behalf of William
S. Ballou, being first duly sworn, says,
that said William S. Ballou is about to
institute a suit in Replevin in the Circuit
Court of the County of Bureau aforesaid
for the following personal property of which
he the said William S. Ballou is the owner
and entitled to the possession thereof viz:
the buildings lately occupied by Thomas
O'Hare as a bakery shop and dwelling
and now occupied by Lucretia Jones and
Joseph Rettenmayer on the part of Lot
No. Forty in the original Town of Princeton in
the County of Bureau and State of Illinois
Commencing at the South East corner of
said Lot, running thence West on the South
line of said Lot one hundred feet, thence
North thirty feet, thence East one hundred
feet to the East line of said Lot, thence
South thirty feet to the place of beginning.

This affiant further says, that said buildings are strictly personal property and do not compose any part of the realty, that they are temporary erections now owned by the said William I. Ballow on the aforesaid part of Lot No. Forty and who was at the time merely a tenant of the above decribed part of Lot No. Forty and whose lease of said part of Lot No. Forty is not yet expired, that said buildings are not permanently attached to the real estate or annexed to the freehold, so as to become a part of the same, but are so situate that the owner of said buildings has the right to remove said buildings from and off said lot and that the owner of the freehold has no right to them, nor does the owner of the freehold set up any right to them, that they are frame buildings susceptible of being easily removed from said lot, that neither the said William I. Ballow nor said Lucretia Jones or said Joseph Rettenmayer are the owners of said lot, or any part thereof, and set up title to the same, with the exception of the above lease to the said William I. Ballow which lease will expire on the first day of January A.D. 1864, that said William I. Ballow is possessed of all the rights

of said Jones and Rettenmayer in and to the said buildings, and that the said William S. Ballou has duly notified said Loretta Jones and said Joseph Rettenmayer to deliver up the possession of said buildings to the said William S. Ballou, but they the said Jones and Rettenmayer refused, and still refuse so to do, and do now unlawfully detain the possession of said buildings from the said William S. Ballou.

This Affiant further says that the said buildings have not been taken for any tax assessment or fine levied by virtue of any law of this State, nor seized under any execution or attachment against the goods and chattels of said Plaintiff liable to execution or attachment and that the said buildings are of the value of Five Hundred dollars

Alvin Ballou

Subscribed and sworn to before me this 25th day of April A.D. 1861.

Geo. M. Radcliffe Clk.

(And on the same day comes Wm. S. Ballou and files his "plaint" in the words and figures following)

4

State of Illinois } In the Circuit
Bureau County } ss Court of said County

William S. Ballou

vs

Lucretia Jones and
Joseph Rettenmayer

Replevin

The said Plaintiff complains of the said defendants. For that the said Plaintiff being the owner of the property hereinafter mentioned, and entitled to the possession thereof, the said Defendants on the Seventeenth day of January A.D. 1861 at the County of Bureau and State of Illinois unlawfully and unlawfully detained in their possession and from the said Plaintiff the following personal property, to wit: The buildings lately occupied by Thomas O'Hare as a bakery shop and dwelling and now occupied by said Lucretia Jones and Joseph Rettenmayer on the part of Lot Six Forty in the original Town of Princeton in the County of Bureau and State of Illinois Commencing at the South East corner of said lot, running thence West on the South line of said lot one hundred feet, thence North thirty feet, thence East one hundred feet to the East line of said lot, thence South thirty feet to the place of beginning

5

And the said Plaintiff States that the said buildings are of the value of five hundred dollars, and are no part of the realty, but are strictly personal property, that they are temporary erections made by a former tenant of that part of said lot whose rights and interests in said buildings said Plaintiff long since fully acquired and became the owner thereof - and that said buildings do not belong to the owner of the land, that they are not so attached or annexed to said real estate as to form a part of it or its appurtenances, but are so situate that the tenant has the right to remove them from the said lot, and that they are susceptible of being easily so removed, that they are frame buildings not placed on any permanent foundation, but resting on the earth and wooden blocks, that neither the Plaintiff nor the said defendants or either of them has any interest in the real estate, except that the Plaintiff has a lease of the aforesaid part of said lot which will expire on the first day of January A.D. 1864. that the owner of the real estate has no claim on said buildings, nor does he set up any, but they belong to said Plaintiff as his tenant, that the possession of said buildings has been duly demanded by

said Plaintiff of the said defendants after they were as the property of said Plaintiff, but that said defendants refused & still refuse to surrender them, and still unlawfully detain them from said Plaintiff to his damage five hundred dollars

William I. Ballou

Whereupon a Writ of Replevin was issued out of said Court as follows, to wit:—

State of Illinois }
Bureau County } ss. The People of the State of Illinois To the Sheriff of said County, Greeting:

If William I. Ballou shall give you Bond and sufficient security to prosecute his suit to effect without delay, and to make return of the following goods and chattels, the property of him the said William I. Ballou, to wit: The buildings lately occupied by Thomas O'Hare as a bakery and now occupied by Lucretia Jones and Joseph Rettenmayer on part of Lot Forty in the Original Town of Princeton in said County Commencing at South East Corner of said Lot running thence West on the South line of said Lot one hundred feet thence South thirty

feet, thence East one hundred feet to the East line of said Lot thence South thirty feet to place of beginning of the value of Five Hundred Dollars which one Lucretia Jones and one Joseph Rettenmayer wrongfully and unlawfully detains against gruages and pledges as he saith, if return thereof shall be awarded, and further to save and keep you harmless in replevying said goods and chattels aforesaid, then you are to cause the said goods and chattels to be delivered to the said William S. Ballow without delay, and to summon the said Lucretia Jones and Joseph Rettenmayer to be and appear before our Circuit Court within and for said County, on the first day of the next term thereof, to be holden at the Court House in Princeton in said County on the second Monday in the Month of August next, then and there to answer the plaint of the said William S. Ballow for unlawfully and wrongfully detaining the goods and chattels aforesaid to the damage of the said William S. Ballow as he says in the sum of Five Hundred Dollars, and make due return of the bond to be taken from the said plaintiff as aforesaid to the Clerk of our said Court together with this writ with an endorsement thereon of the manner in which you may have

executed the same.

Witness George M. Radcliffe Clerk of our said Circuit Court, and the Seal thereof, at Princeton, in said County, this 25th day of April in the year of our Lord one thousand eight hundred and sixty one

L.S.

Geo. M. Radcliffe Clerk
per Chas J. Peckham Dep.

Which said Writ was duly returned with the following endorsement —

I have Executed this Writ this 1st day of May A.D. 1861 by putting the within named William S. Ballow in possession of the within described property and by reading to the within named Lucretia Jones and Joseph Rettenmayer

D. McDonald Sheriff
By M. Cassel Deputy

The Bond required in said Writ and entered into by said Plaintiff is as follows. Writ: —

Know all men by these presents that we William J. Ballou as principal and Melton J. ~~Ballou~~ Peters as security are held and firmly bound unto Daniel McDonald Sheriff of the County of Bureau in the State of Illinois, in the penal sum of one thousand dollars for the payment of which well and truly to be made we bind ourselves, our heirs executors and administrators jointly severally and firmly by these presents. Sealed with our seals, and dated this 25th day of April A.D. 1861.

The condition of the above obligation is such that whereas the above bounden William J. Ballou is about to Replevy from Lucretia Jones and Joseph Rettenmayer by Writ of Replevin issued by the clerk of the Circuit Court of said Bureau County the following personal goods and chattels of the said William J. Ballou, to wit:- The buildings lately occupied by Thomas O'Hare as a bakery shop and dwelling, and now occupied by said Lucretia Jones and Joseph Rettenmayer on the part of Lot No. Forty in the original Town of Princeton in the County of Bureau and State of Illinois, commencing at the South East corner of said Lot, running thence West on the South line of said Lot one hundred feet, thence North thirty feet

thence East one hundred feet to the East line of said Lot, thence South thirty feet to the place of beginning. Now if the said William S. Ballou shall prosecute his said suit to effect, and without delay, and shall make return of the said property, goods and chattels, if return thereof shall be awarded, and shall save and keep harmless the said McDonald Sheriff as aforesaid in Replevying said property, then the above obligation to be void, otherwise to remain in full force and effect

Attest

William S. Ballou (Seal)

Martin Ballou (Seal)

Milton T. Peters

11

Pleas before the Hon. M. E. Hollister Judge of the Sixth Judicial Circuit of the State of Illinois at a term of the Circuit Court begun and held at the Court House in Princeton within and for the County of Bureau on the Second Monday in the Month of August in the year of our Lord one thousand eight hundred and sixty one. Present Hon. M. E. Hollister Judge

Geo. M. Radcliffe Clerk

Daniel McDonald Sheriff

and D. P. Jones States Attorney

— On the Eighth day of said Term, to wit: —

Tuesday Morning 8 o'clock August A.D. 1861 — Court met pursuant to adjournment — Present same as yesterday — And as before —

William S. Ballou

vs. Replevin

Lucretia Jones and

Joseph Rittenmayer

And now comes plaintiff by M. Ballou his Attorney and files his Narration herein as follows, to wit:

State of Illinois } ss
County of Bureau }

In the Circuit Court
August Term A.D. 1861

William S. Ballou

vs

Replevin

Lucretia Jones and
Joseph Rettenmayer

And the said William S. Ballou the plaintiff, complains of said Lucretia Jones and Joseph Rettenmayer the defendants, in a plea of Replevin.
For that the said defendants heretofore, towit: On the Seventeenth day of January A.D. one thousand eight hundred and sixty one, and before the commencement of this suit at the County of Bureau and State of Illinois unlawfully and unjustly detained in their possession and from the said plaintiff the following personal property of the said plaintiff and until the same was replevied by the writ of Replevin issued herein, to wit:- The buildings lately occupied by Thomas O'Hare as a bakery shop and dwelling and now at the commencement of this suit occupied by Lucretia Jones and Joseph Rettenmayer on the East of Lot No. Forty in the Original Town of Princeton in the County of Bureau and State of Illinois commencing at the South East corner

13

of said Lot, running thence West on the South Line of said Lot. one hundred feet, thence North thirty feet, thence East one hundred feet to the East line of said Lot, thence South thirty feet to the place of beginning, and the said plaintiff further states that said buildings are of the value of Five hundred dollars, and are no part of the realty, but are strictly personal property, that they are temporary erections Made by a former tenant of said part of said Lot whose rights and interest in said buildings said plaintiff long since acquired and became the owner thereof, and that said buildings do not belong to the owner of the land, that they are not so attached or annexed to said real estate as to form a part of it or its appurtenances, but that said buildings are so situate that the tenant has the right to remove them from the said Lot., and they are susceptible of being easily so removed, that they are frame buildings not placed on any permanent foundation, but resting on the earth and on wooden blocks. that neither the said plaintiff nor the said defendants or either of them has any interest in the real estate except that the plaintiff has a lease of the aforesaid

part of said Lot which lease will expire on the first day of January A.D. 1864. that the owner of the real estate has no claim on said buildings nor does he set up any, but they belong to said plaintiff as his tenant, that the ~~said~~ possession of said buildings has been duly demanded by said plaintiff of the said defendants after they were ~~so~~ the property of said plaintiff and before the commencement of this suit, but that said defendants refused and still refuse to surrender them and still unlawfully detain them from said plaintiff, to his damage Five Hundred dollars and thereupon he sues &c.

M. Ballou

Atty for Plaintiff

15

— On the thirteenth day of said Term, to wit:—
Monday Morning August 26th A.D. 1861
10 o'clock A.M. — Court met pursuant
to adjournment — Present same as
on saturday last — And as before —

William S. Ballou

vs Replevin

Lucretia Jones and
Joseph Rettenmayer

And now come
defendants be Grimes their attorney and
on their motion it is considered and
ordered by the Court that this suit be
continued until next Term at plaintiffs
costs for want of narration filed ten
days before the first day of the present term.

Pleas before the Hon. M. E. Hollister
Judge of the Sixth Judicial Circuit of
the State of Illinois at a term of the Circuit
Court begun and held at the Court House
in Princeton within and for the County of
Bureau, State aforesaid, on the Second
Monday in the Month of December in the
year of our Lord one thousand eight hun-
dred and sixty one

Present George M. Radcliffe Clerk
" Daniel McDonald Sheriff

And now on this first day of said term
are present as aforesaid but the Hon. M. E.
Hollister Judge of said Court is not present,
and thereupon according to the Statute in
such case made and provided Court stand
adjourned until tomorrow morning

—On the third day of said Term, to wit: —
Wednesday Morning 9 o'clock December
11th A.D. 1861 — Court met pursuant
to adjournment Present same as
yesterday — And as at first,
with also M. E. Hollister Judge
" D. P. Jones States Attorney —

William S. Ballou
Replevin
Lucretia Jones et al
Joseph Rettenmayer

17 And now come defendants by Eckels their Attorney and file their pleas herein as follows, to wit:

State of Illinois } In Circuit Court
Bureau County } ss December Term A.D. 1861.

William S. Ballou
vs
Lucretia Jones and
Joseph Rettenmayer } Replevin

1 And the defendants come and defend the wrong and injury when &c. and say that they did not unlawfully detain the property mentioned in the plaintiffs declaration, as the same is therein alleged, and of this they put themselves upon the country &c

2 And for a further plea in this behalf defendants say actio non &c. because they say that the property mentioned in said plaintiffs declaration was the property of Lucretia Jones and not the property of the plaintiff, as is alleged in plaintiffs declaration and of this they put themselves on the country &c.

3 And for a further plea in this behalf, defendants say actio non &c. because they say the property mentioned in plaintiffs declaration is the property of the heirs of

William Jones deceased to wit, Lucretia Jones, Cecilia Jones, Laura E. Jones, George M. Jones & William J. R. Jones, heirs of the said William Jones deceased, of said County & State, and not the property of the plaintiff as is alleged in plaintiffs declaration, and of this they put themselves on the Country &c.

And for a further plea in this behalf defendants say actio non &c. because they say, that the property mentioned in plaintiffs declaration is the property of Owen Lovejoy and not the property of the plaintiff, and of this they put themselves on the Country &c.

5 And for a further plea in this behalf defendants say actio non &c. because they say that property mentioned in plaintiffs declaration is the property of the heirs at law of Butler Denham late of said County deceased, and not the property of the plaintiff and of this they put themselves on the Country &c.

6 And for a further plea in this behalf defendants say actio non &c. because they say that the property mentioned in plaintiffs declaration is not personal property, that the said buildings are firmly attached

to the real estate - that they are placed on permanent foundations, and of this they put themselves on the country &c.

Eckels & Kyle
Taylor & Kendall
Defts attys.

— On the fourth day of said Term, to wit; —
Thursday Morning 8 o'clock December 12th A.D. 1861 - Court met pursuant to adjournment - Present same as yesterday — And as before —

William L. Ballou
vs
Lucretia Jones and
Joseph Rettenmayer
} Replevin

And now come the parties hereto by their attorneys aforesaid and both parties being ready for a trial it is ordered by the Court that a Jury be empannelled herein. And thereupon comes a Jury of twelve good and lawful men, to wit; David G. Bonham, Elijah Sapp, E. D. Bills, David K. Morris, Preston L. Barr, Levi Mercer, John Staley, Michael Kettenman, Colston Cook, William Whitney, William T. Scott and A. H. Boyden of whom David G. Bonham and Elijah Sapp are by order of the Court summoned by the Sheriff

from the bystanders the regular pannel being exhausted. And said two last jurors are each duly sworn, and said Jury is duly empanelled as a Jury of the Country to try the issues Joined herein. And on motion of plaintiff it is ordered by the Court that he have leave to substitute Melton T. Peters as surety in the Replevin Bond herein in place of Martin Ballow

— On the fifth day of said Term, to wit: —
Friday Morning December 13th A.D. 1861
8½ o'clock — Court met pursuant to adjournment — Present same as yesterday — And as before —

William T. Ballow

vs. Replevin

Lucretia Jones and
Joseph Kettenmayer

And now defendants by their attorney aforesaid move the Court to dismiss this suit on account of the alteration of surety in the replevin Bond herein, which motion the Court being fully advised in the premises orders to be overruled

And afterwards, to wit: on this same day this cause is given to the Jury aforesaid

21

upon the testimony produced, the argument of Counsel, and the instructions of the Court

And said Jury having retired to consider of their verdict, return the same into Court, and for their verdict herein say,

"We of the Jury do find the defendants not guilty as alleged in plaintiffs declaration"

Whereupon the plaintiff by Peters his attorney moves the Court for a new trial of this Cause.

— On the Eighteenth day of said Term, to wit:—

Saturday morning 8½ o'clock

December 28th A.D. 1861, Court met pursuant to adjournment, Present same as yesterday — And as before —

William S. Ballou

vs. Replevin

Lucretia Jones and

Joseph Rettenmayer

And now come the parties hereto by their attorneys aforesaid and by the consent of both parties it is ordered by the Court that a new trial of this Cause be had

-Plaintiffs Motion for new trial is in the words and figures following, to wit:-)

William I. Ballou

vs.

Lucretia Jones and Joseph Rettenmayer } Replevin

Pltff moves the Court for a new trial in above cause for the following reasons.

1st That the verdict is contrary to the evidence.-

2nd That erroneous and improper instructions on the part of Defts. were given by the Court to the Jury.-

3d That the verdict should have been for the Pltff. M. Ballou for Pltff.

23

Pleas before the Hon. M. E. Hollister
Judge of the Sixth Judicial Circuit of the
State of Illinois at a term of the Circuit
Court begun and held at the Court House
in Princeton within and for the County of
Bureau and State aforesaid, on the second
Monday of March in the year of our Lord
one thousand eight hundred and sixty two.

Present Hon. M. E. Hollister Judge
George M. Radcliffe Clerk
Daniel McDonald Sheriff
and D. P. Jones States attorney

— On the third day of said term, to wit: —
Wednesday morning 8 o'clock March
12th A.D. 1862, Court met pursuant
to adjournment, Present same as
yesterday — And as before —

William I. Ballon
vs
Lucretia Jones et al
Joseph Rettenmayer

Replevin

And now comes
plaintiff by Ballon and Hall his attorneys
and defendants also come by Eckels & Kyle
their attorneys and both parties being ready
for trial it is ordered by the Court that a
jury be empanelled herein.

And thereupon comes a jury of twelve
good and lawful men, to wit:

James A. Shuyel. James K. Hoskin, Charles Mason, Elijah Smith, James Powell, Benj. F. Dow, T. A. Sykes, Hiram Kaufman, Daniel Minier, Shubael Whipples, Evelyn P. Edwards and John H. Campbell, who are duly empanelled as a Jury of the County to try the issues Joined herein

—And on the Fourth day of said term, to wit: — Thursday Morning 8½ o'clock March 13th A.D. 1862. Court met pursuant to adjournment. Present same as yesterday. — And as before —

William S. Ballou

vs

Lucretia Jones et al
Joseph Rettenmayer

Replevin

And now this Cause is given to the Jury aforesaid upon the testimony produced together with the arguments of Counsel and the instructions of the Court.

And said Jury having retired to consider of their verdict return the same into Court and for their verdict herein say. "We of the Jury do find the defendants not guilty as alleged in plaintiffs declaration, and do also find the

25

property in controversy in this suit in the defendant. Whereupon the plaintiff by his counsel aforesaid moves the Court for a new trial herein.

On the Ninth day of said term, towit: —
Wednesday Morning 8½ o'clock March 19th A.D. 1862. Court met pursuant to adjournment. Present same as yesterday — And as before —

William S. Ballou
vs. Replevin
Lucretia Jones and
Joseph Rettenmayer

And now the Court being fully advised in the premises orders that plaintiffs motion for a new trial herein be overruled; and it is further ordered and determined by the Court that defendants have and recover of plaintiff their costs expended herein and that they have execution therefor, and that writ of Retorno Habendo issue herein for the return of the property replevied.
And on plaintiffs motion it is ordered by the Court that he be allowed an appeal to the Supreme Court in this cause on filing bond therefor with Justin H. Otis as surety in the penal sum of Twelve Hundred Dollars within thirty days from this date —

— Also on the 11th day of said Term, to wit: —
Friday Morning 9 o'clock March 21st
A.D. 1862, Court met pursuant to
adjournment, Present same as yesterday
— And as before —

William S. Ballew

vs. Replevin

Lucretia Jones &
Joseph Rettenmayer

And now comes
plaintiff by his attorneys aforesaid, and,
on his motion, It is ordered by the Court
that he have leave to file his Bill of
Exceptions herein, within ten days as of
this day —

27 — The Bill of exceptions ordered to be filed herein, and duly filed, is in the words and figures following, to wit: —

State of Illinois } ss
Bureau County }

In the Circuit Court
March Term A.D. 1862

William S. Ballon

vs.

Lucretia Jones and
Joseph Rettenmayer

} Replevin

Be it remembered that on the trial of this cause before the Court and a Jury, in order to prove the issues on the part of the plaintiff, the plaintiff produced M. Ballon, who being sworn, testified that Eunice S. Lovejoy, Owen Lovejoy and William Jones executed the following Lease in the presence of said witness:

This Indenture made this First day of January in the year of our Lord One thousand Eight hundred and Fifty three between Eunice S. Lovejoy as Guardian of Lucy S. Denham, Mary B. Denham and Elizabeth S. Denham minors under the age of twenty one years, and Owen Lovejoy husband of said Eunice S. of the County of Bureau and State of Illinois, of the one part, and William Jones of the County and State aforesaid of the other part, Witnesseth: That the said Eunice S.

Lovejoy as Guardian aforesaid, and the said Owen Lovejoy do hereby demise and lease unto the said William Jones the following described lot piece or parcel of ground, bounded as follows. Commencing at the South East Corner of lot No. Forty in the Original Town of Princeton in said County of Bureau on the West side of Main Street in said Town, thence running West on the South line of said Lot, One Hundred feet, thence North Thirty feet, thence East One Hundred feet to the East line of said lot, thence South Thirty feet to the place of beginning.

To hold for the term of three years from the date hereof; yielding and paying therefor during said Term the yearly rent of Eight Dollars to be paid as follows, to wit, Eight Dollars on the first day of July 1853. Eight Dollars on the first day of January A.D. 1854 and Eight Dollars on the first day of January A.D. 1855 and the said William Jones hereby covenants to pay the rent aforesaid in manner aforesaid and to deliver up the said premises to the said Eunice S. Lovejoy Guardian and said Owen Lovejoy peacably and quietly at the end of said term in as good condition as the same now are. And that the said William Jones his executors and administrators,

shall and will at all times during said term pay and discharge all such taxes, levies and assessments as shall be taxed levied or assessed upon said premises during said Term. And the said William Jones hereby covenants that he shall not, nor will during said term keep on said premises or use or sell nor suffer or permit any other person or persons to keep use or sell thereon any spirituous or intoxicating liquors, nor use exercise or carry on any offensive trade or business on said premises.

And it is further agreed by and between the aforesaid parties, that the said William Jones may erect and put upon said premises during said term any building or buildings which he may think proper, and take and remove the same away at the expiration of this lease.

And that the said William Jones shall have the privilege or preference at the expiration of this Lease to then lease the same for two years longer if the said parties shall then agree upon the terms of such further lease.

Provided, always that these presents are upon this express condition that if the said William Jones his executors administrators and assigns shall well and truly observe, perform, fulfil and keep all and every the Covenants, Clauses, Conditions and agreements in these

presents expressed, on his and their part to be performed and kept, then and from thenceforth, in either of the said cases, it shall and may be lawful to and for the said Eunice I. and Owen Lovejoy into the said demised premises to reenter, and the same to have again, retain, repossess and enjoy as in her and his first and former estate, and the said William Jones his executors administrators or assigns, and all other tenants and occupiers of said premises, thereout and therefrom, thence, utterly to expel put out and remove, and that, from and after such reentry made, this present lease, and every clause and thing therein contained on said Lessors' part and behalf, from thenceforth to be done and performed, shall cease, determine and be utterly void, to all intents and purposes. Given under our hands and Seals the day and year first herein written

Eunice I. Lovejoy (Seal)

Owen Lovejoy (Seal)

William Jones (Seal)

Which Lease was thereupon read in evidence to the Jury. Said M. Ballon further testified that at the time of the execution of said Lease, the premises described in said Lease was a vacant Lot, and that shortly after said Lease was so executed said Wm Jones erected a temporary wooden building upon said leased ground for the purpose of dwelling and Grocery shop, and afterwards attached a bakery & built an oven, that said main buildings are some 16 or 18 feet wide by some 18 or 20 feet long one & half story high the additions are but one story, that the buildings are set on wooden blocks or posts set either upon or in the ground. That the building was erected in 1853 - that afterwards said Wm Jones erected a bake oven at the west end of the buildings, the foundations of North, West & South side of the oven being set upon blocks or posts which extended some two or three feet above the ground with timbers lying on top of the posts on which timbers the Brick Oven on those sides is built, that a part of the East end or mouth of the oven is built up with brick from the ground, the mouth or that end of the oven being even with or forming a part of the sidewall of the bake room in the building, and that a few boards were laid over the brick oven, to shelter the top of the oven, that Wm Jones occupied said buildings under said Lease from the time of he erected the same until some time between the Fall of A.D. 1857 and

82 the Spring of 1858 when said Jones removed to Bloomington in this State, where he resided awhile, from thence he removed to Mendota and resided there awhile, thence he removed to Princeton, near the Depo where he resided for some time before he died. Said witness also testified that he knows the signature or hand writing of said Wm Jones. Plaintiff produced the following note and Chattel Mortgage of Wm Jones to Alvin Ballou

Note $348.80 One year after date for value rec'd I promise to pay Alvin Ballou or order Three Hundred and forty eight 80/100 dollars with ten per cent interest
Princeton Sept. 12th 1857 William Jones

Chat. Mort. Know all men by these presents; That I, William Jones of the County of Bureau in the State of Illinois, of the first part, for and in Consideration of Three hundred and forty eight 80/100 dollars to me in hand paid by Alvin Ballou of the County and State aforesaid of the second part, the receipt whereof is hereby acknowledged, do hereby grant, bargain and sell unto the said party of the second part, his heirs and assigns the following goods and chattels, to wit:-

the dwelling house and bakery where I now reside situate on Lot no. forty in the Original Town of Princeton, in said County of Bureau, together with two shaw cases now used in said house. To have and to hold, all and singular, the said goods and chattels unto the said party of the second part, his heirs and assigns forever: And the said party of the first part, for himself, his heirs, executors and administrators doth hereby covenant to and with the said party of the second part and his assigns that he is lawfully possessed of the said goods and chattels, as his own property; that the same are free from all encumbrance, and that he will Warrant and Defend the same to the said party of the second part and his assigns, against the lawful claims and demands of all persons;

Provided, nevertheless, That if the said party of the first part, his heirs, executors and administrators, shall well and truly pay to the said party of the second part, his heirs, executors, administrators or assigns, for the Redemption of the above bargained goods and chattels, the just and full sum of Three Hundred and forty eight 80/100 dollars on or before the 12th day of September next with interest, according to the tenor and effect

of a certain Promissory Note given by the said party of the first part to the said party of the second part. Then this Mortgage to be void, otherwise to remain in full force and virtue:

And, Provided, further, That until default be made by the said party of the first part in the performance of the condition aforesaid, it shall and may be lawful for him to retain the possession of the said goods and chattels, and to use and enjoy the same, but if the same or any part thereof shall be taken on execution, attached or claimed by any other person or persons, at any time before payment, or if the said party of the first part shall attempt to sell the same without the authority and permission of the said party of the second part in writing expressed, then it shall and may be lawful for the said party of the second part or his assigns to take immediate and full possession of the whole of said goods and chattels to his own use.

In witness whereof the said party of the first part has hereunto set his hand and seal this 12th day of September 1857.

William Jones [L.S.]

State of Illinois } ss
Bureau County }

This Mortgage was acknowledged before me by William Jones this 12th day of Sept. 1857.

Isaac Wilson J.P. [Seal]
Justice of the Peace Bureau County

35

Said witness M. Ballou testified that the signatures of William Jones to said Note & Mortgage are the signatures of Wm Jones & in his hand writing.

Plaintiff then proved by said witness the signatures of said Wm Jones to the following promissory note and chattel Mortgage of Wm Jones to Enos C. Matson

Notes $400. Princeton Sept. 2d 1857.

Three Months after date I promise to pay to the order of Enos C. Matson Four Hundred Dollars Value Received with ten per cent from date due William Jones

D 4925

Chat. Mort. This Indenture, Made and entered into this Second day of September in the year of our Lord, One thousand Eight hundred and fifty Seven, Between William Jones of the Town of Princeton of the County of Bureau and State of Illinois party of the first part, and Enos C. Matson also of said Town party of the second part, Witnesseth, That the said party of the first part, for and in consideration of the sum of four hundred dollars in hand paid, the receipt whereof is hereby acknowledged, do hereby grant, sell and convey and confirm unto the said party of the second part his heirs and assigns, forever all and singular, the following described goods an chattels, to wit:

The dwelling house, grocery and bakery now owned and occupied by said William Jones situate on Lot Number forty (40) in the Original Town of Princeton in said County and State, and also the lease of the premises on which the same stands and also all the utensils used in the bakery and the Cupboards, cases, counters, shelves and desk in the grocery. Together with all and singular the appurtenances thereunto belonging or in any wise appertaining; To have and to hold, the above described goods and chattels, unto the said party of the second part his heirs and assigns forever. Provided Always, And these presents are upon this express condition, that if the said William Jones, his heirs, executors, administrators or assigns, shall on or before the second day of December A.D. one thousand eight hundred and fifty seven, pay or cause to be paid, to the said Enos C. Matson or his lawful attorney or attorneys, heirs, executors, administrators or assigns, the sum of four hundred Dollars, together with the interest that may accrue thereon at the rate of ten per centum per annum, from the second day of September A.D. One thousand eight hundred and fifty seven, until paid according to the tenor of one promissory note of said William Jones, calling for four hundred dollars with interest at

ten per cent payable to said Enos C. Matson three months after date, that then and from thenceforth, these presents and everything herein contained, shall cease and be null and void, anything herein contained to the contrary notwithstanding.

Provided also, that the said William Jones to retain profession of and have the use of said goods and chattels; until the day of payment aforesaid and also at his own expense, to keep said goods and chattels: and also, at the expiration of said time of payment, if said sum of money, together with interest as aforesaid, shall not be paid, to deliver up said goods and chattels, in good condition to said Enos C. Matson or his heirs, executors, administrators, or assigns.

And Provided, also, That if default in payment as aforesaid shall be made, or if the said party of the second part shall at any time feel unsafe or insecure, that then the said Enos C. Matson or his attorney, agent, or assigns, or heirs, executors, or administrators, shall have the right to take profession of said Goods and Chattels wherever the same may or can be found, and sell the same at Public or Private sale, to the highest bidder, for cash in hand, after giving thirty days notice of the time, place, and terms of said sale, together with a description of the Goods and Chattels to be sold, by at

least four advertisements posted up in public places in the vicinity where said sale is to take place: to make the sum of money and interest promised as aforesaid, together with his reasonable costs, charges and expenses in so doing; and if there shall be any overplus, shall pay the same to the said William Jones, or his legal representatives.

In witness whereof, the said party of the first part has hereunto set his hand and seal, the day and year first above written.

Signed sealed and delivered in presence of

William Jones Seal

Seal

State of Illinois
Bureau County } ss. I Levi North Police Magistrate of the Town of Princeton in said County, do hereby certify that this Mortgage was duly acknowledged before me by the above named William Jones this 2 day of September A.D. 1857. Levi North P.M.

State of Illinois
Bureau County } ss.
Filed for Record Sept. 2d 1857 at 11 o'clock A.M. and duly recorded in book No. 1. of Chattel Mortgages page 344.
E. M. Fisher Ex Officio Recorder
By W. A. Fisher Deputy

State of Illinois
Bureau County } ss.
Filed for record June 7th 1858 at 12. M. and duly recorded in Book H. of Mortgages page 851.
Ed. M. Fisher Recorder.

Cross examined. Said witness M. Ballou testified that he could not state how long the blocks are on which the buildings stand, nor how far the blocks or posts enter the Ground. thinks the posts on which the buildings stand are from 8 to 12 inches in diameter, and extend from 8 to 12 inches above ground. could not state about any cistern. that there is not properly a cellar but only a hole or shallow space for cellar dug out, but not walled - Can not state whether the first building put up in 1853 was afterwards moved back from front and present front building put up front or not = Do not know whether the present front building was erected in 1854 or not. Can not state whether the building erected in 1853 was fastened to blocks or not. The buildings all stand on blocks or posts - I have seen the buildings latterly frequently.

Plaintiff then called Alvin Ballou who being sworn defendants objected to said witness testifying on the ground of his interest. Plaintiff here showed and proved the release by Plaintiff to said witness testing his competency. thereupon said witness was by the Court admitted as a witness, who testified that said Wm Jones executed the promissory note and Chattel Mortgage

of Wm Jones to Alvin Ballow. And Plaintiff having proved to the Court here that the Justice of the Peace who took the acknowledgement of said Jones to the Chattel Mortgage from said Wm Jones to said Alvin Ballow had at the time of the taking said acknowledgement duly entered in his Justices Docket a minute of said acknowledgement with a description of the said mortgaged property. Thereupon Plaintiff read in evidence to the Jury the said Promissory Note and Chattel Mortgage of said Wm Jones to said Alvin Ballow. Said Alvin Ballow further testified that said Note and Mortgage was given to witness by said Wm Jones to secure to witness the sum of Three Hundred and Forty Eight Dollars and eighty cents indebtedness of said William Jones then due to witness. That no part of the debt in said Note and Mortgage specified has ever been paid by said Wm Jones or by any one for him. That nothing had ever been paid on it. That witness knows the property specified in said Chattel Mortgage & now replevied. That the buildings are of wood set upon blocks or posts. the buildings made of planks or boards set upright and battoned. Thinks the buildings not clapboarded unless it be the front part.

41

Does not remember whether the front portion is clapboarded or not. believes the back additions are not clapboarded. The brick oven is at the back end of buildings and stands on blocks or posts some two or three feet above the ground except a small space under the front or mouth of the oven where the brick is built on the ground. First building erected by Wm Jones in or about A.D. 1853. Jones occupied the buildings from that time until in the Fall of 1857 - when he went to Bloomington as witness understood. That witness did not know that Matson held a chattel Mortgage on the property until either after or just before the time Matson advertised the sale of the property under his Mortgage. Can not state whether the first knowledge I derived of the existence of Matson's Mortgage was by seeing the advertisement of sale, or whether Matson informed me just as he was about to advertise the sale. Plaintiff having proved to the Court here that the Justice of the Peace who took & certified the acknowledgement of Wm Jones to the Chattel Mortgage from Jones to Enos C. Matson had at the time of taking the said acknowledgement duly entered in his Justices Docket a minute of said acknowledgement with a description of the

42

Mortgaged property thereupon plaintiff read in evidence the Note and Mortgage from said Wm Jones to said Enos C. Matson to the Jury. Witness Alvin Ballou further testified that Matson sold the property on the 31st day of July A.D. 1858. I bid the property in question off at said sale for the sum of $336.66. The sale was made at the premises. I executed my notes to Matson for that sum which notes I afterwards paid in full. At the sale Matson gave me possession of the property and gave me the key belonging to the building and Matson notified the occupants there that the property then belonged to me. That at the sale Matson claimed that the sum of $436.66 was due him on the Mortgage, but said that he held notes for the rent of the building to the amount of $100. which he said were collectable which would reduce the amount due him to $336.66 and that the property must bring the latter amount, or he Matson would bid the property in, or would have it bid in for him Matson. At the time of the sale O'Hare & Hyde were occupying the buildings as I understood under a lease from Wm Jones which lease had some time then to run - some month or two. When O'Hare & Hyde's lease from Jones expired I

leased the property to O'Hare for one year. This was in the fall of 1858. O'Hare, I understood assigned the lease I gave him to Pliny F. Morton and O'Hare & Morton occupied the property that year, and Morton paid me the rent for that year. On the expiration of my first lease to O'Hare I again leased the property to O'Hare for another year. O'Hare occupied the property that year, and paid me the rent up till I sold the property. and paid the rent afterwards to Plaintiff or to me for Plaintiff.

O'Hare then left the premises and went away. This was about September or October 1860.

After O'Hare went away the property remained vacant and unoccupied until some time in November 1860 when as I was passing by the premises I discovered from appearances that some one was occupying the premises, and on further investigation I found that Mrs. Jones one of the defendants, widow of Wm Jones was in possession, and apparently had just moved in from appearances of furniture and things. After the Morton sale Wm Jones was back there in 1859 but he never set up any claim to the property to my knowledge. He never said anything to me about any claim to the property. On the 2d September 1858 I leased the ground from Owen Lovejoy

for two years from January 1st 1859, on which the property stands.

Witness testified that in the spring of A.D. 1860 I sold the property in question to Wm S. Ballou the plaintiff for the amount I bid on the purchase at Mason's sale and the amount of the note and Mortgage I held against Wm Jones, and thereafter the Plaintiff had the care of the property & received the rents until defendants got possession.

Witness being shown the following notice from Plaintiff to defendants said, I know the hand writing of Plaintiff and that the signature of Plaintiff to said Notice is the hand writing of Plaintiff and I served said written Notice on each of defendants on the 17th day of January 1861 - by delivering to each of defendants the originals of which this is a true copy

To Lucretia Jones & Joseph Rettenmayer's

You are hereby notified to immediately remove from the following described buildings and deliver possession thereof to either me or my agent Alvin Ballou, Viz: The buildings lately occupied by Thomas O'Hare as a baker shop and Dwelling, and now occupied by you on the part of Lot No. Forty in the Original Town of Princeton in the County of Bureau and

State of Illinois commencing at the South East corner of said lot, running thence West on the South line of said Lot One Hundred feet, thence North thirty feet, thence East One Hundred feet to the East line of said lot, thence South thirty feet to the place of beginning - and that I demand possession of said buildings, and that if possession thereof is not surrendered to me I shall institute the necessary proceedings to obtain possession of said buildings

January 16th 1861 - William J. Ballou.

- Endorsed "Notice to Lucretia Jones and Joseph Rettenmayer . Served Jany. 17th 1861 -

Plaintiff then read said Notice in evidence to the Jury. Witness further testified that the defendants Mrs. Jones & Rettenmayer were occupying the buildings when I served the Notice, and they continued to occupy the same until the service of the Writ of Replevin in this Cause

Cross examined - I think probably the front building may have been clapboarded, will not be certain however. There is not properly a cellar. There is a space dug out for a kind of cellar. I dont know how far the blocks on which buildings stand are set in

the ground. I think oven stands on blocks or posts except under the mouth of the oven where there is a brick wall for the space of some three feet resting on the ground. I did not go to the sale in company with Matson. I think Matson was there when I came to the sale. Matson claimed $436.66 as due him, but he said he held notes given for the rent of the property to the amount of $100. which he said were collectable and which he could apply towards the amount due him on the Mortgage. And he claimed he must have a bid for $336.66 or he would strike the property off to himself or to some one for him. I never saw the notes Matson said he held. I tried to prevent Matson from selling. I told Matson I had not then got the money to buy. Matson said he would take my note for a time for the purchase if I bought. It was finally understood that I would bid $336.66 & if no higher bid was made the property would be sold to me at that sum. I bid the $336.66 and it was struck off to me. After O'Hare & Hyde's lease from Jones expired. I leased the property to O'Hare for about $300. for first year. I again leased the property the second year to O'Hare for about $150. When I sold the property to

Plaintiff I was indebted to Plaintiff on some $1400. or more. I transferred the property to him towards my indebtedness to Plaintiff. I did not take any receipt from him. Dont know whether he credited me the amount I was indebted to him on account. I dont recollect whether Plaintiff then held any note against me or not. Plaintiff was present at that time. I delivered him the key of the building. I passed the property over to him. He received the rent since that time. I am still indebted to Plaintiff in $700. or $800. After the Matson sale Wm Jones never claimed the property nor ever said any thing to me about the property, nor ever set up any right to it. Wm Jones never paid me anything on the note and Mortgage I held against him. When my Mortgage became due I went to the premises and tried to get possession, but the tenants would not give me possession. I notified them that I claimed the property on my Mortgage, but did not then get possession. After the Matson sale while I held the property I claimed the property both under the sale and under my mortgage

Plaintiff then called Chas Baldwin who being sworn Plaintiff proposed to prove by said Baldwin that Owen Sorjoy in September 1858 leased the ground on which said

buildings stand to Alvin Ballou for the term of two years next from January 1st 1859. and that said Lovejoy afterwards in December 1860 leased said ground to Plaintiff for three years then next ensuing. But Defendants objected thereto, and the Court sustained the objection and excluded the evidence, to which ruling of the Court Plaintiff then and there excepted.

Plaintiff then called Enos C. Matson who testified. I sold the property described in my Mortgage on the 31st day of July 1858 to Alvin Ballon for $436.66. Witness being here shown a copy of Notice of sale testified that the copy of Notice is a true copy of Notice he gave of sale of the property.

Sale.

Public Notice

Is hereby given, that I, Enos C. Matson will, by virtue of a Mortgage executed to me by William Jones, sell at Public Auction, to the highest bidder for cash in hand, the following described property, to wit;

The Dwelling House, Grocery, and Bakery now owned and lately occupied by said William Jones, and at present occupied by O'Kane and Hide, situated on Lot No. 40. in the original Town of Princeton, in Bureau County Illinois, and also the lease of the premises on which the same stands, now also owned by the said Jones; also all the utensils used in the bakery, and the Cupboards Cases Counters, Shelves, and desk, in the Grocery.

Said sale will be made on the premises on the 31st day of July, A. D. 1858. at 2 oclock P. M. of said day

June 19th 1858.

E. C. Matson.

49

Pltff. then read in evidence to the jury the said Notice of sale. Witness further testified I sold the property at the premises in pursuance of Notice. That the sale was for $436.66. but at the time of sale I held two notes of $50. each given by the tenants for rent, and believing that the purchaser would be entitled to the rent of the property from the time of sale the occupants the occupants time not then having expired, I applied these two notes I held in reduction of the amount of the sale, thereby leaving due me $336.66 for the balance of the bid at the sale. Alvin Ballou gave me his notes for the $336.66 which he bid at the sale and for which sum the property was struck off to him. I told Ballou I was going to sell the property about the time I advertised it, or a little before. Jones did not owe me the amount mentioned in my Mortgage. I gave him, Ballou, possession of the property and gave him the key belonging to the building. I afterwards traded off the notes A. Ballou gave me on the sale.

Cross examined. I did not go to the place of sale in company with said Ballou. I think I was there first and he came there afterwards. I had no understanding with Ballou before the sale except that if he bid the amount I claimed and no one else

should bid higher, then it would be struck off to him on his bid. The sale was held just in the building. O'Hare & Hyde, Judge Fraser, Alvin Ballou and myself were present at the sale. I dont recollect whether other persons were present or not. After the sale I notified the tenants that the property then belonged to Alvin Ballou. The sale was held just inside the door in the building. Wm Jones went to Bloomington in September 1857. The two $50. notes I held for rent were drawn payable to Wm Jones and belonged to him. I cried the sale as long as there was any prospect of bidders. I then struck it off to Ballou for $436.66. being the amount of my Mortgage & interest. I kept the two $50 notes as given for rent in so much reduction of amount of the bid & took Ballou's note for the $336.66. Plaintiff then called Mrs Elizabeth Harris who being sworn testified. When O'Hare went away in the fall of 1860 the key of the building in question had been left with me to be given to Mr. Ballou, and after the building was vacant defendant Mrs. Jones called at my house and asked for the key, and not suspecting any harm I let her take the key. She then said nothing but immediately left with the key. Next I heard was that Mrs. Jones was occupying the building. Plff closed

57

Defendants then called H. H. Hyde, who testified that myself and O'Hare leased the property in question of Wm Jones from September 20th 1857, for one year. At the expiration of which time I went out or left the premises. I was present at Maton's sale. The sale took place just inside the building. Defendants then called Pliny F. Maton who testified. I went into the building in September 1858. That O'Hare had rented the property of Alvin Ballou for one year, and O'Hare assigned his lease to me. Myself together with O'Hare occupied the property from September 1858 till September 1859 under lease from Ballou. I paid said Ballou the rent that year. Rent a little less than $208. At the expiration of that lease, O'Hare again leased the property from Alvin Ballou another year and O'Hare occupied the property the second year. The rent the last year was about $150. O'Hare paid Ballou the rent that year.

Defendants called H. Richards who testified. I know the property in question. The main building is about 18 by 20 feet with additions extending back, the whole buildings were forty feet in length. The buildings are on blocks or posts set in the ground. The corners spiked down to posts. I built

the oven. Oven set on posts. Posts under oven set two feet in the ground and extending some three feet above ground. Timbers on which brick work on three sides of the oven was laid are set on these posts and spiked together. The brick work at the end of the oven next the building is even with and forms part of the wall of the building, and for a space of about five feet is laid in brick sunk about two feet in the ground, & on which the mouth of oven rests. Over the mouth of the oven the plate of that side of the bakeroom rests on the brickwork above the mouth of the oven. under the bakeroom is a cistern. I dont remember whether the brick extends down the sides of the cistern or not. But the cistern is arched over the top with brick and the brickwork of mouth of cistern extends up even with the underside of the floor of the bakeroom. and one joice on which the floor rests was cut off where it passes the brickwork of the mouth of cistern and the two ends of joice where so cut off are laid in the brickwork. The building first put up was erected in 1853. Oven built in 1854. The whole buildings is set on posts. Could not move the building without taking off the brick of the

south of cistern. I laid the brickwork. The ~~building~~. The building could not be removed without injury to the brickwork On cross examination, witness testified that the buildings could be easily removed without much damage. Mrs. Jones is the widow of Wm Jones.

Defendants then called Joseph Huntington who testified that the first building was erected in July 1853, which was afterwards moved back in rear, and the main building put up in front. The buildings are placed on blocks or posts from three to five feet in length, which are set in the ground from three to five feet. The four corners of timbers to building are ~~spiked~~ & spiked to the blocks. William Jones died in September 1860. There is a cellar under the main building not extending however close to the outer edges. Cellar not walled:

Defendant here closed their testimony, and this was all the testimony and evidence in the case.

The Court at request of the Plaintiff instructed the Jury as follows.

William S. Ballou
vs
Lucretia Jones & Joseph Kettenmayer } Replevin

The Court instructs the Jury for the Plaintiff

54 1st Given That in a Chattel Mortgage, if the property is not redeemed by the time fixed in the Mortgage by the payment of the money secured by such Mortgage the property so Mortgaged is by law absolutely vested in the Mortgagee.

2d Given That such is the law even in a Chattel Mortgage authorizing a sale of the property mortgaged upon default in payment of the Mortgage Debt.

3d Given That possession of personal property is sufficient ownership to recover such property from all the world except from the actual owner of such property

4th Given Although the house in question was not removed from the leased premises at the expiration of the lease that in law such property would not thereby be forfeited to the owner of the land, but the owner of the land would have to insist upon a forfeiture, and order the removal of the house and there must have been an unreasonable delay to remove the house after notice from the owner of the land to make such removal before a forfeiture could be insisted upon by such landlord

Provided it appears from the evidence that the tenant or other claiming under him had not surrendered possession of the premises to the owner thereof.

5th Given

That all fixtures made by a tenant can be removed from the leased premises unless such removal would injure the freehold, and the tenant who made the same can mortgage or sell the same as personal property and such sales or Mortgages are subject to the same rules as appertains to other personal property.

6th Given

Although the presumption of law be that a building is real estate and belongs to the owner of the land on which it stands in the absence of proof to the contrary, yet such is only a presumption of law and such presumption is overthrown whenever it is satisfactorily shown to the Jury by the evidence that such building is not the property of nor is owned by the owner of the land.

7th Given

If the Jury believe from the evidence that Alvin Ballou purchased the property in question at the sale on Matson's Mortgage and that such sale was a valid one then upon such sale said Alvin Ballou would become the owner of said property as against William Jones the Mortgagor and his legal representatives and those claiming under him

8th Given

That in a Chattel Mortgage authorizing the sale of the Mortgaged property upon default in payment of the Mortgage Debt the provision therein specifying how notice of sale may be

56

given and the manner of making sale is for the benefit and protection of the Mortgagee and which the Mortgagee after such default made may waive and dispense with if he sees fit, and that if William Jones made such default in the Matson Mortgage then Matson could sell the property so mortgaged in such manner with or without notice or advertisement and for cash or upon credit as he Matson should deem expedient and a sale so made would be valid.

9 L
Given

That even if the Matson sale were invalid the fact that such sale had been made would not prejudice the rights of Alvin Ballou which he may have derived under his own Mortgage on the same property against Wm Jones.

10 L
Given

Although the tenant cannot deny the title of his landlord yet the tenant or those claiming the property could show that the landlords title had expired or ceased in the premises and after the landlords title had ceased the tenants may lawfully recognize the new owner of the property and become the tenants of the new owner of the property.

To the giving of said Plaintiffs instructions the defendants then objected and excepted.

And the Court at the request of Defendants instructed the Jury as follows.

State of Illinois }
Bureau County } ss

In the Circuit Court
March Term A.D. 1862

William L. Ballou

vs.

Lucretia Jones and
Joseph Rettenmyre

} Replevin

For the defendants the Court are instructed as follows.

1st Given. In this action the Plaintiff must show affirmatively that he was the owner of the property, and entitled to the possession of the same before & at the time of the commencement of this suit.

2d Given. Alvin Ballou could give the Plaintiff no greater title to the property in controversy than he himself possessed

3d Given. Before the title to property becomes perfect under a chattel Mortgage, the Mortgagee must reduce the property to possession – Hence unless Norton reduced said property to his possession by virtue of his Chattel Mortgage, he had no legal title to the property and conferred none on Ballou by virtue of his sale unless Ballou or Plaintiff took possession under such sale, before defendants gained possession thereof.

4th Given. If the jury believe from the evidence that the premises in controversy are not personal property the Plaintiff cannot recover in this form of action

5th Given

The Tenant cannot deny the title of his Landlord, and if the Jury believe from the evidence that O'Hare & Hyde were in possession of the property in controversy as the tenants of Jones then no arrangement entered into between Matson and Ballou with O'Hare & Hyde could divest Jones of his title and possession to the property without the consent of Jones.

6th Given

If the Jury believe from the evidence that Alvin Ballou purchased the property in controversy at the sale on Matsons Mortgage his Alvin Ballou's Chattel Mortgage being a subsequent Mortgage was thereby cancelled and he could derive no title by virtue of said Mortgage, if the sale from Matson to Ballou was a valid one.

7th Given

The delivery of the key by Matson to Alvin Ballou does not in a sale constitute a delivery of possession of the property as against Jones or his legal representatives unless it has been shown to the satisfaction of the Jury that the key delivered was the property of Jones and not the property of said Matson.

8th Given

The presumption of law is that a building is real estate and belongs to the owner of the land on which it stands and it devolves on the Plaintiff in the case to overcome this presumption.

Fixtures is anything which has been attached to the realty with a view to the purposes for which it is held or employed however slight or temporary the connection between them

10th When a Tenant under a Lease erects buildings Liens on leased land, he must remove the same during the continuance of the term of the lease, or before surrendering possession of the premises. He cannot reenter for the purpose of exercising it afterwards, and if he fails to do so, the Title rests absolutely in the Landlord. This is the law as qualified by Plaintiffs fourth instruction.

11th Refused Persons acting under a delegated power must comply strictly with the terms of their authority - Hence if the Jury believe from the evidence, that the Mortgage from Jones to Matson, required the said Matson to sell for cash, to give 30 days notice by posting 4 Notices in four Public Places, and if the Jury further believe that Matson did not comply with the terms of the Mortgage, in regard to the sale, the sale was void and conveyed no title to Alvin Ballou and consequently the transfer of the property to William S. Ballou by Alvin Ballou confers no title on him.

9th [illegible] the giving of Defendants said instructions the Plaintiff then and there objected and excepted to the giving the same.

The Jury returned in Court the following Verdict: "We of the Jury do find the defendants not guilty as alleged in Plaintiffs Declaration, and do also find the property in controversy in this suit in the Defendant."

The Plaintiff then moved the Court for a new trial for the reason that the verdict was contrary to law and the evidence in the case.

Which motion for a new trial the Court overruled. To the overruling by the Court of said motion for new trial the Plaintiff then and there excepted.

The Court then entered Judgment for Defendants and against Plaintiff on said [illegible], and ordered return of the property, entering which Judgment and order of [illegible] by the Court, the Plaintiff then and there excepted.

The Plaintiff then and there prayed an appeal to the Supreme Court. And Plaintiff also then and there prayed that this his Bill of Exceptions be signed sealed and made part of the Record which is accordingly done

M. E. Hollister Judge [Seal]

State of Illinois }
Bureau County } ss I George M. Radcliffe
Clerk of the Circuit Court in and for said
County in the State aforesaid do hereby certify
the foregoing Transcript of Records and files to
be a true copy of all the proceedings had in
the foregoing Cause in our said Court as appears
from the said Records and files now in my
Office.

Witness my hand and the seal
of our Circuit Court at Princeton
this 6th day of February A.D. 1863

G. M. Radcliffe Clk.

By Geo. D. Tillotson Dep.

22 Baltimore
Jones & Dale

Filed April 9th 1863
L. Leland
Clerk

Clerk's Fee $1.00