No. 12532

Supreme Court of Illinois

Ewing.

---

vs.

Runkle

71641

State of Illinois
Knox County } ss.

Pleas before the Honorable John S Thompson Judge of the Sixth Judicial Circuit in the State of Illinois at a Court began and holden at the Court House in the City of Knoxville on the Third Monday of April in the year of our Lord one thousand Eight hundred and fifty seven it being the twentieth day of said month in said year

Present Honorable John S Thompson Judge
James H Stewart State Attorney
George W Burke Sheriff
Cyphas Orms Clerk

Alexander Ewing } Plaintiff
vs } Trespass
Cornelius Runkle } Defendant

Be it remembered that heretofore to wit on the 24th day of December in the year 1856 came the Plaintiff in the above entitled cause by his Attorneys Mead and Williamson and filed his declaration herein which reads as follows to wit

State of Illinois } Circuit Court in and
Knox County } for the County of Knox and

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State of Illinois April term thereof A D 1857

Alexander Ewing } Plaintiff
v
Cornelius Runkle } Defendant

Alexander Ewing the Plaintiff in this suit complains of Cornelius Runkle the defendant in this suit in a plea of trespass for that the said Cornelius Runkle to wit on the first day of November A D One thousand eight hundred and fifty six at the County of Knox aforesaid with force and arms took and carried away the goods and chattels to wit two waggons, seven horses and seven mares of the Plaintiff then and there found and being of great value to wit of the value of two thousand dollars and converted the same to the use of the said Cornelius Runkle against the Law and to the damage of the said Plaintiff three thousand dollars. And therefore he sues &c

By Mead & Williamson & Clifford
Attorneys for Plaintiff

And afterward to wit on the 29th day of April A D 1857 during said term of said Court came the defendant in this suit by his attorneys

Manning. Douglass, Craig & Lander and
filed his Plea herein which reads in
words and figures as follows to wit

State of Illinois }
Knox County } ss Knox Circuit Court
April term 1857

Alexander Ewing }
vs } Trespass
Cornelius Runkle }

1 And the defendant
comes and defends the wrong and injury
when &c and says that he is not guilty
of the said supposed trespasses above laid
to his charge or either or any of them
nor any part thereof in the manner and
form as Plaintiff hath complained against
him. And of this he puts himself upon Country &c
Douglass Craig & Lander
And Plff doth the Like
Knappley Clifford & Kellogg for Plff

2 And for a further Plea in this behalf defendant
says "Actio non" because he says that upon the
time of the said supposed trespasses at the
County aforesaid, to wit, on the 20th day of
August 1856 Seven several certain writs of attach-
ment were legally and duly issued out of and

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under the seal of ~~said~~ the Circuit Court within and for the County aforesaid bearing date the day and date last aforesaid, in the manner and at the suit of the several persons hereinafter named that is to say One certain writ of Attachment at the suit of Robert C. Price against the estate ~~of~~ real or personal of one Smith A Brown and Ira Brown for the purpose of satisfying a certain amount of indebtedness therein named in favor of said Price

One certain writ of attachment at the suit of Hugh Happy & Washington Happy in like manner against the estate real and personal of said Smith A & Ira Brown to satisfy a certain amount of indebtedness in favor of said Hugh & Washington Happy therein named

Another certain writ of attachment in like manner issued at the suit of Thomas P. Benson against the estate of said Smith A & Ira Brown Real or personal to satisfy a certain amount of indebtedness therein named.

Another certain writ of attachment in like manner issued at the suit of John E. Ker Daniel M. E. Ker and Samuel Grants against the Estate real or personal of said Smith A & Ira Brown to satisfy a certain amount of indebtedness in favor of said E. Ker & E. Ker & Grants therein mentioned

Also another certain writ of attachment in like manner issued at the suit of one Miles Smith against the Estate of said Smith A Ira Brown to secure in favor of said Miles Smith a certain amount of indebtedness therein named

Also another certain writ of attachment in like manner issued at the suit of one Nathan Barbre against the Estate real or personal of said Smith A & Ira Brown to satisfy in favor of said Barbre a certain amount of Indebtedness therein named

Also in like manner a certain other writ of attachment issued at the suit of one John Pendergraft against the Estate real or personal of said Smith A & Ira Brown to satisfy a certain amount of indebtedness therein named All of which several writs of attachment were made returnable to the September term of the said Circuit Court A D 1856

That before and at the time, and for a long time after the time of issuing said several writs of attachment aforesaid, the said defendant was the legal and lawful acting Sheriff in and for said County of Knox and State of Illinois, and that each of said several writs of attachment were directed to said defendant, as such Sheriff to execute and on the said 20th day of August 1856, duly and lawfully came into the hands of the Defendant to execute as Sheriff aforesaid

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That by virtue of said several writs of attachment said defendant as such Sheriff did on the said 20th day of August and on the 23d day of said August 1856 attach and levy upon the said goods and chattels in Plaintiffs Declaration mentioned as the property goods and chattels of said Smith A & Ira Brown with other property belonging to them said Smith A & Ira Brown for the purpose of satisfying the claims of said several attaching Creditors aforesaid and afterwards to wit on the 29th day of August 1856 said defendant as Sheriff aforesaid did personally serve each and copy of said writs of attachment on said Smith A & Ira Brown by reading to them said several writs of attachment Defendant avers that at the time of the said levy of said several writs of attachment on said goods and chattels in said declaration mentioned, the same were the goods and chattels of said Smith A & Ira Brown and subject to said attachments and that the said goods and chattels were duly attached and levied upon as aforesaid as the property of said Smith A & Ira Brown by defendant acting in his said capacity of Sheriff

That afterwards to wit at the September

Term of said Circuit Court 1856 Judgment was duly rendered and rendered in and by said Circuit Court in favor of said Hunt & Bro and against said Smith A & Ira Brown for the sum of Nine hundred and Sixty one dollars and Sixty eight cents damages & also Costs of Suit

That in like manner at the said September Term of said Court Judgment was duly rendered and rendered in and by said Court in favor of said Hugh D Heavy and Washington Heavy and against said Smith A, & Ira Brown for the sum of Three hundred and Ninety two & 13/100 Dollars damages and also costs of Suit

That in like manner at said September Term of said Court Judgment was duly rendered & rendered by and in said Court in favor of said Thomas L Benson and against said Smith A & Ira Brown for the sum of Four hundred and Twenty five dollars damages and also costs of Suit

That in like manner at said September Term of said Court Judgment was rendered and rendered in and by said Court in favor of said John Ecker David Ecker & Samuel Grants for the sum of Two Hundred and forty nine & 97/100 dollars against said Smith A & Ira Brown damages & also costs of Suit

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That at the same time of said Court to wit September Term 1856 Judgment was in like manner duly rendered and entered by and in said Circuit Court in favor of said Miles Smith and against said Smith A. & Ira Brown for the sum of Two hundred and Eight and 27/100 Dollars damages & also costs of suit

That in like manner at the said September Term of said Circuit Court, the said Plaintiff Alexander Ewing entered a Judgment in all respects legal against the said Smith A. & Ira Brown for the sum of fifteen hundred and fifty five dollars and forty cents in said Court, his damages and also costs of suit

That afterwards to wit on the 28th day of September 1856 a writ of Execution was duly and legally issued on said Judgment in favor of said Robt L Price and against said Smith A. & Ira Brown for the amount of the Judgment of said Price

That on the 1st day of October 1856 in like manner a writ of Execution was duly issued on said Judgment of said Hugh & Washington Hogey, and against said Smith A. & Ira Brown for the amount of their said Judgment

That on the first day of October A.D. 1856 in like manner a writ of Executions was duly

and legally issued on said Judgement in favor of said Thomas P Benson and against the said Smith & & Ira Brown for the amount of his said Bensons Judgement

That on the 6th day of October 1856 in like manner a writ of Execution was duly and legally issued on said Judgment in favor of John Mc Daniel Mc Ellen & Samuel Frantz and against the said Smith & & Ira Brown for the amount of their said Judgement

That on the 6th day of October A.D 1856 in like manner a writ of Execution was duly & legally issued on said Judgement in favor of said Miles Smith and against the said Smith & & Ira Brown for the amount of his said Miles Smiths Judgement

That on the 25th day of September 1856 in like manner Execution issued on said Judgment in favor of said Plaintiff Alexander Ewing against said Smith & & Ira Brown for the amount of his said Ewings Judgement

That each and every of said writs of Execution were legally and properly issued on said Judgements by the Clerk of said District Court and under the Seal of said Court for the respective amounts of said Judgments against the Goods and Chattels Land, Tenements & Real Estate of them the said Smith & & Ira Brown and that said writs of Execution were severally directed to the said

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Defendant as Sheriff aforesaid to Execute

That on the 29th day of September 1836 said Execution in favor of said Plaintiff duly came into the hands of Defendant as such Sheriff to Execute

That in like manner on the 4th day of October 1836 said Executions in favor of said Benson and in favor of said Hughes & Washington Happy duly came into the hands of defendant as Sheriff aforesaid to Execute

That on the 6th day of October 1836. in like manner said three writs of Execution to wit the one in favor of John D & Daniel McEwen & Samuel Sands. and the one in favor of said Miles Smith. each and all duly came into the hands of said defendant to Execute as such Sheriff aforesaid

And also on the 29th day of September 1836 said Execution in favor of said Plaintiff Alexander Ewing. duly came into the hands of defendant as Sheriff aforesaid to Execute. And that said defendant as Sheriff aforesaid acting under the authority of & by virtue of said several writs of Execution levied upon and on the 20th day of October 1836 and on the 1st day of Nov. 1836. duly & legally sold at public sale the said goods and chattels in said ~~goods and chattels~~ declaration mentioned. as the goods and chattels of them the said Smith & Isaacs for the purpose of satisfying said several Executions as he lawfully might do

Defendant says that the said several Judgments
in attachment aforesaid were recovered as
aforesaid against them said Smith & Ira
Brown after personally service of said several
writs of attachment on them said Smith &
Ira Brown and that all of said several
Judgments as well the said Judgments com-
menced by attachment as said Judgment
in favor of said Plaintiff Alexander Ewing
were general Judgments against them said
Smith & Ira Brown and that said
several writs of Execution issued against said
Smith & Ira Brown, commanding said Defend-
ant as Sheriff aforesaid that of the goods
and chattels, Lands and tenements of the said
Smith & Ira Brown he make or cause to be
made the said several sums of money severally
therein mentioned. Which are the said several
trespasses in the Plaintiffs declaration
mentioned whereof the Plaintiff hath above
complained against him, without this that
the said Defendant was guilty of the said
suppposed trespass in said Declaration mentioned
otherwise than above in this plea mentioned, &
this he is ready to verify Wherefore he prays
Judgment &c

Douglass, Craig Lander & Manning
for Defendant

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3.

And for a further Plea in this behalf the said defendant says actio non because he says that the said defendant at the said time when &c by the leave and license of him the said Plaintiff to the defendant for that purpose first given and granted omit at the county aforesaid committed the said supposed trespass in said declaration mentioned as he lawfully might for the cause aforesaid; and this he is ready to verify wherefore he pray judgement &

McDaniel Douglass Craig & Sanders
for Dfts

And for a further plea in this behalf the said defendant says actio non because he says that heretofore to wit at the September Term AD 1856 of the Circuit Court in and for the County of Knox and State of Illinois to wit on the 23d day of said September the said Plaintiff Alexander Craig lawfully and duly recovered in said Court a judgement against Smith A Brown & Ira Brown for the sum of fifteen Hundred & fifty five dollars his damages and also the further sum of two dollars thirty five cents which was adjudged to said Plaintiff for his costs and charges in that behalf expended and that afterwards to wit on the 28th day of September 1856 a writ of execution was duly issued by the clerk of said Circuit on said last

named Judgement and in favor of said Plaintiff under the Seal of said Court directed to the defendant to Execute as Sheriff of said County, Commanding him defendant that he cause to be made of the goods and chattels Lands and tenements and real Estate in said County of said Smith & Ira Brown the said Sum of money last aforesaid to wit the said Judgment last named and the costs last aforesaid

That the said defendant before and at the time and for a long time after the time of issuing said last named writ of Execution was the legal and lawful acting Sheriff of said County and that on the 29th day of September 1836 said last mentioned writ of Execution duly came to the hands of the defendant as such Sheriff to Execute for the benefit of said Plaintiff in this suit and that said defendant as Sheriff aforesaid duly levied upon the said goods and chattels in the said declaration mentioned by virtue of said last named writ of Execution as the goods and chattels of the said Smith & Ira Brown for the benefit of said Plaintiff. While said Levy was duly made on the day of 1836 and that the said defendant as such Sheriff aforesaid to wit on the day of 1836 by virtue of said last named writ of Execution the said defendant as Sheriff aforesaid duly and legally sold

S/2582-V

the said goods and chattels in Plaintiffs declaration mentioned for the benefit of said Plaintiff in this suit as he lawfully might do. Which is the supposed trespass in said declaration mentioned, whereof Plaintiff hath complained against him, without this that defendant was guilty of said supposed trespass otherwise than in this plea above mentioned and this he is ready to verify. Wherefore he prays Judgment &c

Manning Douglass Ewing & Sanders
for Defts

[illegible] came the Plaintiff by his Attorney

Afterwards to wit on the 4th day of May
1857 during said term of said Court the Court made an order herein which reads as follows to wit

Alexander Ewing
vs
Cornelius Runkle
} Trespass

Ordered by the Court that this suit be continued until the next Term of this Court

State of Illinois }
Knox County } ss.

Pleas before the Honorable John S Thompson Judge of the Tenth Judicial Circuit in the State of Illinois at a court begun and holden at the Court House in the City of Knoxville on the third Monday in the Month of October in the Year of our Lord One thousand Eight hundred and fifty. being the nineteenth day of said month

Present Honorable John S Thompson, Judge
James H Stewart States Attorney
George W. Entrikin Sheriff
Cephas Arms Clerk

Alexander Ewing
vs
Cornelius Runkle } Trespass

On the second day of said October term of said Court to wit on the 20th day of October A.D. 1857 came the Plaintiff by his attorney and filed his Demurrer to Defendants 4th Plea herein which reads as follows

State of Illinois } Knox Circuit Court April
Knox County } ss. Term A.D. 1857

2

5 1858-59

Alexander Ewing
vs
Cornelius Runkle } And the Plff. as to the 4th plea of Defendant above pleaded says precludi non because he says that the matters and things in said Plea set forth & pleaded are not sufficient in Law to preclude the said Plaintiff from having and sustaining his said action against said Defendant as in his declaration alleged and this he is ready to verify Wherefore he prays Judgment &c.

Pr Join
Kellogg Knights & Clifford
Dougherty & Craig

Whereupon proceedings were had herein, the record of which recites in words and figures following to wit

Alexander Ewing
vs
Cornelius Runkle } Trespass

This day came the Plaintiff by his attorney and filed his Demurrer to the defendants 4th Plea. After hearing the argument of Counsel thereon, it is ordered by the Court that the Demurrer be sustained. Thereupon came the defendant by his attorney and moves the Court for a continuance herein. Thereupon it is ordered by the Court that leave be given to file

Additional Replications

The replications to defendants Plea filed in this suit by Plaintiffs Attorneys, read as follows to wit

State of Illinois } Knox Co. Circuit Court
Knox County } S.S. April Term A.D. 1857

Alexander Ewing
vs
Cornelius Runkle

And the Plaintiff as to the 2d plea of deft says precludi non because he says that that writs not seven several writs of attachment, or any one, or either of them issued under the seal of this court and placed in the hands of defendant as Sheriff of said County of Knox as in said plea mentioned and set forth and of this he puts himself upon the Country Ringwalt Clifford & Kellogg for pltff
So do we
Douglass & Craig for Deft

And for further replication to said 2d plea of said defendant says precludi non because he says that Judgments were not rendered against the said Smith A. & Ira Brown in favor of the persons in said mentioned or any one or more of them and of this Pltff puts himself upon the Country
So do we
Douglass & Craig for Defts Ringwalt Clifford & Kellogg Attys for pltff

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And for further replication to said 2d plea of defendant says that there was not an Execution issued on each or either of ~~said~~ the several
3 judgements in said Plea specified as therein alleged And of this he puts himself upon the country. Kellogg Knight & Clifford
for Plff

So do we :
Douglass & Craig for Dft

And for further Replication to said 2d plea Plff says precludi non because he
4 says that said several writs of Attachment & said Executions nor either of them were levied on the property in said plea mentioned And of this he puts himself upon the country
Kellogg & Knight
for Plff

And for further replication to said 2d plea Plff says precludi non because he says that the goods & chattels in said plea mentioned was not the ~~plea~~ goods & chattels of said Smith
5 A & Ira Brown as in said Plea alleged but was the property of Plff as in his declaration is averred And of this he puts himself upon the country for trial
So do we Clifford Kellogg & Knight for Plff
Douglass & Craig for Dft

And as to the 3d plea of

Deft defendant above pleaded. Says pre-
cludi non because he says that he did
not give and grant to the defendant
6 leave and license to commit the said
Trespasses in his the plaintiffs declaration
or any of them as alleged in said 3d
plea and of this he puts himself upon
the country for trial

So do we Kellogg Clapper & Kingsbury
Douglass & Lacey for Defs Ally for Plff

And for further replication to defendants
second plea by him above pleaded the
said plaintiff says precludi non because
he says that the Judgement & Execution in
favor of Alexander Ewing against the said
Brook was obtained without
the knowledge or consent of the said plaintiff
and this he is ready to verify wherefore he prays
Judgement &c By Kellogg & Meachem attys

The said defendant comes and for
rejoinder to the said Plaintiffs 7th replication
to defendants second plea herein, says that said
Judgement & Execution therein mentioned were obtained with the
knowledge and consent of said Plaintiff and
of this he puts himself upon the country

So do we Douglass & Lacey for Defs
Mack for Plff

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And on the 22d day of October A.D. 1857, on the 4th day of said Term of said Court this cause came on for trial, the record of which is in words and figures following to wit

Alexander Ewing
vs
Cornelius Runkle
} Trespass

This day came the parties and their attorneys, and issue being joined for trial put themselves upon the country. Thereupon came a Jury to wit Francis McMurtry, James Featherazi, Edward Colburn, Samuel Collins, Wm Haines, James Johnson, John L. McCallister, Felix Thurman, R.C. Jones, Jacob Wolf, Jesse Perdue & Thomas Collinson who having been elected tried & sworn, well and truly to try the issue joined herein, after hearing the opening remarks of Counsel were permitted to retire under charge of the court, and required to meet the Court to morrow ~~morning~~ morning at 8½ o'clock

And on the 28th day of October in said year, further proceedings were had in this cause as follows, to wit

Alexander Ewing
vs
Cornelius Ruckle } Trespass

This day again came the Jury empanneled herein heretofore and after hearing the evidence and argument of Counsel upon their oath do say. "We the Jury find for the defendant not guilty" thereupon came the the Plaintiff by counsel and moved the Court for a new trial herein

which motion is in words and figures as follows to wit.

Alexander Ewing
vs
Cornelius Ruckle } In the Circt. C. C.
Oct T. 1857

The plaintiff comes now and moves the Court for a new trial for the following reasons

1 Because the verdict is contrary to Law
2 It is contrary to evidence
3 The instructions given on the part of the defendant were illegal and improper and calculated to mislead the Jury
4 The Court refused proper instructions on the part of the plaintiff
5 The Court permitted improper evidence to be

$ 12532-11

given to the Jury on the part of the Defendant

By Kellogg & Reed his Attorneys

And afterwards to wit on the 5th day of November during said Term of said Court further proceedings were had herein as follows to wit

Alexander Ewing
vs
Cornelius Runkle
} Trespass

This day came again came on this cause for hearing on the Plaintiffs motion for a new trial herein, after being fully advised as to the merits of said motion, it is ordered by the Court that the motion be annulled. Therefore is considered by the Court that the defendant have and recover of the said Plaintiff his costs by him in this suit laid out and expended, and may have Execution therefor, to all of which the Plaintiff excepted,

And afterwards to wit on the 6th day of November during said term of said Court an order was made herein in words and figures as follows to wit

Alexander Ewing } Trespass
vs
Cornelius Runkle

This day came the Plaintiff and prayed an Appeal to the Supreme Court. Thereupon it is considered by the Court that the same be allowed, and that the Plaintiff file his Bond, with H. N. Knightley as security in the sum of Five Hundred Dollars within 30 days, and have leave to file Bill of Exceptions in 60 days

While Appeal Bond was filed in the Office of the clerk of said Court on the 18th day of November AD 1837 and reads as follows to wit

Know all men by these presents that we Alexander Ewing & H. N. Knightley are held and firmly bound unto Cornelius Runkle in the sum of Five Hundred Dollars to be paid to the said Cornelius Runkle his Executors or administrators, for the payment of which we jointly and severally bind ourselves our Executors & administrators by these presents Witness our hands and seals this 19th day of November AD 1837.

The condition of the foregoing Obligation is such that whereas on the 3d day of November AD. 1837 in the Circuit Court of Kent County

[12538-12]

State of Illinois. Cornelius Rumble recovered a judgement against the said Alexander Ewing for the costs of suit that accrued during the progress of said trial. from which said judgement the said Alexander Ewing has taken an appeal to the Supreme Court of the State of Illinois. Now therefore if the said Alexander Ewing shall prosecute his said appeal with effect, and shall pay whatever judgement may be recovered by the Court upon dismissal or trial of said appeal then the foregoing obligation to be void, otherwise to remain in full force and effect

Alex^r Ewing (Seal)

Acknowledged in me at my office this 19th day of November A.D. 1837

H. N. Keightley (Seal)

Cephas Lemon clerk

The Bill of Exceptions herein was filed in the office of the clerk of the Circuit Court of said County on the 8th day of December A.D. 1837. and read as follows. to wit:

State of Illinois }
Knox County } ss

Pleas before the Honorable John D. Thompson Judge of the Tenth Judicial Circuit of the State of Illinois, at a Court began and held at the Court House in the City of Knoxville, on the third Monday of the Month of October, in the year of our Lord one thousand Eight hundred and fifty seven it being the nineteenth day of said Month in said Year

Present Hon. John D Thompson Judge

Alexander Ewing
vs
Cornelius Runkle } In the Knox Circuit Court
Oct Term 1857

Bill of Exceptions

Be it remembered that on the trial of this cause, the plaintiff, to sustain the issues on his part, introduced the following Bill of Sale from Smith A. Brown & Son to Alexander Ewing dated Aug. 27. 1856

Bill of Sale

Know all men by these presents that we, Smith A Brown & Son Brown Copartners under the name Style & firm of S. A Brown & Son have bargained sold and by these presents do bargain, sell, transfer and Set over and deliver unto Alexander Ewing, of the County of Knox & State of Illinois the following property to wit,

[12532-13]
[illegible]
E 2880

One Span of Horses one Grey & one Bay with a white face, One Span one bay & one Sorrel with White face - One Span of Black horses - One Span One small Grey & bay - One cream colored Mare & one Roan horse - One Sorrel Mare & one Sorrel horse - One large bay horse - One small bay horse - One small sorrel horse - One dark bay or brown horse - One Span of Spotted horses, One small bay with white with white Stripe in the face and one Glass eye as it is called - One leg't Grey with big joint on hind leg - One large Black horse little knee Spavin One dark bay horse Grey hairs intermingled, - One Span of old horses one black or brown and the other Dark brown - One bay horse and one bay or sorrel mare & one bay mare in the possession of S. A. Brown. Two yoke of Oxen one yoke Black & White and one yoke Red & White - fifteen lumber waggons twelve two horse plows - fifty Scrapers & fifty log chains - four hundred shovels, ten crow bars, fifteen Set double Harness - One Log waggon a Lot of Double trees, whipple trees, Clevises and Chains - also one Shanty at Swab Run in possession of Dennis Burk - one at French Creek in possession of Roger Mack - One in the possession of Fitzpatrick near O Selbys One between Magnon and Haw Creek occupied by Mooney - One near Dempseys, in possession of John O Harren another close by put up by Abner Brown - Another at Haw Creek, Occupied by John Long - A lot of hewed Timber at Haw Creek and a Lot at Galesburg Delivered to S. A. Brown & Son for the sum of five thousand dollars, duly paid by the said Alexander Erving to the said S. A. Brown and Son, the receipt of which is hereby acknowledged to have and to hold all and singular

the above described goods, chattels, and personal property to the said Alexander Ewing, his heirs and assigns forever, as his sole, absolute, property, hereby delivering and investing the said Ewing with the possession of said goods, chattels and effects and full and ample power to take possession of the same wherever found, hereby imparting and conveying to said Ewing, complete and absolute control over the said goods chattels and and personal property as fully and amply as we may have hereby warranting and defending the title and possession of the said goods, chattels and personal property to and in the said Ewing his heirs and assigns forever. In Witness Whereof we have hereunto set our hand and seal this 27th day of August A.D. 1856.

S. A Brown & Son (Seal)

State of Illinois)
Knox County) ss: On this 29th day of August A.D. 1856 personally appeared before me (the undersigned Justice of the Peace) Smith A Brown & Ira Brown who acknowledged the foregoing bill of sale signed S. A Brown & Son to be their voluntary act and deed and that they acknowledged the execution thereof under the description of S.A. Brown & Son to be the signature of them & each of them and that said signature was the firm name of said Smith A Brown & Ira Brown

Given under my hand & seal this 29th day of August A.D. 1856 — William Sanburin J.P. (Seal)

State of Illinois)
Knox County) I, Hiram J. Morey, Clerk of the Circuit Court and Ex Officio Recorder, within and for the said County of Knox

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and State aforesaid, do Hereby certify, that the within and foregoing Instrument of writing was Filed for Record on the 29th day of August A.D. 1856, at 2 o'clock P.M. and duly recorded in Volume 2 of C. Mortgages on page 186. In Testimony whereof I have hereunto set my hand and affixed the seal of said Court, at Knoxville this 29th day of August A.D. 1856

Seal

Hiram T. Morey Clerk)

2 (The plaintiff then called S. A Brown who testified that the Bill of Sale was made on the day of its date, at Knoxville for the purpose of securing his indebtedness to the plff. Ewing - That Brown & Son were indebted to plff. to secure which they gave Ewing 12 notes, all dated 9th Aug. 1856 amounting to $1316 26; that he sold Ewing a Span of horses for 325.00 which was to be credited on the notes; that some account was made with Ewing after the notes were given; that the Bill of Sale was given to secure said notes, and account & to pay the same! that at the time of the date of said Bill of Sale he was in the County of Warren & came down to Knoxville a day or two afterwards for the purpose of signing & acknowledging said Bill of Sale. - That the arrangement with Ewing for the Bill of Sale was made by his brother-in-Law Erastus Rice & his (Browns) son - That he sent his son Ira A Brown with Rice to arrange it with Ewing & his son returned to Warren County & told him what had been done & then he went to Knoxville to sign & acknowledge the Bill of Sale, which he did - That at the time of the making of the Bill of Sale, the property described therein was very much scattered in the Counties of Knox Fulton & Peoria & along the line of the Peoria & Oquawka Railroad between Knoxville & Elmwood in Peoria Co. & some of it had been taken out of the State; That the

had been a contractor on said road & employed a large number of hands - that he had failed & was unable to pay them their wages & some of them had taken some of the property and hid it in the woods & some of it was buried in the ground. The cattle & horses some of them, was levied on by attachment, some of them run off by workmen & some hid in the woods - that some of the Irish on the the road had threatened personal violence towards him & that he had left the work & gone home to Warren County where his family resided.

On Cross Examination he further testified that all the property mentioned in the Bill of Sale was worth at least Seven thousand Dollars ($7000) that the same was sold to Ewing to pay the indebtedness of S. A. Brown & Son to Ewing, being the 12 notes & the Book Account - that the notes had never been surrendered, but were still held by Ewing - that they had never recd any discharge of their indebtedness to Ewing, excepting the Bill of Sale - that at the time the Bill of Sale was made they (said S. A. Brown & Son) were in failing circumstances & owed more than they could pay & had stopped business some days before Sale Bill was made. Ewing was fully aware of our condition and wanted to secure his claims against us. When we gave the notes, Ewing wanted security & proposed two ways - one by taking small notes & a power of attorney to confess judgements before a Justice of the Peace & issue executions; the other by taking a mortgage on personal property; but this last was objected to because it might alarm his other creditors; that the first mode was adopted & judgments were confessed by Keightly before Sanburn Justice of the Peace. Keightly came to my house in Warren Co. to get security for debt due Ewing a few days before the date of the Sale Bill. He drew up a Sale Bill same as the one here signed, which I agreed to sign to secure Ewing, but

3 10530-15

did not finally do it. At that time a number of attachment suits had been brought against us & Keightly said if I would give the Bill of Sale, the plff. could replevy the property – That it was scattered all over the Country, He agreed if I would give it to Ewing, then the attachment suits pending could be broken down & Ewing could get the property together and then I could plff. notes & security on 6 & 12 months time & then I or my securities could take the property & sell it or turn it to pay my debts. On these conditions I agreed to sign it. Then Keightly & I went out doors & asked him if he would go to selling off the property & he said Ewing must have money, then I backed off – because by the agreement I was to have the property back after giving my notes. Keightly then left. Then I sent Erastus Rice to Knoxville & told him the conversation I had with Keightly. I sent him to make full arrangments as to property & debts as he should see fit. Rice then sent me word what he had done – thought it the best thing that could be done, so I went to Knoxville & signed the Bill of Sale upon Rice's arrangement. At Knoxville Keightly did the business in respect to the debt and Bill of Sale – it was done at his (Rs) office. Ewing came in once or twice – I signed the Bill of Sale because Rice told me to. He said it was the best thing that could be done & I supposed so to – Some of the property had been attached in this Court and some before Justice Court in Magnon. The attachments were issued & levied because people supposed I had gone out of the State – but I had not –

When I gave the notes plff. wanted security. He thought I would brake up. but I thought not, I said I would give him any security; but declined giving chattel mortgage because it would make it public. After agreement at Warren Keightly said

what should he do with the property after they got it together. This made me think something was not right & I refused to sign it (Bill of Sale) until I saw Rice.

At Knoxville Bill was signed & also pleas in abatement filed to quash the attachment suits.

I did not sign the Bill of Sale with intent to hinder or delay creditors. That it was his understanding that Ewing was to gather the property together & pay himself for his trouble & expenses, then pay his indebtedness to himself & if there was any left to divide it among his creditors in equal portions. That he agreed to pay Ewing for his time and trouble in looking up and getting together the property - that Ewing was to pay all liens upon the property where the claims were honest & fair by advancing the money that he did advance to one Thomas Kerrs the sum of fifty dollars to pay his debt which was just - said Kerrs having attached a span of horses. And also to Jesse Pickel the sum of fifty dollars for a similar purpose - That the sale was in good faith for the purpose of having it gathered together for the benefit of his creditors after paying Ewings debt.

The judgments by confession before Justice of the Peace were found to be illegal & abandoned.)

3 The plff. then called Erastus Rice who testified that J. A. Brown wanted him to come to Knoxville & make any arrangement he thought best for his benefit & for the benefit of his creditors, after stating to me his interview with Keightly at Warren. I came up and by my advice Ira Brown came also. This Bill of Sale was then executed was then drawn up & executed as far as it then could be - The consideration was to pay Brown's debts & save the property from being squandered. It was my judgment & Ewings & Browns

[13532-4]

that there was property enough to pay all the debts. Ewing's debt was about a thousand dollars. The intention was to sell all the property the Browns had on the line of the Rail Road, They were in a tight place, Some attachments were then issued at Knoxville and some at Maguon on the ground that Brown had left the State & he believed these attachments were illegal. The sale was not made to hinder, or delay or defraud any one. Ewing was to be paid expenses in collecting the property. If the plff. got enough to pay his debt he was to be paid his expenses. The same offer was made to James Price. Ewing took the bill of sale. It was talked that Ewing might have to pay off some small debts, & if Brown agreed to it, I agreed he might do so. In cases where a small debt was levied on property worth more than the debt, they were to be paid, if Brown agreed to it. Nothing said about paying Ewing for his trouble. Another talk was that when Ewing got all the property together, all Browns creditors should meet & bid it off to pay their debts.

On cross examination he further testified that he agreed to have Brown sign this Bill of Sale. It was not agreed to sell the property forever for plff. debt. The Bill of Sale did not express all the agreement. Ewing was to gather up all the property & then it was to be disposed of for the benefit of all the creditors. The talk was that if not much property was got that Ewing was to be paid and his expenses. It was thought there was enough to pay all the debts. It was a part of the arrangment that the attachment suits were to be fought & broken down & the property released, and got together for the benefit of the creditors, & Keightly was employed by Brown for that purpose. The bill of sale was made on these conditions. It was suggested by Keightly that Brown must sign pleas in abatement in the suits & I agreed that Brown should do so. Keightly & Ewing were both present when

the arrangement was made. I think Ewing was present. Several of the Creditors were present, - I think Hagey Armstrong & Price

4C H. N. Keightly being sworn stated that I officiated in getting up Bill of Sale. I first got judgments for Ewing vs Brown & Son before Sanburn J.P. on the notes - found that the judgments were void - next day went to Warren to see Brown - drew up Bill of sale. Brown would not sign it - Ewing did not know that I went to Warren - Price came the next day & said the only way Ewing could be safe was to take the Bill of sale. the property was scattered & some attached before Justices of the Peace - Some in Knox Some in Fulton & Peoria as I was told. Armstrong, James Price & Hagey were out & in the office at the time the arrangment was made - Ewing first refused to take a Bill of Sale - Said he had about as soon lose his debt as to gather the property - All appeared to be afraid of the risk - We suggested to Price to take the sale Bill - We offered it to James Price & to Hagey Robert Price had nothing to do about this - I prevailed on Ewing to take the Bill of Sale - It was agreed by all present for Ewing to take it - & to take out his debt first - if there was not enough to pay all - it was offered to Price & Hagey in the same way they refused to take it I offered to tranfer the Bill of sale to them if they would pay Ewings debt - the agreement was that Ewing was to have his pay and his expenses in getting the property together - there were attachments then pending & I said to Price - Brown to save the property must file Pleas in abatement. I filed 4 pleas in abatement in each suit I think the attachments were then issued but not levied. Price came & the arrangment was made the 27th of Aug. Some claims & debts were right & just & Brown was not willing to let Ewing have Sale Bill without his agreeing to pay the just debts in suit in

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Justices Court. One span spotted horses in Fulton Co. Claim on them was $50 by Barnes — Barnes said if Ewing would pay the $50 - he might have the horses. Brown said the claim was right & Barnes said Ewing paid it — was a claim of $50 by Pickrel on a team — Ewing spent 12 or 14 days gathering up property - I notified the defendant of the Bill of sale the very day it was made & forbid his touching any thing further — don't think he made any particular reply - James Price, Hagey, Joe Grimes, Burtnett & Thompson went along to help find property — Ewing brought home from 10 to 14 horses & 2 yoke of oxen — the oxen & 2 or 3 horses some Plows & Scrapers were afterwards sold on Executions that were prior liens — Ewing got 4 or 5 double waggons and two ~~odd~~ waggons — 1 Waggon and 2 horses were Replevied by Potter and retained — Can't say Ewing gathered the ones Replevied — Ewing got some chains I went over Spoon River & quashed some attachments & got some little stuff say $10 or 12 worth but not more than enough to pay for trouble — first rather than take mortgage I took Cognovit of Brown & Son — after I got Bill of Sale. James Price & G. F. Harding (I Can't say others) wanted Bill of sale released — I said I would not do it — Ewing Refused to release it & said he would rely upon it, at court time Brown empowered Harding to act for him — after Harding Confessed Judgments for other Expeditors he wanted to give me Judgment for Ewing & Release Bill of Sale. I refused & told him that Ewing rested on the Bill of Sale & I would not disturb it I told Harding I wanted Judgment for the amount due Ewing for hunting up the property & as Brown had not agreed on the amount there might be trouble about it — that if he had any power to give judgment for the amount he might do so. Harding said he had no power to do that, but would see Brown & see what he said — he then came

and said he would do it if I would let him put in $300 - for some Open bought of his father - we then had some sharp words - he said I could not prevent him Confessing Judgment as he had the Power - I said he might do as he pleased that I would have nothing to do with it - Afterwards he said to me you had better take the judgment - I said do as you please - that is all that was said - there was no suit pending of that character - I had no authority to do it from Ewing & Plaintiff said he did not want judgment or any thing that would effect Bill of Sale.

A. S. Brown recalled. I said before that Keightly told me in Warren that Ewing sent him. I now say that he said Ewing did not know of his coming.

Keightly Cross Examined stated that Judgment was recovered in favor of Ewing against the Browns at the Sept. Term of this Court 1856. I on the same day of Judgment ordered out Execution I might have given Execution to Rumble & given instructions but don't remember about any instructions to him. I think H. T. Morey gave Execution to Sheriff. I am & was in 1856 Son in law of Ewing have been his attorney & adviser - in the first place I told Plaintiff what to do & he took the notes, he wanted me to go & see Brown but I declined What has been done in Plaintiffs claim I have done and assisted in doing in obtaining Bill of Sale I acted for Plaintiff. I & Plaintiff were there, - acted for Plaintiff in making arrangement with Rice in fact all I have done was for him (Plaintiff) since date of notes I have been Attorney at law - it was no part of arrangement with Rice that attachments should be sought - Brown was to come and file pleas in abatement in suits in Justices Courts & he did come &

[25132-18]

file them in I think about 12 to 20 suits – part I beat them on & part I appealed to this Court – in the settlement of suits appealed by Brown the Creditors took the property attached to pay them & Ewing got notes for balance – of $200 now in my hands for Ewing 2 notes of about $70 both of them – $8, in Cash collected – got John Combs note for about $100 I think, may be more – Brown asked me to fight the suits – Bill of sale was given to secure Ewings debt & if Plaintiff got more property than to pay his debt Brown was to have the benefit of it in paying other debts before Bill of sale was made Executions issued on Judgments Confessed in Plaintiffs favor before I P. were in the hands of the Constable Peter Burnett – he got some horses before Bill of Sale was made I think. Cash was paid to Barnes after Sale Bill was made & before this suit was brought – Brown spoke to me to defend the attachments in the circuit Court. I afterward saw Harding in them, then I backed out – fighting suits was no part of the consideration of the Bill of Sale it was for Brown's benefit – the object was to save the property for Brown so as to apply it on his debts & pay Ewing just as Ewing got it together, he put some in his Barn horses & Cattle were sent onto a farm. I would not take same trouble that Plaintiff did for $300 – Some he sold – had one span of horses at the barn & I had one span a month before they were taken on Executions – Plaintiff sold one to Dr Philips & let Bill Rogers have a pair. Cant say they were sold to Rogers, Executions took all Ewing had only what were sold on Executions issued from Justice Court. 2 horses sold on Constables Executions – 2 yoke of Oxen – 3 horses – 2 waggons & 2 ½ sett of Harness Potter replevied & detained – One waggon was run off by Croucher it was agreed that Ewing was to get the property together pay himself & let the other creditors have the balance

A

5 John Ewing being sworn stated that the debt due Ewing from Browns 1st January 1856 was $1331.10 less $325 for span horses the Book account afterwards was $65. paid out by Plaintiff in looking up property paying off claims &c about $400 - at time Bill of sale was made it was supposed that Brown was broken up - the indebtedness was due the firm of A. Ewing & Co. members of the firm are Plff. myself & Albert Burdett. My interest in the property bought of Brown & Son is equal to my interest in the debt against them - My interest in the property sued for in this suit is equal to one fourth - this property was in the possession of the firm when Rumble took it - Can't tell to whom all the $400 was paid some paid to Pickrel - $50 to Eames $84 to Palmer - the items I know about of expenses paid for getting horses - services by Plff 11 days worth $55, Rogers bill $20.10 & $38.71 which we are to pay - these are all the items I know about - We went into Partnership 1st January 1856 - the account against Brown & Son commenced Oct. 4th /55, $440.85 of the account was made before the formation of the partnership - all the account was posted together - the rest of the account was due the new firm. Plff took Span of horses on debt at $325, the firm paid all expenses in finding property. Plaintiff did all that was done in gathering the property - property in suit was in our possession out at Palmers, he kept it for us.

6 Peter Burtnett sworn for Plaintiff testified he helped look up part of the property for the plaintiff - found Span of Horses & 2 Set of Harness at Bridgport & 3 Span of Horses &, 2 Set Harness & 3 wagons at Godfreys. this was before the Bill of Sale these I got on the Plaintiffs Executions from Justices Court - Defendant levied on two Horses & Waggon while I was using them at the Fair. Some time after I brought

112532-19

them up. Horses ~~that~~ were worth $300. waggon worth $80, Harness worth $18 to $20 – this is all I saw him levy on – he said he came to levy on the rest & took a description of them. I brought up 8 head of Horses some Bay some grey, Brown & Sorrel – some mares. Cant tell how many – he did not take them away from me – I put them in Plaintiffs barn & never saw them afterwards – All the Horses worth $150 each but two & they worth $100 each the waggons worth $80 each – this property I took as Constable on void Executions issued by Sanburn in favor of Plaintiff. Some time afterward went for Plaintiff and got two yoke of cattle – I charge Plaintiff $10. to $12.50 – It was the attachments Defendant levied on The two horses & waggon & Harness – I gave him a description of the rest of the property to levy attachments – at the time Defendant levied part of the property was at Plaintiffs barn & part at Rogers Stable – The cattle I brought up were put in Newman's yard.

Amos Palmer sworn stated I kept for Ewing 13 or 14 head of horses. I kept some for defendant on his order he took 2 spotted horses & sold them worth $250 took from Rogers Stable. he sold one Grey horse, 2 sorrels, 1 Brown & 2 Blacks he sold 1 or 2 others Grey worth $50 to $60, 2 sorrels worth $235, Brown worth $95 2 Blacks worth $250 to 275. the Bay worth $80, Grey worth about $40 – Dun Mare worth $130. Plaintiff forbid Defendant selling – 1 or two waggons sold I don't know about them – this property was taken last Sept. or 1st of Oct. only one mare among the lot of Horses. On cross examination he stated Defendant took from me 2 blacks, 2 Sorrels, 1 Brown, 1 Bay, 1 Dunn Mare, 2 Grays. I charge the Plff with keeping & some to the Defendant

8

Pitt Rogers sworn Stated Defendant took 2 Spotted Horses from my barn that I got from Ewing worth $230 & Sold them Cross Examination he stated I got the Horses of Ewing considered them mine – was to pay for them in 3 or 4 months – No conditions in the sale & told on them when Rumble sold them – one of them was bad in the wind – the other was sound – One sold for all it was worth – the other for $5 or 10 less than value – I have not paid for them

4 Marcus Smith sworn Stated I had 3 wagons in my possession Deft. got them & sold them worth $70 or $75 each – Sale was about 1st of Oct. – One span Blacks worth $90 – Gray worth $50 to 60. – Spotted horses worth $200 – Grey worth $50.

It was also agreed that 4 of the horses sold by Rumble & taken as the property of Brown's had not been levied on by the attachments but had been seized & sold on the Executions after the sale from Brown to Ewing.

10 A. Thompson sworn Stated I knew the horses at Palmers saw the defendant sell them I appraised them as follows

One Sorrel worth	$72.	1 Spotted worth	$125,
Gray "	50,	1. Sorrel "	125.
1 Spotted	$125,	1. Brown "	70

Here the Plaintiff Rested & the defendant to sustain the issues on his part swore the witness following.

Isaac Maslin sworn Stated the value of the property, I was at sale of property – bought Spotted horse at $108 might have been worth 5 or 10$ more – the Spotted horse sold for $102, the same gray sold for $30. Most of them brought their worth.

S 185.32-38

A. H. Potter stated that Mason took Cream Colored horse from Rumble. Rumble levied attachments on some property horses & wagon & harness at my stable in Magnon. I had a conversation with Ewing after the Sale Bill was made at Magnon. he said he was looking up property – he first demanded the property in the stable by virtue of Chattel Mortgage – afterwards he said it was a Bill of Sale – I asked to see it he refused – he said he intended to secure himself first & then he did not care what became of the balance – said Browns were owing him about $1000.

George F. Harding being sworn stated – I had a power of Attorney from Brown & Son to confess judgment in favor of Browns creditors against them – I had power to confess in favor of Ewing for $1000 – afterwards $500. was added to this amount $825. of which last amount was a debt due my father for open sold Browns. Keightley & I had a talk about confessing a Judgment in favor of Ewing for the amount of his debt against the Browns. I had some sharp words with Keightley because I confessed Judgment in favor of other creditors of Browns at that court – thinks the $1000 mentioned in Power of Attorney was the residue due Ewing on the notes – after this Keightley came to me in court and I told him he had better take Judgment for the amount due Ewing. Keightley then agreed that Judgment might be entered – Keightly knew about the Judgment for he told me to confess it – this is all that passed

Deft. offered in Evidence the Power of Atty to Confess Judgment in favor of Ewing to wit

Power of Attorney

Know all men by these presents that we Smith A. Brown, and Ira Brown being now justly indebted to Alexander Ewing in

the Sum of one thousand & fifty five & 40/100 Dollars do hereby authorize & empower, constitute & appoint George F. Harding for me and in my name to appear in the Circuit Court of Knox County Illinois for me and in my name to confess a Judgment against me and in favor of said Alexander Ewing for the said Sum of money and for that purpose to do all necessary, proper & needful things on the premises. Hereby ratifying the acts of my Attorney in the premises & annuling all errors.

Smith A Brown (Seal)
Ira Brown (Seal)

The Amount is to be increased Five hundred Dollars

S. A. Brown (Seal)
Ira Brown (Seal)

Filed September 24th 1856.
Hiram T. Morey

Geo. F. Harding
Atty in fact

Defendant then offered in evidence the writs of attachment & returns thereon, Judgments Executions and returns thereon as follows

Brown

Writ of attachment in the case of R. C. Price vs Smith A & Ira

State of Illinois } SS.
Knox County } The People of the State of Illinois
To the Sheriff of said County Greeting:

Whereas Robert Price hath complained on oath to Hiram T. Morey Clerk of the Circuit Court of Knox County that Smith A Brown & Ira Brown are justly indebted to the said Robert C. Price to the amount of Six hundred Sixty four 82/100 dollars, and oath having been also made that the said Smith A Brown & Ira Brown Conceal themselves so that the ordinary process of law cannot be served upon him, and that the said Robert C. Price having given bonds and security according

[12.532-21]

to the directions of the act in such case made and provided: We
therefore Command you, That you attach so much of the Estate, Real
or personal, of the said Smith A. & Ira Brown to be found in your Coun-
ty, as shall be of value sufficient to satisfy the said debt and costs according
to the complaint, and such estate in your hands to secure, or so
to provide that the same may be liable to further proceedings there-
upon according to Law at a Court to be holden at the Court House in
Knoxville, for the said County of Knox upon the Fourth Monday in September next, so as to
compel the said Smith A & Ira Brown to appear and answer
the complaint of the said Robert Rice and that you also Summon
as Garnishee - to be and appear at the said Court on the said
Monday of - next, then and there to answer to what may be
objected against - - when and where you shall make known to
the said Court how you have executed this writ and have you then
and there this writ. Witness, Hiram F. Money Clerk of the
said Court this 20th day of August, September, In the year of our Lord eight-
een hundred and fifty six

Seal

Hiram F. Money Clerk.

Upon this attachment appears the following returns

Returned

By virtue of the within Attachment I did on the 20th day of
August A.D. 1856 Levy upon One Brown Horse, One Brown
Brown Mare, one Gray Horse, one Brown Horse one Dun Mare
Two double Lumber Wagons, 2 sets double Harness & 3 Chaines
as the Property of S. A. & Ira Brown & also one Bay Horse, one
Brown Horse one Rhone horse & an Iron Grey Horse - one set
double Harness & Two double Lumb. Wagons in the Possession
of J Lauman Carnsold under attachment from Justice East
as property of S. A. & Ira Brown & also on the 23rd day of Au-
gust A.D. 1856 I levied the same upon one small Grey horse

and Common size dark Bay Wht Strip in face. one Span Large Chestnut Sorel Horses. one Span of dark Bay Horses one of which is little Largest. One small Brown Horse & one small Black Horse. Two yoke of Oxen. One yoke Red & White & one Yoke Black & White & one oz yoke. Three double lumber wagons Three setts double Harness in the Possession of Peter Burtnett Constable under Execution Against I. A & Ira Brown. All of which was so Levied upon as the Property of I. A. & Ira Brown & Served the within writ by reading the same to I. A & Ira Brown on the 29th day of August 1856.

E. Rumble. Sheriff

Filed Sept 20th 1856. H. T. Morey Clk.

Sheriff fees

2 Service — 1,00

1 Levy . . ,50

10 miles travel. ,50

1 Return ,10

2,10

E. Rumble Sheriff.

Writ of attachment in the case of Hugh Hagee Etal vs. I.A. & I. Brown

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

Whereas Hugh D. Hagey hath complained on oath to Hiram T. Morey Clerk of the Circuit Court of Knox County that Smith A Brown & Ira Brown are justly indebted to the said Hugh D. Hagy and Washington Hagy to the amount of Three hundred & Eighty One & 57/100 Dollars, and oath having been also made that the said Smith A Brown & Ira Brown so conceal themselves from the officers, that the ordinary process of law cannot be served upon them, and that the said Hugh D. & Washington Hagey having given Bonds and Security according to the directions of the act in such case made and provided.

[12532-22]

We therefore Command you, That you attach so much of the estate real or personal, of the said L. A Brown & Ira Brown, to be found in your county, as shall be of value sufficient to satisfy the said debt and costs according to the complaint, and such estate in your hands to secure, or so to provide, that the same may be liable to further proceedings thereupon according to law at a Court to be holden at the Court House in Knoxville, for the said County of Knox upon the fourth Monday in September next, so as to compel the said Defendants to appear and answer the complaint of the said W. D. & Washington Hagey and that you also Summon — as Garnishee to be and appear at the said Court on the said - Monday of next, then and there to answer to what may be objected against when and where you shall make known to the said Court how you have executed this writ and have you then and there this writ

Witness Hiram T. Morey Clerk of the said Court, this 20th day of August In the year of our Lord eighteen Hundred and fifty six

Seal

Hiram T. Morey Clerk.

Returns upon the foregoing Attachment

By virtue of the within attachment I have levy on the following property, one Bay Mare Seven years old, two dark Sorrel Horses Six or Seven years old past two Iron grays horses five years old, two do Iron grays horses Six years old - One Dorll horse five years old - One Bay horse five years old taken as the property of Smith A Brown & Ira Brown this the 21st day of August the A. D. 1856, this levy made ½ past eleven Oclock A. M. - and also one truck wagon.

I have also served the within writ, by reading the same to the within named L. A. & Ira Brown August 21st 56

James McCoy Shff. By C. B. Elenberger Dpt.

James McCoy Shff by C. B. Elenberger Dpt.

Came to hand August 21/56 at ½ past Eleven O'clock A. M.

James McCoy Shff By O B Clenger Dept.

I have served the within writ of attachment by attaching the following described property viz, one Grey Mare, - one Grey horse and bay horse - one sorrel Horse five or six years old - two double sets of Harness & two two Horse wagons as the property of Smith A & Ira Brown Levy made at 6 o'clock P. M. August 21st /56

James McCoy Sheriff. W. C. C.

By virtue of the within attachment I did on the 20th day of August A. D. 1856. Levy upon One Brown Horse & one Brown mare - one Gray Horse - one Brown Horse - one Dun Mare - Two double Lumber Wagons 2½ sets double Harness & 3 Chantes as the property of S. A. & Ira Brown & also one Bay Horse - one Brown horse - one Rhone Horse & One Iron Gray Horse - One set Double Harness & two double Lumber Wagons in the possession of P. Lamen Constable under attachment from Justice Court as the property of S. A. & Ira Brown & also on the 23rd day of August A. D. 1856 Levied the same upon one small Gray Horse - one Common Size dark - White Strip in face - one Span Large Chestnut Sorrel Horses one Span of dark Bay Horses one of which is little largest - one small Brown Horse & one small Black Horse - Two yoke of Oxen (one yoke red & white and one yoke Black & White) one yoke Three double Lumber wagons & Three sets Double Harness in the possession of Peter Burnett Constable under Execution Against S. A & Ira Brown. All of which was so levied on as the property of S. A. & Ira Brown.

Attachment filed Sept 8th 1856 Cornelius Rumble Sheriff

Sheriff fees

8 miles ,40
2 Levys 1,00
Bond ,50
Return ,10
$2,00

Sheriff Rumble's fees

1 Levy ,50
10 miles travel ,50
1 Return ,10
1,10 C. Rumble Sheriff

[12532-23]

Writ of attachment in the Case of Thomas Benson vs I. A & Ira Brown

State of Illinois } SS: The People of the State of Illinois
Knox County } To the Sheriff of said County, Greeting:

Whereas Thomas P. Benson, hath complained on oath to Hiram I. Morey Clerk of the Circuit Court of Knox County that Smith A Brown & Ira Brown are justly indebted to the said Thomas P. Benson to the amount of Four hundred and Twenty five Dollars, and oath having been also made that the said I. A. & Ira Brown are about to depart from the State of Illinois with the intent of removing their property & effects from said State & that they conceal themselves so process cannot be served upon them, so that the ordinary process of law can not be served upon him, and that the said Thomas P. Benson having given Bonds and security according to the directions of the act in such case made and provided: We therefore Command you, That you attach so much of the estate, real or personal, of the said I. A. & Ira Brown to be found in your County, as shall be of value sufficient to satisfy the said debt and costs, according to the complaint, and such estate in your hands to secure, or so to provide that the same may be liable to further proceedings thereupon according to law at a Court to be holden at the Court House in Knoxville, for the said county of Knox upon the 4th " Monday in September next so as to compel the said I. A. & Ira Brown to appear and answer the complaint of the said Thomas P. Benson - and that you also Summon — as Garnishee — to be and appear at the said Court on the said — Monday of — next then and there to answer to what may be objected against — when and where you shall make known to the said Court how you have executed this writ and have you then and there this writ. Witness Hiram I. Morey Clerk of the said Court, this 20th " day of August. In the year of our Lord.

eighteen hundred and fifty six

Seal

Hiram T. Morey Clerk.

Returns on the foregoing Attachment

By vertue of the within attachment I did on the 20th day of August A. D. 1856 Levy upon one Brown Horse, one Brown Mare, one Gray Horse, one Brown Horse, One Dun Mare, Two Double Lumber Waggons, 2½ sets double Harness, and 3 Chantes, as the property of L. A. & Ira Brown, also one Bay horse, one Brown Horse, one Rhone Horse & one Iron Gray Horse, one set double Harness & two double Lumber Waggons in the possession of D. Laman Constable under attachment from Justice Court as property of L. A. & Ira Brown. & also on the 23rd day of August 1856. Levied the same upon one small grey horse, one common size Dark Bay White Strip in face, One span large Chestnut Sorrel Horses, One Span of dark Bay Horses, one of which is little largest. One small Brown Horse and one small Black Horse, Two yoke of Oxen (one yoke Red & White & one yoke Black & White) one of yoke, Three double Lumber waggons and three sets double Harness in the possession of Peter Burnett Constable under execution against L. A. & Ira Brown, all of which was so Levied upon as the property of L. A. & Ira Brown & Served the within writ by reading the same to L. A. & Ira Brown on the 29 day of August 1856.

Sheriff fees, Filed Sept. 20th 1856 L. Rumble Sheriff.

2. Service — 1,00 Morey Clk.
1 Levy 50
10 miles Travel. 50
1 Return 10
2.10

Writ of attachment in the case of John Eiker et al vs L. A. & Ira Brown

State of Illinois } ss:
Knox County }

The people of the State of Illinois
To the Sheriff of said County, Greeting:

Whereas John Eiker hath complained on oath to Hiram T. Morey Clerk

12532-24

of the Circuit Court of Knox County, that Smith A Brown & Ira Brown is justly indebted to the said John Ecker, David M. Ecker & Samuel Frantz to the amount of two hundred and fifty $\frac{78}{100}$ dollars and oath having been also made that the said Smith A Brown and Ira Brown have departed this State or have concealed themselves so that the ordinary process of law cannot be served upon him, and that the said Plaintiffs having given bonds and security according to the directions of the act in such case made and provided: We therefore command you: That you attach so much of the estate, real or personal, of the said Smith A Brown & Ira Brown, to be found in your County, as shall be of value sufficient to satisfy the said debt and costs according to the complaint, and such estate in your hands to secure or so to provide that the same may be liable to further proceedings thereupon according to law at a Court to be holden at the Court House in Knoxville for the said County of Knox, upon the 4th Monday of September next so as to compel the said Defendants to appear and answer the complaint of the said plaintiffs and that when and where you shall make known to the said Court how you have executed this writ and have you then and there this writ. Witness, Hiram T. Morey Clerk of the said Court, this 20th day of August, In the year of our Lord eighteen hundred and fifty six

(Seal) Hiram T. Morey Clerk.

Returns on the above Writ of Attachment.

By virtue of the within attachment, I did on the 20th day of August A.D. 1856 Levy upon one Brown Horse one Brown Mare one gray horse one brown horse one dun Mare, Two double Lumber Waggons, 2 1/2 sets double Harness & 3 Chanties as the property of S. A. & Ira Brown & also one bay horse, one horse, one Rhone horse, & One Iron gray horse one set Double Harness & Two double Lumber Waggons in the possession

of P Lamman Constable under attachment from Justice Court as property of S. A & Ira Brown, Also on the 23rd day of August A. D. 1856 I levied the same upon one Small Gray horse, one common size Dark bay white strip in face, one span Large Chesnut Sorel horses one Span of dark Bay Horses one of which is little largest, one small Brown horse, one small Black horse, Two yoke of Oxen (one yoke Red & White & one Black & White) One Ox yoke Three double two horse waggons & Three sets of double harness in the possession of Peter Burnett Constable under execution against S. A. & Ira Brown, all which was so levied upon as the Property of S. A & Ira Brown & served the within writ by reading the same to S. A. & Ira Brown on the 29th day of August 1856

C. Rumble Sheriff

Sheriffs fees

Filed Sept 20. th 56.

2 service	1,00
1 Levy	,50
8 miles travel	,50
1 return	,10
	2.10

C. Rumble Sheriff

Writ of attachment in the case of Miles Smith vs S. A. & Ira Brown

State of Illinois } The People of the State of Illinois
Knox County } To the Sheriff of said County, Greeting:

Whereas William Arms Agent for Miles Smith hath complained on oath to Hiram T. Morey Clerk of the Circuit Court of Knox County that Smith A Brown & Ira Brown is justly indebted to the said Miles Smith to the amount of Two hundred & Eight 00/100 dollars and oath having been also made that the said Smith A Brown & Ira Brown have departed the State or have concealed themselves so that the ordinary process of law cannot be served upon him, and that the said Miles Smith having given bonds and security according to the directions of the act in such case made and provided: We therefore Command you, that you Attach so much of the Estate, real or personal

12532-25

of the said Smith A & Ira Brown to be found in your County as shall be of value sufficient to satisfy the said debt and costs according to the complaint, and such estate in your hands to secure, or to provide that the same may be liable to further proceedings thereupon according to law, at a Court to be holden at the Court House in Knoxville, for the said County of Knox upon the 4th Monday in September next so as to compel the said Smith A. & Ira Brown to appear and answer the complaint of the said Miles Smith, and that you also Summon as Garnishee to be and appear at the said Court on the said Monday of next then and there to answer to what may be objected against - when and where you shall make known to the said Court how you have executed this writ and have you then and there this writ. Witness Hiram D. Morey Clerk of the said Court, this 20th day of August in the year of our Lord eighteen hundred and fifty six. (Filed Sept 20th 1856) Hiram D. Morey Clerk.

Seal

Returns on the above writ of Attachment

By virtue of the within Attachment I did on the 20th day of August A. D. 1856. Levy upon One Brown Horse, & one Brown Mare, one Gray Horse, one Brown Horse & one Dun Mare, Two double Lumber Waggons 2 p sets of double Harness & 3 Chaines as the property of I. A & Ira Brown & also one Bay horse, one Brown Horse, one Rhone horse & one Iron gray horse, one set Double Harness & Two double Lumber Waggons in the possession of P Lamman Constable under Attachment from Justice Court as property of I. A & Ira Brown & also on the 28th day of August A. D. 1856. I Levied the same upon one small Gray horse, One common size Dark Bay white strip in face, One Span Large Chestnut Sorel Horses, One Span of Dark Bay Horses one of which is little largest, one small brown horse & one small black horse, Two yoke of Oxen (One yoke red & white & one yoke Black &

White) One Ox yoke Three double Lumber Wagons & Three sets of double Harness in the possession of Peter Burtnett Constable under execution against S. A Brown & Isa Brown All of which was so levied upon as the property of S. A. & Isa Brown & served the within writ by leading the same to S. A & Isa Brown on the 29th day of August 1856

C. Rumble Sheriff

Sheriff's fees
2. service 1,00
1. Levy ,50
10 miles travel ,50
1 Return ,10
2,10

C. Rumble Sheriff)

Writ of Attachment in the case of Nathan Barbero vs S. A & I. Brown

State of Illinois } ss:
Knox County }

The People of the State of Illinois
To the Sheriff of said County, Greeting:

Whereas Nathan Barbero hath complained on oath to Hiram T. Morey Clerk of the Circuit Court of Knox County that Smith A Brown & Isaac Brown is justly indebted to the said Nathan Barbero to the amount of Six hundred dollars, and oath having been also made that the said Smith A Brown and Isaac Brown are about to remove from this State with the intention of having their effects removed from this State so that the ordinary process of law cannot be served upon them, and that the said Nathan Barbero having given bonds and security according to the direction of the act in such case made and provided We therefore command you, That You attach so much of the Estate real or personal, of the said Defendants, to be found in your County as shall be of value sufficient to satisfy the said debt and Costs according to the complaint, and such estate in your hands to secure or so to provide that the same may be liable to further proceedings thereupon according to law at a Court to be holden at the Court House in Knoxville, for the said County of Knox, upon the fourth Monday in September next, so as to compel the said Defendants to appear and

[12532-26]

answer the complaint of the said Nathan Barbero, and that you also Summon the Peoria & Oquawka Rail Road Company as Garnishee—to be and appear at the said Court on the said Fourth Monday of September next, then and there to answer to what may be objected against them, when and where you shall make known to the said Court, how you have executed this writ, and have you then and there this writ. Witness Hiram T. Morey Clerk of the said Court this 20th day of August in the year of our Lord eighteen hundred and fifty six

Seal

Filed Sept 20th 1836. Hiram T. Morey Clerk.

Returns on the foregoing Writ of Attachment

By virtue of the within attachment I did on the 20th day of August A.D. 1836, Levy upon one Brown Horse & one Brown Mare, one Gray Horse One Brown horse, one dun Mare, Two double Lumb wagons, Three double Harness & Three Chaines as the property of L. A. & Ira Brown, & also one Bay Horse, one Brown, one Rhone & one Iron Gray Horse & one sett Double Harness & two Lumber Wagons in the possession of B. Lamman Constable, under attachment from Justice Court as the property of L. A & Ira Brown & also on the 23rd day of August A.D. 1836 I levied the same on one small Gray Horse, One Common size dark Bay white strip in face, One span Large Chestnut Sorrel Horses, One Span dark Bay Horses one of which is little largest, one small Brown Horse, & one small Black Horse. Two yoke of Oxen (one yoke red & white & one yoke black & white) One ox yoke, Three double Lumber Waggons & Three sett Double Harness. in the possession of Peter Burkett Constable under execution against L. A & Ira Brown, All of which was so levied upon as the property of L. A. & Ira Brown & served the within writ on D. M Gilson as Agent for the Peoria & Oquawka Rail Road as Garnishee by Reading the same to him on the 21st day of August 1836 & also served the same on L. A. & Ira Brown by reading the same to them

the 29th day of August 1856.

E. Rumble Sheriff.

Sheriffs fees.
1 serving Garnishee ,50
2. service 1,00
10. miles travel ,50
1, Levy ,50
1 return ,10
2,60 E. Rumble Sheriff.

Writ of attachment in the case of John Pendergast vs S. A. & I. Brown.

State of Illinois } ss. The people of the State of Illinois
Knox County }

To the Sheriff of said County, Greeting:

Whereas John Pendergast hath complained on oath to Hiram T. Moore Clerk of the Circuit Court of Knox County that Smith A Brown & Ira Brown is justly indebted to the said John Pendergast to the amount of One Hundred & Nineteen 99/100 Dollars, and oath having been also made that the said Smith A. Brown & Ira Brown conceal themselves, so that the ordinary process of law cannot be served upon them, and that the said Pendergast having given Bonds and Security according to the directions of the act in such case made and provided, We therefore Command you, That you Attach so much of the Estate real or personal, of the said Brown & Brown to be found in your County, as shall be of value sufficient to satisfy the said debt and costs according to the complaint, and such estate in your hands to secure, or so to provide that the same may be liable to further proceedings thereupon according to law; at a Court to be holden at the Court House in Knoxville, for the said County of Knox, upon the 4th Monday in September next, So as to compel the said defendants to appear and answer the complaint of the said Pendergast and that you also Summon as Garnishee — to be and appear at the said Court on the said Monday of next, then and there to answer to what may be objected against when and where you shall make known to the said Court how you have executed this writ and have you then and there this writ

[12532-B]

Witness, Hiram T. Morey Clerk of the said Court, this 20th day of ~~Dec~~ August. In the year of our Lord eighteen hundred and fifty six

Seal

Filed Sept 20th 1856) Hiram T. Morey Clerk

Returns on the above Writ of attachment

By virtue of the within attachment, I did on the 20th day of August A. D. 1856, Levy upon one Brown Horse & One Brown Mare, One Gray Horse, One Brown Horse, One Dun Mare, Two double Lumber Wagons 2½ sets Double Harness & Three Chaines as the property of L. A. & Ira Brown & also One Bay Horse, One Brown Horse, one Roane Horse & one Iron Grey Horse, One Sett Double Harness & Two double Lumber Waggons in the possession of J Lamman Constable, under attachment from Justices Court as property of L. A. & Ira Brown & also on the 23rd day of August A. D. 1856. I Levied the same upon one small Gray horse, One Common Size Dark Bay white Stripe in face, One Span large Chesnut Sorrel Horses. One span of Dark Bay horses one of which is little largest, one small Brown Horse & one small Black Horse. Two yoke of Oxen (One yoke Red & White & one yoke Black & white) One ox yoke, Three double Lumber Waggons. Three sets Double harness in the possession of Peter Bratten Constable under Execution Against L. A. & Ira Brown, all of which was levied upon as the property of L. A. & Ira Brown & Served the within writ by reading the same to L. A. & Ira Brown on the 29th day of August 1856.

Sheriff Fees

2 Service	1,00
1 Levy	50
10 miles travel	,50
1 return	10
	2,10

C. Rumble Sheriff

C. Rumble Sheriff

Copies of Judgments

Robert Price
vs
Smith A Brown & Attachment
Ira Brown

This day came the parties and their Attorneys and by consent and agreement thereof It is considered by the Court that the Plaintiffs have and recover of the said Defendants the sum of nine hundred and sixty one Dollars and thirty eight cents, the amount so agreed upon by the parties aforesaid, and that he have execution therefor, And it is further considered by the Court that the defendants recover of the said Plaintiff their costs by them in this suit expended, as also agreed upon by the parties, and that they have Execution therefor

$125 32-38

Hugh D Hagey &
Washington Hagey
vs
Smith A Brown &
Ira Brown
} Attachment

This day came the parties and their attorneys and by agreement the plaintiffs are to have Judgement against the defendants for the sum of Three Hundred and ninety two dollars and thirteen cents and the plaintiff to pay the costs. Therefore it is considered by the court that the Plaintiffs have and recover of the said defendants the sum of Three Hundred and ninety two dollars and thirteen cents. the amount agreed upon as aforesaid. And it is further considered by the court that they have general execution therefor. And that the defendants recover of the said Plaintiffs their costs by them in this suit expended and may also have execution therefor. And that the property attached in Warren County be released to the said defendants

E 12582-29

Thomas P. Benson
vs
Smith & Brown & Ira Brown
} Attachment

This day came the parties and their attorneys, and by consent and agreement, It is considered by the court, that the Plaintiff have and recover of the said Defendants the Sum of four hundred and Sixty five Dollars the amount so agreed upon as aforesaid, and may have Execution therefor, And it is further considered by the court that the Defendants have and recover of the said Plaintiff their costs by them in this suit laid out & expended, and may have Execution therefor

Miles Smith
vs
Smith & Brown & Ira Brown
} Attachment

This day came the parties and their attorneys, and by consent and agreement of parties, It is considered by the court that the Plaintiff have and recover of the said defendants the Sum of Two Hundred and Eight Dollars and Ninety Seven cents the amount

agreed upon by the parties as aforesaid and may have execution therefor.
And it is further considered by the Court that the Defendants have and recover of the said Plaintiff. their costs by them in this suit expended, as also agreed upon by the parties. And may have execution therefor. And the property attached in the county of Warren is hereby released to the said defendants

John Ecker. David M. Ecker
and Samuel Frantz
v
Smith A Brown & Ira Brown } Attachment

This day came the parties and their attorneys and by consent and agreement thereof. It is considered by the Court. That the plaintiffs have and recover of the said defendants. the Sum of Two Hundred and forty nine Dollars and ninty seven cents. the amount so agreed upon as aforesaid. by the parties. and that they have Execution therefor. And it is further considered by the court that the defendants recover of the said Plaintiffs their costs by them

2/2532-30

in this suit expended and as also agreed upon by the parties. and they have execution therefor

Alexander Ewing
vs
Smith & Brown & Joe Brown
} Confession

This day came George Harding Esqr Attorney in fact for the said defendants. and filed his power of Attorney the due execution of which was sworn to the satisfaction of the court. and confessed a Judgment for, and on behalf of the said defendants. and in favor of the said Plaintiff Alexander Ewing. for the sum of one thousand five hundred and fifty five dollars and forty cents. Therefore it is considered by the court that the Plaintiff. have and recover of the said Defendants the sum of One Thousand five hundred and fifty five Dollars and forty cents ($1555.40). the amount so confessed as aforesaid. together with his costs. by him in this behalf expended and may have Execution therefor
The above and foregoing Judgments were all rendered on the 24th day of September AD 1856

Robert C. Price
vs
Smith A. & Isa Brown
} In Attachment

Copy of Execution

State of Illinois
Knox County
} ss;

The People of the State of Illinois
To the Sheriff of said County, Greeting
We command you that you cause to be made of the Goods and Chattels Lands, Tenements, and real Estate, in your County of Smith A Brown & Isa Brown the sum of nine hundred & sixty one Dollars and thirty eight cents, which in our Circuit Court within and for the said County before our Judge of said Court at Knoxville, on the 23rd day of September, anno Domini eighteen hundred and 56 were awarded to Robert C. Price for damages which he sustained by reason of Detention, And also the further sum of Dollars and —— cents, which was adjudged to him for his costs and charges in that behalf expended, whereof the said Smith A Brown & Isa Brown were convicted as appears to us of record And have the money ready, and interest thereon, at the rate of six percent. per annum, from the time of recovering the same until paid, and make return of this writ, and of the manner in which you execute the same, ninety days from the date hereof

Witness Hiram T. Morey Clerk of our said Court, at Knoxville this 28th day of September 1856.

(Seal)

H. T. Morey Clerk.

Upon which Execution Issued as aforesaid appears the following return, to wit:

21583-31

Levi Lawrence

I, Lowelius Rumble, Sheriff of Knox County Illinois do hereby Certify that in the following cases in the Circuit Court of said County Commenced by Attachment Against the Parties hereafter named as defendants Returnable at the September Term of said Court A.D. 1856 to wit, Hugh & Washington Hagey vs Smith A & Ira Brown, Thomas P. Benson vs Smith A. & Ira Brown, John Eider & others vs Smith A. & Ira Brown, Miles Smith vs Smith A. & Ira Brown, Robert C. Price vs Smith A. & Ira Brown, Nathan Barbo vs Smith A. & Ira Brown & John Pendegraft vs Smith A. & Ira Brown. in all of which cases General Judgment was given Except the last two which were continued. The following Property being the same Property named in my return written on the Attachments Issued in said Court was Levied upon by me to wit; Seventeen Horses, four of which & one Set of Double Harness & two Double Wagons I never had in my possession the same having been Levied upon by Joshua Looman A Constable on attachment from Justice Court Issued & Served on the same before the Levy in the above Causes which Suits are undetermined & I could not find the Property to Sell the Same as it was secreted from me. Also said Attachments were Levied by me upon two yoke of Oxen & Yoke, Seven Double Wagons & Six & ½ Sets of double Harness & Three Shanties. Three of said Horses, two yoke of Oxen & Yoke & Two Sets double Harness were sold by M. Smith Constable upon Execution in his hands which were prior liens as against said Attachments and two & ½ Sets of Harness, Three Horses & one Wagon were replevied out of my hands by A. L. Potter which Suits is undetermined, the said four Horses stated as being in Joshua Loomans hands, two wagons & one

Set of Harness were Levied upon by said Bowman under attachment from Justice Court before my Levy which Suits in Justice are undetermined, the said Shantus were claimed by other Parties than the Defendants and were removed so the same could not be sold by me the remainder or other Harness never came to my hands. And I further Certify that by virtue of Executions issued Out of the Circuit Court on the Judgments as aforesaid recovered by virtue of an Execution issued out of the Same Court in favor of Alexander Ewing vs said Smith A. & Ira Brown recovered at the same term I Levied upon & Sold Property as follows that was attached for the following prices to wit; which sale was made on the 20th day of October 1856. Excepting the property Sold to B. Booth & W. H. Smith which was sold on the 1st day of November 1856.

1	Double Wagon to	H. D. Hagey for	$72.00
1	" " "	R. Benson "	79.75
1	" " "	T. Carnes "	54.25
1	Black Horse "	J. Pendegratt	99.00
1	" " "	J. Smith	116.00
1	Bay "	Casteel	63.00
Rec from W. Smith Bal. on Sale of Oxen			18.78
1	Sorrel Horse to	B. Booth	72.00
1	Gray " "	W. H. Smith	30.25

And I further certify that under said Executions I Levied upon as the Property of Smith A. & Ira Brown & Sold on 1st of November 1856. Property not attached as follows

1	Spotted horse to	Isaac Masten for	108.00
1	" " "	H. D. Heagy "	182.00
1	Sorrel " "	E Lotts	96.00
1	Brown " "	E Patrick	70.00

Excellent record

21532-32

Continued

And I further certify that one Wagon on by the attachment writs by me was replevied by Alexander E Going & has not yet been returned, and that two of the Horses attached were run off by one Boucher & has not been returned. And I further certify that the Property Levied upon as aforesaid by the above named attachments was after said Levy Attached by me on a writ of attachments from Warren Circuit Court in Case of Armstrong & others vs Said Smith A & Ira Brown.

C. Rumble Sheriff

Hugh D. & Washington Hagey
vs
Smith A. & Ira Brown
} In Attachment

Copy of Execution

The people of the State of Illinois

To the Sheriff of Knox County, Greeting:

We Command You, That of the Goods and Chattels, Lands and Tenements of Smith A. Brown & Ira Brown in your County, you make or cause to be made the sum of Three hundred and ninety two Dollars and thirteen cents which on the 24th day of September A. D. 1856, Hugh D. Hagey & Washington Hagey recovered in the Circuit Court of said County against the said Smith A Brown & Ira Brown with legal interest thereon from said date until paid And, also, the further sum of Dollars and cents, which were adjudged to the said by said Court, for costs

and charges in that behalf expended, whereof the said
stand_ convicted as appears to us of record; and that you have the
said sum of money, interest, and costs, at the Clerk's Office of
our said Court, at Knoxville, within ninety days of the date hereof, to render unto the said or such other person as shall
be entitled thereto, and have you then there this writ.

Witness, Hiram T. Morey, Clerk of our Circuit Court, at Knoxville, this first day of October A.D. 1856, the seal of said Court being hereunto affixed.

Seal

H. T. Morey Clerk.

Upon which Execution Issued as Above Appears the following return, to wit:

I, Cornelius Rumble, Sheriff of Knox County, Illinois do hereby Certify that in the following cases in the Circuit Court of said County Commenced by Attachment Against the Parties hereafter named as defendants returnable at the September Term of said Court A.D. 1856, to wit Hugh & Washington Hagey vs Smith A. Brown & Ira Brown, Thorne P. Benson vs Smith A. & Ira Brown, John Ecker & others vs. Smith A & Ira Brown, Miles Smith vs Smith A & Ira Brown, Robert C. Price vs Smith A & Ira Brown, Nathan Barbo vs Smith A. & Ira Brown & John Pendegratt vs Smith A & Ira Brown. In all of which cases General Judgment was rendered. Except the last two which were continued. The following Property being the same Property named in my return written on the attachments issued in said Court was Levied upon by me to wit: Seventeen Horses four of which & one Set of Double Harness & two double Waggons I never had in my possession, the same having been

42532-33

Levied upon by Joshua Lowman a Constable on attachment from Justices Court Issued & Levied on the same before the Levy in the above Causes which Suits are undetermined & I could not find the Property to sell the same as it was Secreted from me. Also said Attachments were Levied by me upon two yoke of Oxen & yoke, Seven double Waggons & Six & 1/2 half Sets of double Harness & Three Chanties. Three of said Horses two yoke of Oxen & yoke & two Sets of double Harness were sold by M. Smith Constable upon Execution in his hands which were prior Liens as against said Attachments and 2 & 1/2 Set of Harness Three Horses and one Waggon were replevied out of my hands by A. L. Potter which Suit is undetermined. The said four horses stated as being in Joshua Lowman's hands & two waggons & one Set of Harness were Levied upon by said Lowman under attachment from Justice Court before my Levy which Suits in Justices Court are undetermined. The said Chanties were claimed by other Parties than the Defendants and were removed so the Same could not be sold by me. The remaining or other Harness never came to my hands. And I further Certify that by virtue of Executions issued out of the Circuit Court on the Judgments as aforesaid recovered & by virtue of an Execution issued out of the Same Court in favor of Alexander Ewing vs said Smith A Brown & Ira Brown recovered at the Same term I Levied upon and Sold Property as follows that was attached for the following prices to wit Which Sale was made on the 20th day of October 1856 excepting the property sold to B. Booth and to H. Smith which was sold on the 1st day November 1856.

1, Double Waggon to H. D. Hagey for $72.00

1 Double Waggon to R. Benson for 79.75
1 " " " T. Barnes " 54.25
1 Black Horse " P. Pendegrat " 99.00
1 " " " J. Smith " 116.00
1 Bay " " Casteel " 63.00
Rec from M. Smith Bal. on Sale of Oxen " 18.78
1 Sorrel Horse B. Booth " 72.00
1 Gray " W. H. Smith " 80.25

And I further certify that under said Executions Levied upon as the Property of Smith A. & Ira Brown & Sold on the last day of November 1856. Property not attached as follows:

1 Spotted Horse Sold to J. Masten 108.00
1 " " " " W. D. Hagey 102.00
1 Sorrel " " " E Lotts 96.00
1 Brown " " " E. Patrick 70.00

And I further certify that One Wagon Levied upon by the attachments sued by me was replevied by Alexander Ewing & has not yet been returned, and that two of the Horses attached were run off by one Croucher & have not been returned.

And I further certify that the property Levied upon as aforesaid by the above named attachments was after said Levy attached by me on a writ of attachment Issued from Warren Circuit Court in the case of Armstrong & others vs said Smith A & Ira Brown.

E. Rumble Sheriff.

[12533-34]

Thomas P. Benson
vs.
Smith A & Ira Brown
} In Attachment

Copy of Execution.

The People of the United State of Illinois

To the Sheriff of Knox County Greeting:

We Command you, That of the Goods and Chattels, Lands and Tenements of Smith A. Brown & Ira Brown in your County, you make or cause to be made the sum of Four hundred and twenty five Dollars and Cents, which on the 24th day of September A. D. 1856, Thomas P. Benson recovered in the Circuit Court of said County against the said Smith A. Brown & Ira Brown with legal interest thereon from said date till paid; And also the further sum of Dollars and Cents which were adjudged to the said by said Court, for costs and charges in that behalf expended, whereof the said stand convicted as appears to us of record; and that you have the said sum of money, interest, and Costs, at the Clerk's office of our said Court, at Knoxville, within sixty days of the date hereof, to render unto the said or such other person as shall be entitled thereto, and have you then there this writ.

Witness, Hiram T. Morey, Clerk of our said Circuit Court, at Knoxville, this first day of October A. D 1856, the seal of said Court being hereunto affixed.

Seal.

H. T. Morey Clerk.

Upon which Execution Issued as Above appears the following return, to wit;

I, Cornelius Rumble, Sheriff of Knox County Illinois do hereby Certify that in the following cases in the Circuit Court of said County Commenced by Attachments Against the Parties hereafter named as defendants, returnable at the September Term of said Court A.D. 1856 to wit, Hugh & Washington Hagey vs Smith A & Ira Brown Thomas P. Benson vs Smith A & Ira Brown, John Ecker & others vs. Smith A & Ira Brown, Miles Smith vs Smith A & Ira Brown Robert C. Price vs Smith A. & Ira Brown, Nathan Barbo vs Smith A. & Ira Brown & John Vendegratt vs Smith A & Ira Brown, In all of which cases General Judgment was rendered Except the last two which were Continued. The following Property being the Same Property named in my return written on the Attachments issued in said Court was Levied upon by me to wit Seventeen Horses four of which & one Set of Double Harness & two double Wagons I never had in my possession the same having been Levied upon by Joshua Lowman a Constable on Attachments from Justice Court Issued & Levied on the same before the Levey in the above Causes which Suits are undetermined & I could not find the property to sell the same as it was secreted from me. Also said Attachments were Levied by me upon two yoke of oxen & Yoke Seven Double Wagons & 5½ Sets of Double Harness & Three Chaines. Three of said Horses two yoke of Oxen & Yoke & Two Sets double Harness were sold by Mr. Smith Constable upon Execution in his hands which were Prior Liens as against said Attachments and Two & ½ Sets of Harness Three Horses & One Wagon were replevied out of my hands by D. L. Potter which Suits is undetermined, the said four horses taken as being in Joshua Lowman's hands & Two Wagons & One Set of Harness

[12532-35]

were Levied upon by said Loomman under attachment from Justice Court before My Levy, which suits in Justice Court are undetermined the said Chattles were claimed by other Parties than the Defendants and were removed so the same could not be sold by me the remainder or other Harness never came to my hands.

And I further certify that by virtue of Executions issued out of the Circuit Court on the Judgments as aforesaid recovered & by virtue of an Execution issued out of the same Court in favor of Alexander Ewing vs said Smith A & Ira Brown recovered at the same term I Levied upon & Sold Property as follows that was attached for the following prices to wit: which sale was made on the 20th of October 1856. Excepting as to the property sold to B. Booth, W H. Smith which was sold on the first day of November 1856.

1 double Wagon	to	H. D. Hagly	for $ 72.00
1 " "	"	R. Benson	" 79.75
1 " "	"	J. Carnes	" 54.25
1 Black Horse	"	J. Pendegrat	" 99.00
1 " "	"	J. Smith	" 116.00
1 Bay "	"	Castel	" 63.00
Rec from W. Smith Bal. on Sale of Oxen			18.78
1 Sorrel Horse		B. Booth	72.00
1 Gray "		W. H. Smith	30.25

And I further certify that under said Executions I Levied upon as the Property of Smith A. & Ira Brown and sold property not attached as follows which was sold on the 1st day of November 1856. 1 Spotted Horse to Isaac Masten for 108.00

1 " "	"	H. D. Hagey	" 102.00
1 Sorrel "	"	E. Lotts	" 96.00
1 Brown "	"	E Patrick	" 70.00

And I further certify that one Wagon Levied on by the attachment writs by me was Replevied by Aleyander Ewing & has not yet been returned and that two of the Horses attached were run off by one Croucher & have not been returned. And I further certify that the Property Levied upon as aforesaid by the above named attachments was after said Levy attached by me on a writ of attachment issued from Warren Circuit Court in the case of Armstrong & others vs said Smith A & Ira Brown.

C. Rumble Sheriff.

John Eiker & D. M Eiker
vs
Smith A. & Ira Brown
} In Attachment.

Copy of Execution

The People of the State of Illinois

To the Sheriff of Knox County Greeting;

We command You, That of the Goods and Chattels, Lands and Tenements of Smith A. Brown & Ira Brown in your County, you make or cause to be made the Sum of Two Hundred and Forty nine Dollars and 97 Cents, which on the 24th day of September A. D. 1856. John Eiker, David M. Eiker Samuel Frantz recovered in the Circuit Court of said County against the said Smith A. Brown & Ira Brown with legal interest from said date until paid; And, also, the further Sum of Dollars and Cents, which were adjudged to the said by said Court for — costs and charges in that behalf expended

[12 Sd 2-36]

whereof the said Stand convicted as appears to us of record; and that you have the said sum of money, interest, and costs, at the Clerks office of our said Court at Knoxville, within ninety days of the date hereof, to render unto the said or such other person as shall be entitled thereto, and have you then there this writ.

Witness Hiram T. Morey, Clerk of our said Circuit Court at Knoxville, this 6th day of October A. D. 1836, the Seal of said Court being hereunto affixed

Seal

Hiram T. Morey Clerk.

Upon which Execution Issued as above appears the following return to wit:

I. Cornelius Rumble, Sheriff of Knox County Illinois, do hereby certify that in the following cases in the Circuit Court of said County commenced by Attachment against the Parties hereafter named as defendants, returnable at the September Term of said Court A. D. 1836, to wit Hugh & Washington Hagey vs. Smith A. & Ira Brown, Thomas P. Benson vs. Smith A. & Ira Brown, John Eiker & others vs. Smith A. & Ira Brown, Miles Smith vs Smith A. & Ira Brown Robert C. Price vs Smith A. & Ira Brown. Nathan Barbro vs Smith A. & Ira Brown. & John Pendegratt vs Smith A. & Ira Brown. In all of which cases General Judgment was rendered Except the last two which were continued. The following Property being the same Property named in my return written on the attachment issued in said Court was levied upon by me to wit Seventeen Horses four of which & one Set of double Harness & Two Lumber Waggons I never had in my possession the same having been levied upon by Joshua Lowman A Constable on Attachments

from Justices Court Issued & Levied on the same before the Levy in the above Causes which Suits are undetermined & I could not find the Property to sell the same as it was secreted from me. Also said Attachments Levied by me upon two yoke of Oxen & yoke, Seven double Wagons & Six & ½ Sets of double Harness & three Shanties. Three of said Horses two yoke of Oxen & yoke & two sets double Harness were sold by M. Smith Constable upon Executions in his hands which were Prior Liens as against said Attachments and two & ½ sets of Harness Three Horses & one Wagon were replevied out of my hands by A. S. Potter which suit is undetermined the suit four Horses stated as being in Joshua Lowman's hands & two Wagons & one Set of Harness were Levied upon by said Lowman under attachment from Justice Court before my Levy which suit in Justices Court are undetermined. The said Shanties were Claimed by other parties than the defendant, and were removed so the same could not be sold by me. The remainder of the Harness never came to my hands

and I further certify that by virtue of Executions Issued out of the Circuit Court on the Judgments as aforesaid recovered & by virtue of an Execution issued out of the same Court in favor of Alexander Ewing vs Smith A. & Ira Brown recovered at the same term Levied upon & Sold property as follows that was attached, for the following prices to wit, which Sale was made on the 20th day of October 1856, excepting the property sold to B. Booth & W. H. Smith which was sold on the 1st day of November 1856.

1, Double Wagon to	H. D. Hagley Jon	$	72.00
1, " " "	R. Benson "		79.25
1, " " "	J. Carnes "		54.25
1, Black Horse "	J. Pendegraft "		99.00

SB533-37

1 Black Horse to D. Smith for $116.00
1 Bay " " Casteel " 63.00
Rec. from M. Smith Bal. on Sale of Oxen " 18.78
1 Sorrel Horse B. Booth 72.00
1 Gray W. H. Smith 30.25

And I further certify that under said Executions I Levied upon as the Property of said Smith A. & Ira Brown & sold on the 1st November 1836. Property not attached as follows.

1 Spotted Horse sold to Isaac Masten for 108.00
1 " " " " H. D. Hagey " 102.00
1 Sorel " " " E Letts " 96.00
1 Brown " " " E. Patrick 20.00

And I further certify that one Wagon Levied on by the attachment writs by me was replevied by Alexander Ewing & has not yet been returned and that two of the Horses attached were run off by one Croucher & has not bin returned.

And I further certify that the property Levied upon as aforesaid by the above named attachment was after said Levy attached by me on a writ of attachment Issued from Warren Circuit Court in the case of Armstrong & others vs said Smith A. & Ira Brown.

E. Rumble Sheriff.

Miles Smith
vs
Smith A. & Ira Brown } In Attachment

Copy of Execution

The People of the State of Illinois

To the Sheriff of Knox County, Greeting

We Command you, That of the Goods and Chattels Lands and tenements of Smith A. Brown & Ira Brown in your County you make or cause to be made the sum of Two hundred and Eight Dollars and 99 Cents which on the 24th day of September A. D. 1856. Miles Smith recovered in the Circuit Court of said County against the said Smith A. & Ira Brown with legal interest thereon from said date until paid; and, also, the further sum of Dollars and cents which were adjudged to the said by said Court, for costs and charges in that behalf expended, whereof the said stand convicted as appears to us of record; and that you have the said sum of money, interest, and costs, at the Clerks office of our said Court, at Knoxville, within ninety days of the date hereof to render unto the said or such other person as shall be entitled thereto, and have you then there this writ.

Witness Hiram T. Morey Clerk of our said Circuit Court at Knoxville, this 6th day of October A. D. 1856, the seal of said Court being hereunto affixed.

Seal.

Hiram T. Morey Clerk.

Upon which Execution Issued as above appears the following return to wit

I. Cornelius Rumble, Sheriff of Knox County Illinois, do hereby Certify that in the following causes in the Circuit Court of said County Commenced by attachments Against the parties hereafter named as defendants, returnable at the September Term of said Court A. D. 1856 to wit, Hugh & Washington Hagle vs Smith A. & Ira Brown, Thomas P. Benson vs. Smith A. & Ira Brown,

$ 18538-38

John Eibre & others vs Smith A. & Ira Brown, Miles Smith
vs. Smith A. & Ira Brown, Robert C. Price vs Smith A & Ira Brown
Nathan Barbo vs. Smith A & Ira Brown & John Pendegrat vs
Smith A & Ira Brown. In all of which cases General Judgment
was rendered Except the last two which were continued. The fol-
lowing Property being the same Property named in my return
written on the attachment issued in said Court was Levied
upon by me to wit: Seventeen Horses four of which & one Set
of double harness & two double Waggons I never had in my Pos-
session, the same having been Levied upon by Joshua Lowman
a Constable on attachment from Justice Court Issued and
Levied on the same before the Levy in the above Causes, which
Suits are undetermined & I could not find the Property to sell
the same as it was secreted from me. Also said attachments were
Levied by me upon two yoke of Oxen & yoke, Seven double Wagons
& Six & ½ Sets of double Harness & three Shanties. Three of said
Horses two yoke of Oxen & yoke & two Sets of Double Harness were
sold by M. Smith Constable upon Execution in his hands
which were prior liens as against said attachments and
two & ½ sets of harness. Three Horses & one Wagon were replevied
out of my hands by A. L. Potter which Suit is undetermined
the said four horses stated as being in Joshua Lowmans hands & two
Wagons & one Set of Harness were Levied upon by said Lowman
under attachments from Justices Court before my Levy which
Suits in Justice Court are undetermined. The said Shanties were
claimed by other Parties than the defendants and were removed
so the same could not be sold by me the remainder or other harness
never came to my hands.

And I further certify that by virtue of executions issued out of

the Circuit Court on the Judgment as aforesaid recovered & by Virtue of an Execution Issued out of the same Court in favor of Alexander Ewing & Smith A & Ira Brown recovered at the same term I Levied upon & Sold Property as follows that was attached for the following prices to wit (which Sale was made on the 20th day of October 1856 excepting the property sold to B. Booth & W. Smith which was sold on the 1st day of November 1856.)

1 double Wagon	As	H D. Hagey	for $12.00
1 " "	to	R. Benson	" 19.75
1 " "	to	J. Carnes	" 54.25
1 Black Horse	"	J. Pendegrat	" 99.00
1 " "	"	L. Smith	" 116.00
1 Bay "	"	Castel	" 68.00
Rec. from M Smith Bal. on Sale of Oxen			18.75
1 Sorrel Horse,		B. Booth	for 12.00
1 Gray "		W. H. Smith	30.25

And I further Certify that under said Execution I Levied upon as the property of Smith A & Ira Brown & Sold on 1st day of November 1856. Property not attached as follows.

1 Spotted Horse	Sold to	D. Masten	for 100.00
1 " "	"	H. D. Hagey	" 102.00
1 Sorrel "	"	E Lotts	" 96.00
1 Brown "	"	E. Patrick	" 20.00

And I further Certify that one wagon Levied on by the attachment sued by me was replevied by Alexander Ewing & has not yet been returned, and that two of the Horses attached were run off by one Croucher, & have not been returned.

And I further Certify that the Property Levied upon as aforesaid by the above named attachments was after said Levy attach

12532-39

ed by me on a writ of attachments Issued from Warren Circuit Court in the case of Armstrong & others vs Smith A & Isa Brown

C. Rumble Sheriff.

State of Illinois } ss.
Knox County }

Knox Circuit Court
September Term A. D. 1836

Alexander Ewing
vs
Smith A. Brown & Isa Brown } In Attachment

Plaintiffs Costs. Clerk's fees,

H. T. Morey Clerk.

Ent order of filing Power atty 20. admr. oath 5. filing 1 papers 5. Doc 10. Ent ap Pffs atty 10. Ent order of confession 20. Ent final Judgt 25. Issuing Ex & filing Poa 45. Doc 10. Ent Shffs return & filing 15 Ent Sat 15. making & Ent Bill costs 30. certfy & seal 35. making copy bill costs. 25. $2.35

State of Illinois } ss.
Knox County }

I H. T. Morey Clerk of the Circuit Court within and for said County Do Hereby Certify that the above bill of Plaintiffs costs and Charges in the above entitled Cause, is truly copied from my Cost Docket, and is included in an Execution herewith issued against the said defendant.

Witness, H. T. Morey Clerk of our said Circuit Court and the Seal thereof, at Knoxville, this 28th day of September A. D. 1836.

Seal

H. T. Morey Clerk.

Copy of Execution

State of Illinois } ss
Knox County }

The People of the State of Illinois
To the Sheriff of said County Greeting:

We command you, That you cause to be made of the Goods and Chattels, Lands, Tenements, and Real Estate, in your County, of Smith A. Brown & Ira Brown the sum of Fifteen hundred and fifty five Dollars and forty cents which in our Circuit Court, within and for the said County, before our Judge of said Court, at Knoxville on the 23d day of September, anno Domini eighteen hundred and fifty six were awarded to Alexander Ewing for damages which he sustained by reason of Non payment &c.
And also the further sum of Two Dollars and thirty five cents which was adjudged to him for his costs and charges in that behalf expended, whereof the said Smith A Brown & Ira Brown were convicted, as appears to us of record. And have that money ready and interest thereon at the rate of six per cent. per annum from the time of recovering the same, until paid, and make return of this writ, and of the manner in which you execute the same, sixty days from the date hereof.

Witness H. T. Morey Clerk of our said Court, at Knoxville this 28th day of September 1856.

Seal

H. T. Morey Clerk.

Upon which Execution issued as above appears the following return, to wit:

I Cornelius Rumble, Sheriff of Knox County Illinois, do hereby certify that in the following cases in the Circuit Court of said County Commenced by Attachments against the Parties hereafter named as defendants, returnable at the September Term of said Court A.D. 1856.

1 Return

1 10532-40

2d Return

to wit; Heigh & Washington Hagly vs. Smith A. & Ira Brown. Thomas P. Benson vs Smith A. & Ira Brown. John Ecker & others vs Smith A. & Ira Brown. Miles Smith vs. Smith A & Ira Brown. Robert C Rice vs. Smith A & Ira Brown. Nathan Barbo vs Smith A & Ira Brown & John Rudegratt vs Smith A & Ira Brown. In all of which cases General Judgment was rendered Except the last two which were Continued, The following Property being the same Property named in my return written on the attachment issued in said Court was Levied upon by me to wit; Seventeen Horses, four of which & one set of double Harness & two double waggons, I never had in my possession the same having been Levied upon by Joshua Lowman A Constable on attachment from Justices Court Issued and Levied on the same before the Levy in the above Causes, which suits are undetermined & I could not find the Property to sell the same as it was secreted from me. Also said Attachments were Levied on by me up A two yoke of oxen & yoke, Seven double waggon & Six ⅌ sets of double Harness & Three Shanties, Three of said Horses, two yoke of oxen & Yoke & two sets of double Harness were sold by M. Smith Constable upon Executions in his hands which were prior Liens as against said attachments and two ⅌ sets of harness, Three horses & one waggon were replevied out of my hands by A. L. Potter which suit is undetermined, the said four horses stated as being in Joshua Lowmans hands & two waggons & one Set of harness were levied upon by said Lowman under attachment from Justices Court before my Levy which suits in Justices Court are undetermined. the said Shanties were Claimed by other Parties than the defendants and were removed & the same could not be sold by me, the remainder or other harness never came to my hands And I further Certify that by virtue of Executions issued out of the Circuit Court on the Judgments as aforesaid rec'd

& by vertue of an Execution Issued out of the same Court in favor of Alexander Ewing vs said Smith A Brown & Isa Brown recovered at the same term I Levied upon and sold property as follows that was attached for the following prices to wit (which sale was made on the 20th day of October 1836 & Excepting as to the property sold to B. Booth & W. H. Smith which was sold on the 1st day of November 1836.

1 Double Waggon	to	H. D. Hagly	for 72,00
1, " "	"	R. Benson	" 79.75
1, " "	"	J. Carnes	" 54.25
1, Black Horse	"	J. Pendegrat,	99.00
1, " "	"	J. Smith	116.00
1, Bay "	"	Cattel	63 00
Rec from M. Smith Balance on Sale of Gen			18.78
1, Sorrel Horse		B. Booth	72.00
1, Gray Horse		W. H. Smith	30.25

And I further certify that under said Executions I Levied upon as the property of Smith A & Isa Brown & Sold on 1st day of November 1836, Property not attached as follows; 1 Spotted Horse Sold to Isaac Masten 108,00

1 "	"	"	H. D. Hagly 102.00
1 Sorrel "	"	"	E Lotts 96.00
1, Brown "	"	"	E Patrick 70.00

And I further certify that one Waggon Levied on by the attachments rosits by me was replevied by Alexander Ewing & has not yet been returned, and that two of the Horses attached were run off by one Croucher & have not been returned. And I further certify that the Property Levied upon as aforesaid by the above named attachments was after said Levy attached by me on a writ of attachment Issued from Warren Circuit Court in the case of Armstrong & others vs said Smith A & Isa Brown

C. Trimble Sheriff

2d Return

[12532-41]

The plaintiff objected to the introduction of the judgment & Execution in favor of Ewing vs the Browns on the ground that the same were irrelevant & improper evidence but the Court overruled the same and the Plaintiff then and there excepted to such ruling

Deft then offered in evidence the papers, Record and proceedings in the case of Ewing vs Rumble; Replevin the record of which is in words and figures following to wit

State of Illinois }
Knox County } S. Pleas before the Honorable
John S Thompson Judge of the Sixth
Judicial Circuit in the State of Illinois at a
Court began and held at the Court House in
the city of Knoxville on the fourth Monday of
September in the year of our Lord One thousand
Eight hundred and fifty six it being the
twenty second day of said month.

Present Honorable John S Thompson Judge
A M Craig States Attorney
Cornelius Runkle Sheriff
Hiram J Story Clerk

Alexander Ewing } Plaintiff
vs } Replevin
Cornelius Runkle } Defendant

Be it remembered that
on the 28th day of August A.D. 1856. the
Plaintiff in this suit by his Attorney, and upon
leave filed his affidavit in the Clerks Office
of the Circuit Court of Knox County, Illinois
which reads in the words and figures following
to wit

State of Illinois }
Knox County } S. Circuit Court Knox County

Sixth 632-48

In Replevin

I. H. N. Knightly Attorney and Agent for Alexander Ewing, being duly Sworn under oath says that Alexander Ewing is now owner and lawfully entitled to the possession of the following described property to wit One small Gray Horse of the value of one hundred and ten dollars; One Dun Colored Mare of the value of One hundred Dollars One Roan Horse of the value of one hundred Dollars; One sorrel mare of the value of the value of ninty dollars. One large Bay horse of the value of Ninety dollars. One small bay horse of the value of Ninety dollars. One small sorrel horse of the value of Eighty dollars. One dark Bay or Brown horse of the value of Eighty five dollars One small bay with white stripe in the face and one white eye of the value of Eighty dollars. One light Gray horse five years old big joint on hind leg valued at seventy five dollars. One large Black Horse a little Ring Boning valued at Eighty five dollars, One dark bay Roan horse of the value of ninety dollars. One Span of old Brown horses valued at the value of seventy five dollars each. One bay horse of the value of ninety dollars, and one bay or sorrel mare of the value of Ninety dollars Five Two horse Wagons of the value of Sixty five Dollars each. Five Set of double Harnesses of

the value of Ten dollars each and that the same property is unjustly wrongfully and illegally detained by one Cornelius Rumble at Knox County aforesaid. And that the same has not been taken for any tax, assessment or on fines levied by virtue of any law of this State nor seized under any execution or attachment against the goods and chattels of the said Alexander Ewing liable to execution or attachment.

Subscribed and Sworn H. N. Knightley
to before me this 28th day
of August 1856. Hiram T. Morey clk

And at the same day. H. N. Knightly filed his affidavit of the removal of the cause, in which leads in words and figures as follows to wit

State of Illinois }
Knox County } In Knox County Circuit
Court. September Term 1856

Alexander Ewing }
v } Replevin
Cornelius Rumble }

H. N. Knightley being duly sworn says that said Cornelius Rumble defendant in above cause is the

[2552-43]

present acting Sheriff of said County and
affiant further states that Dr. Henderson
the Coroner of said County has removed
from the State of Illinois whereby his office has
become vacant. in consideration of which
the said Plaintiff by his agent. H. N Knightly
prays the clerk of this court to appoint an
"Elisor" to serve the process in said cause

H. N. Knightly

Subscribed and sworn to before me this
28th day of August 1856 H. T. Story clerk

Whereupon Isaac Mastin was appointed said
Elisor and a writ of Replevin was issued
out of said Court which Reads in words
and figures as follows to wit

State of Illinois }
Knox County } ss

The People of the State of
Illinois To Isaac Mastin "Elisor" of
said County Greeting

Whereas H. N.
Knightly Attorney and agent of Alexander
Ewing the Plaintiff in this suit hath com-
plained on oath to Hiram T. Story Clerk of
the Circuit Court of said County that
Cornelius Rumble the defendant herein
unlawfully and wrongfully doth detain

the following described goods and chattles to wit One small gray horse of the value of One Hundred Dollars One Bay Horse of the value of One hundred and ten dollars One Cream colored Mare of the value of One Hundred dollars. One Roan Horse of the value of One Hundred Dollars. One Sorrel Mare of the value of Ninety dollars. One large Bay horse of the value of Ninety Dollars One Small Bay horse of the value of Ninety Dollars. One Small Sorel Horse of the value of Eighty dollars. One dark Bay or Brown horse of the value of Eighty five dollars, One small bay with white Stripe in the face and one white eye of the value of Eighty Dollars One light gray five years old leg joint or hind leg valued at Seventy five dollars One large Black Horse a little sway Spenny valued at Eighty five dollars. One dark Bay Roan Horse of the value of Ninety Dollars, One Span of old Brown Horses of the value of Seventy five Dollars each. One Bay Horse of the value of Ninety Dollars And one Bay or Sorel mare of the value of Ninety Five two horse Waggons of the value of Sixty five dollars each. Five Set of Double Harness of the value of Ten Dollars each Dollars, and that the said Plaintiff is the owner of, and is now Justly & Legally entitled

[12532-44]

to the possession of the above described property
Therefore we command you that if the said
Plaintiff shall give you bond with good &
sufficient security in double the value of the
said property above described, as required by
law to prosecute his suit in this behalf to effect and
without delay, and to make return of the
said property, if return thereof shall be awarded
and to save and keep you harmless in replev-
ying said property. You cause the said
property to be replevied and delivered to the
said Plaintiff without delay; and also
that you summon the said defendant
to be and appear before the Circuit Court of
said County, on the first day of the next
Term thereof to be holden at the Court House
in Knoxville, in said County, on the Fourth
Monday in the month of September next to
answer unto the said Plaintiff in the
premises, and have you then and there this
writ with an endorsement thereon in what
manner you have executed the same, to-
gether with the Bond which you shall
have taken from the said Plaintiff
as by you commanded before executing this
writ Witness Hiram L. Moore Clerk
of our said Circuit Court, and the
Seal thereof at Knoxville in said

County this 28 day of August
A D. 1856

Hiram S. Merry Clk

Upon which writ Issued as above there appears
the following Return - to wit
appointment of Isaac Master as Clerk & his

State of Illinois }
Knox County } S.S. Whereas the within and
foregoing writ is issued against the Sheriff
of said Knox County who is incompetent
by law to serve the same, and H. Nelson
Knightley having made and filed an
affidavit in the office of the clerk of the
Circuit Court of said County, Showing
that Dr. Joseph Henderson the Coroner
of said County, has removed from the
State of Illinois. Therefore in accordance
with the statute in such case made &
provided, I have constituted and appoin-
ted, and by these Presents do constitute
and appoint Isaac Master "Elisor"
to execute the within and foregoing writ of
Replevin in as full and ample a manner
as if he were Sheriff or Coroner of said County

Witness Hiram S. Merry Clerk of
the Circuit Court of Knox County at
Knoxville this 28th day of August
A D. 1856 Hiram S. Merry Clerk

L10532-45

Return

In obedience to the within Command I did on the 30 day of August 1856 Execute the same by taking One Brown Horse, One Gray Horse and One Cream Mare, Two Double set and half of harness and Two double waggons and delivered the same to the Plaintiff herein and served the same writ on the within named C. Runkle, by reading the same to him on the 30th day of August 1856 The remainder of the within named property not found in my County

Fees 5.00 Isaac Martin Coroner

And afterwards to wit on the 2nd day of October A D 1856 at a Term of the Circuit Court then holden an order ~~was passed~~ of said Court was entered of Record, which reads in the words and figures following to wit

Order

Alexander Ewing
vs
Cornelius Runkle
} Replevin

By agreement of parties, the property replevied herein is to be restored to the defendant, and this suit dismissed at the Plaintiffs costs Therefore it is considered by the Court that the defendant have and

Return of the said Plaintiff. his costs by him in this suit expended and may have Execution therefor

for the purpose of showing that the Plff had relinquished all property therein described to the defendant. to the introduction of which Plff. then and there objected. the Court overruled the objections & admitted the proof to which ruling of the Court the Plff then and there excepted.

It is agreed that Keightly ordered out an Execution on the Judgment confessed in favor of Ewing on the very day the same was confessed

Doctor Pollock being sworn stated that Keightly filed an order for an Execution on the Judgment in favor of Ewing at the term when Judgment was rendered thinks that Keightly placed the Ex. in hands of Sheriff but is not sure about this All the creditors were anxious to get out their Executions.

It is agreed that the defendant was at the time of taking the property acting Sheriff of Henry Co. Illinois and acted as such at the time of levy & sales. here the defendant rested his case.

It is admitted that the property Replevied by Ewing had been replevied by one Potter & held by him as his property Excepting one wagon

[illegible] 1a 532-46

Amos Palmer recalled by Plaintiff Stated that Deft came out to his place in last week of Sept to levy on property, that Craig came with him. Levied on span of Blacks and others (Motion by defendant to Exclude this evidence because it is an attempt to show a trespass at two different times before the 1st Nov the time stated in the Declaration. Motion overruled by the Court to which ruling of the Court Defendant by his Counsel then & there Excepted) the first time he came he levied on horses in the barn. 1 span Black horses. 2 Grays one of them flea bitten Sorrel, he saw no others then, he got there in all horses 2 Black large Gray, flea bitten Gray Dunn Mare, small Brown horse Dark Bay 2 Sorrels, small Bay, he got 10 or 12 all together - large Bay & small Bay was taken by Smith Constable & sold. 3 of the horses were Replevied by Potter & detained. Defendant sold 3 waggons Sales were on 2 different days. dont know what sort of process whether Execution or attachment these levies were made - when at the Barn Deft said charge the keeping to me from that day - he had paper & pencil looked at the horses asked if there were any marks on them - I understood he levied on them - Can't say by what process.

Keightley recalled - Ewing brought up altogether from 8 to 12 horses. 3 horses were taken by Potter. 3 were taken by Mercurius Smith & sold on prior Executions the others were all before the Court House for sale at 2 different times - defendant sold nine - Ewing had 5 waggons in his yard - Deft sold 2 or three waggons, I had conversation with Rumble

last Aug. or 1st of Sept. we had been quiet about the Bill of sale as Burtnett told how the Levy was — I told Deft I thought the Levy good for nothing. I believe his reply was we will try it I told him he had not seen the property Levied on by the attachments. — that he got the description from Burtnett — he said he had seen part of the property 2 horses & wagon took the rest from Burtnett's description — this talk was after I got the sale Bill recorded & I felt safe in posting the Defendant up on his Levy. I think the property was brought up from the mine on 20th August & perhaps 21st — it may be it remained here in town a day — I heard of no Levy — I had a spat with the Deft before or after this Conversation, some of the Property was in Town some at Rogers & some in Pfiffs yard. I was not in Pfiffs yard nor Rogers, nor Palmer's that day — neither 20th 21st nor 23rd day — I did not stay with the property — Levy might have been made & I not know it. Burtnett got 8 horses & 2 wagons on the void executions before the Bill of Sale was made Defendant was hunting for property on the 20th Aug.

A. Thompson recalled by Plaintiff — I heard Keightly & Deft talk about the Levy — Defendant said he saw the property with the exception of some can't say what he said the Exceptions was.

A. M. Craig being sworn for Deft. says. It was immediately after the Sept. Term of the Circuit Court that I and Deft. were at Amos Palmers — I saw no Levy made — we all went

[12532-47]

to the barn and saw the horses — Deft had a paper — & if I recollect right he looked at the horses with a view to advertise on Executions.

The foregoing was all the evidence in the case.

The Plaintiff then requested the Court to instruct the Jury as follows,

1st — Before the jury can find the sale from Brown to Ewing fraudulent they must believe from the evidence that Ewing intended to delay hinder or defraud the creditors of Brown.

2nd If the sale was made in good faith, for the purpose of gathering the property and paying Ewing first, & dividing the balance of the property among the creditors, such sale is valid and binding, and passed the title to so much of the property as Ewing was able to reduce to possession.

3 If the creditors knew the object and intention of the Bill of Sale and assented thereto, they cannot afterwards insist that it was fraudulent.

4 If the Sale was fair and honest at the time it was made, the legal title to so much of the property as Ewing reduced to possession, passed to him, and any effort on the part

of the creditors, or of Ewing to procure judgments afterwards against Brown would not render the sale void.

5. If the sale was fair and honest when it was made, the obtaining of a Judgment afterwards by Ewing against the Brown's would not render such sale fraudulent or void

6. If the judgment in favor of Ewing against the Browns was obtained without his knowledge or consent and if he did not consent to it, when informed of its existence, such judgment cannot be used to his injury

A Debtor in failing circumstances, has a right to prefer one creditor over another, and pay him in full, if he chooses to do so. And he may lawfully assign all his property to pay one creditor, and divide the remainder, after such payment, among his other creditors.

8. Brown had a legal right to defend against the attachments and to employ counsel for that purpose, and his doing so is of itself no evidence of fraud

9. If the attachments were illegally issued and without any cause, every body interested in the property attached,

L 12532-48

had a right to defend & defeat them, and the doing so, is no indication of fraud.

10. The return of the officer upon the attachments and executions, in this case, are only prima facie evidence for the deft. and may be disproved, or contradicted by parol evidence.

11. If the jury believe from the evidence that the attachments from the Circuit Court were levied upon the property in controversy without seeing it, and without the property being present when the levy was made, such levy is illegal and void, as against subsequent purchases in good faith.

If the agreement between Browns. Ewing & with the knowledge and consent of Browns other creditors was that Ewing was to receive the property in controversy on the Bill of Sale read in Evidence, and to either first pay himself & the balance to go to the other creditors or for the property to be divided amongst all the creditors and he did so Receive the possession of the property then in either Event= Ewing was the legal owner of the property and held it as Trustee for himself and other creditors

Unless the same was fraudulent in fact.

The Court gave all the instructions Except those marked numbered 5 - which were refused to which refusal of the Court the

Plaintiffs then and there excepted.

Defendant then asked the Court to instruct the Jury as follows.

1. If the Jury believe from the evidence that the several writs of attachments issued in favor of Browns creditors were duly issued and levied by the defendant as Sheriff in the proper discharge of his duties, on the property in controversy in this cause before the sale of the said property by the Browns to Ewing, and that this is the only trespass complained of then they will find for the defendant.

2. If the Jury believe from the evidence that the sale of the property in controversy from the Browns to Ewing was made with the intent to hinder or delay the other creditors of the Browns in the collection of their debts, then such sale is void as to such creditors; and in such case it makes no difference if Ewing was a creditor of the Browns, and was to have his debt paid by such sale.

3. If the jury believe from the evidence that the sale bill to Ewing was only intended to be a security for the payment of Ewing's debt and that after the making of such sale bill. Either by himself or with his knowledge & consent. Ewing voluntarily took a judgement in the Circuit Court against the Browns for his said debt, in lieu of the said Sale Bill, then such judgement was an extinguishment of said sale bill, and the property became released therefrom and liable to be taken on execution or attachment issued against the

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Browns, notwithstanding the said sale bill.

4. If the jury believe from the evidence that a part of the property described in the sale bill was sold to Ewing to hinder or delay Brown's creditors, or any of such creditors in the collection of their demands against the Browns, then the said sale bill is void entirely, and cannot give the plaintiff any right to recover in this action.

5. If the jury believe from the evidence that the sale bill to Ewing was made with a private or secret understanding between the parties thereto, that Ewing's debt should first be paid out of the property therein described, and that then the balance should, at Ewing's discretion be applied for the benefit of Brown other Creditors, then such bill of sale is void as to all such other creditors as have not assented to such secret understanding; and if this is so, and the said bill of sale is the only foundation and evidence of the Plaintiffs title in this case, and the defendant levied legal writs on the property in the due discharge of his duty, and this is the only trespass proved against defendant the jury must find in favor of the defendant.

6. If the jury believe from the evidence that at the time of making of the making of the bill of sale there was any secret or private trust injurious to the rights and interests of the other creditors of the Browns and in regard to the manner in which the property or its proceeds should be applied, and different from that ex-

pressed on the face of the bill of sale, then such sale bill is void as against such other creditors of the Browns, if the carrying out such trust would hinder or delay such creditors in the collection of their debts.

7 If the jury believe from the evidence that the sale bill to Ewing was only intended as a payment of Ewing's debt against the Browns, which amounts to only something over one thousand dollars, and that said bill of sale was not intended as an absolute and bona fide conveyance of such property and that said bill of sale bill conveyed property of the value of from five thousand to seven thousand dollars, then such bill of sale is voluntary as to the excess of the value of such property over Ewing's debt, and as such void as against Browns other creditors.

8. The sale bill from the Browns to Ewing is absolute on its face and if at the time of making the same there was any secret understanding between the parties to such bill of sale as to the disposition of the property thereby conveyed which would be injurious to the rights and interests of the creditors of the Browns, then such sale bill is void as against such creditors rights and interest and therefore if the jury believe from the evidence that the writs given in evidence were duly issued and levied on the property by defendant and such writs were in favor of such creditors, and that said sale bill shows the only title which the plaintiff had to such property, they will find in favor of defendant if such levy is the only trespass proved against defts.

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9. If the jury believe from the evidence that it was a part of the agreement upon which the bill of sale from the Browns to Ewing was given that the attachment suits then pending against said Browns should be defended and the plaintiffs in said suits prevented from obtaining judgments and collecting their just debts, or hindered or delayed in so doing this renders the said bill of sale void against such creditors if the jury believe from the evidence that said suits were rightfully brought and that the plffs were entitled to maintain them.

10. If the jury believe from the evidence that it was a part of the understanding or agreement & that it was secretly made, between the Browns and Ewing upon which the bill of sale was made that said Ewing should account to said Browns or either of them, or to any other person for their benefit for all of the property mentioned in, or conveyed by said bill of sale not necessary to pay said Ewing's debt, this secret agreement or understanding would render the bill of sale void as against the creditors of the Browns, and would not authorize the plaintiff to recover in this suit, so as to injure their rights.

11. If the jury believe the plaintiff by himself or atty. with his knowledge and consent obtained a judgment against the Brown for the same debt intended to be secured or paid by the bill of sale, after the execution of such bill of sale, that he caused the execution in his favor shown in evidence to be placed in the

hands of the defendant as Sheriff to execute, and that he or his proper attorney gave the defendant license to levy the same on the property described in the declaration, and that the defendant levied said execution accordingly with other executions, and that these levies are the only trespasses proved in this cause, then they will find for the defendant.

12. If the jury believe from the evidence that Ewing obtained a judgment as mentioned in the last instruction, and caused by himself or attorney an execution to be issued thereon which came duly to the hands of the defendant as Sheriff to execute, this would be prima facie evidence that said Ewing gave the defendant authority to levy such execution on the property of the said Browns wherever he might find the same in the said defendants County.

13. The Jury is instructed that if they believe from the evidence that the property in controversy at the commencement of this suit was the property of Alexander Ewing, John Ewing & Albert Burdette and not of the Plaintiff alone, and that the property was taken from the possession of the said Alexander Ewing, John Ewing & Albert Burdette, or from the possession of their agent they will find for the defendant

all of which were given except those marked No. 13. to the giving of which instructions the Plaintiff by his counsel then & there objected which objection was overruled by the Court

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to which ruling of the Court the Plaintiff then & there excepted

The case was then submitted to the jury who found a verdict for the defendant.
The Plaintiff then moved the Court for a new trial for the following reasons

Alexander Ewing
vs
Cornelius Rumble } In the Knox C.C.
Oct T. 1857.

The Plaintiff comes now and moves the Court for a new trial for the following reasons

1st Because the verdict is contrary to law

2nd " It is contrary to the evidence.

3rd " The instructions given on the part of the defendant were illegal & improper & calculated to mislead the jury.

4. The Court refused proper instructions on the part of the plaintiff.

5. The Court permitted improper evidence to be given to the jury on the part of the defendant.

By Kellogg & Reed
his attorney.

The Court refused the motion & refused to grant a new

trial, to which ruling of the Court the Plaintiff there & then in open Court at the time excepted and as the foregoing Exceptions do not appear of record It is ordered that the same be allowed, signed, sealed, and placed upon the record.

Witness My hand and seal this 4th day of December A.D. 1857.

John L. Thompson (Seal)

State of Illinois }
Knox County } ss

I Cyrus Arms, Clerk of the Circuit Court within and for said County do hereby certify that the above and foregoing is a full, true, and perfect copy of the record in said cause as the same appears in my Office

In testimony whereof I have hereunto set my hand and affixed the seal of said Court at my office in the City of Knoxville this 1st day of February A D 1858

Cyrus Arms Clerk

Fees on Transcript $3.50

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Alexander Ewing
vs
Cornelius Runkle

State of Illinois
In the Supreme
Court April
Term A.D. 1858

And now comes the said Alexander Ewing by [illegible] and in the judgment & proceedings aforesaid Error hath intervened in this

1st The Court refused proper instructions to the jury on the part of the plaintiff

2 The Court gave improper instructions to the jury on the part of the ~~pl~~ defendant

3. The Court excluded proper evidence from the jury on the part of the plaintiff

4. The Court permitted the defendants to introduce to the jury improper evidence

5. The verdict was against evidence

6. The Court erred in refusing to grant a new trial

7. The verdict & judgment were against the law

Wherefore for the errors aforesaid & for other errors appearing upon the face of the record the said plaintiff prays that said judgment may be reversed annulled set aside and for naught held

Reed & Williamson
Attorneys for Plaintiff

And the said Appellee Crimes and says that in the record and proceedings aforesaid there is no Error

Manning & Swan

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Alexander Long

vs

Cornelius Burnett

Transcript

filed March 15, 1858

filed March 15, 1858

S. Leland

Clk

ALEXANDER EWING,
vs.
CORNELIUS RUNKLE.

STATE OF ILLINOIS,
IN THE SUPREME COURT,
APRIL TERM, A. D. 1858.

APPEAL FROM KNOX.

ABSTRACT.

This was an action of Trespass, commenced in the Knox Circuit Court, to recover the value of two wagons and seven horses, claimed by the Plaintiff, and was tried in that Court, before a Jury, at the October Term, A. D. 1857. Verdict and judgment for Defendant. Motion for a new trial, by Plaintiff, overruled.

Pleas were filed as follows:

1. The General Issue.

2. That on the 20th day of August, 1856, seven attachments were issued out of the Circuit Court of Knox Co., against Smith A. Brown, and Ira Brown, as follows:

One in favor of Hugh and Washinton Hagy,
One in favor of Robert C. Price,
One in favor of Thomas P. Benson,
One in favor of John Eiker & al.,
One in favor of Miles Smith,
One in favor of Nathan Barboro,
One in favor of John Pendegrast,

All of which were returnable to the Sept. Term, A. D. 1856, of said Court.

That said attachments were levied on the property in controversy by defendant, who was then Sheriff of said County, on the 20th Aug., as the property of Smith A. Brown, and Ira Brown, whose property it really was.

That personal service was had on the Browns' and judgment rendered in each of the attachment suits for Plaintiff, at the Sept. Term, 1856.

That on the 28th day of Sept. 1856, execution issued in favor of Price, and on the 1st day of Oct. 1856, execution issued on the judgments in favor of Hagy and Benson.

On the 6th of October, executions issued in favor of Eiker and Smith.

That at the September Term, 1856, the Plaintiff, Alexander Ewing, recovered a legal judgment against Smith A. & Ira Brown, for the sum of $1555 40 and costs, and execution issued thereon on the 28th day of Sept. 1856.

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That said executions were delivered to the Sheriff, as follows :

Price, 29th Sept. 1855.
Benson, 4th Oct. 1856.
Eiker, 6th Oct. 1856.
Ewing, 29th Sept. 1856.

That said executions were levied by the Defendant, who was Sheriff, on the property sued for, as the property of Brown & Son, on the 20th day of Oct. 1856, and said property was sold at public auction on the 1st day of Nov. 1856, by the Defendant as Sheriff. The plea then alleges that personal service was had in each of the attachment cases, and that general judgments were rendered therein, and that the executions were levied upon the property as the property of Smith A. & Ira Brown, whose property it really was.

3 The third plea sets up a license from the Plaintiff to the Defendant to commit the trespass set forth.

4. Alleges that Ewing, the Plaintiff, did, at the Sept. Term, A. D. 1856, of the Knox C. C., recover a legal judgment against Smith A. Brown & Ira Brown, for the sum of $1555 00 and costs of suit — that execution issued thereon, on the 28th Sept. 1856, and on the 29th day of the same month was placed in the defendant's hands, (who was then Sheriff,) for service, and that the Defendant levied said execution upon the property in controversy, for the benefit of the Plaintiff.

The Plaintiffs filed a demurrer to the 4th plea, which was sustained by the Court.

Replications.

1. Issue was joined on Defendant's 1st plea.

2. To Defendant's 2nd plea, Plaintiffs replied that no such attachments were issued and placed in the hands of the Sheriff, as set forth in said plea.

3. Replication to 2nd plea, that no such judgments were rendered.

4. Special replication to 2nd plea, that no such executions were issued.

5. Special replication to 2nd plea, that said attachments and executions were not levied on the property described in said plea.

6. Special replication to 2nd plea, that said goods and chattels were not the property of Smith A. & Ira Brown, but was the property of Plaintiff.

7. Special replication to 2nd plea, that the judgment and execution against Smith A. & Ira Brown, in favor of Ewing, was obtained without the knowledge or consent of Plaintiff.

8. Replication to 3rd plea, denying the license.

There was a special rejoinder to Plaintiff's 7th special replication, which alleged that the judgment and execution were obtained with the knowledge and consent of Ewing.

Issue was joined to the country on all the replications.

The Plaintiff, to sustain the issue on his part, introduced the following

BILL OF SALE.

Know all men by these presents, that we, Smith A. Brown and Ira Brown, co-partners under the name, style and firm of S. A. Brown & Son, have bargained, sold, and by these presents do bargain, sell, transfer and set over and deliver unto Alexander Ewing, of the County of Knox, and State of Illinois, the following property, to wit: One Span of Horses; one grey, and one bay, with a white face; one span, one bay, and one sorrel, with white face; one span of black horses; one span, one small grey and bay; one cream colored mare, and one roan horse; one sorrel mare, and one sorrel horse; one large bay horse; one small bay horse; one small sorrel horse; one dark bay or brown horse; one span of spotted horses; one small bay, with white stripe in the face, and one glass eye, as it is called; one light grey, with big joint on hind leg; one large black horse, little knee sprung; one dark bay horse, grey hairs intermingled; one span of old horses, one black or brown, and the other dark brown; one bay horse, and one bay or sorrel mare, and one bay mare, in the possession of S. A. Brown; two yoke of oxen, one yoke black and white, and one yoke red and white; fifteen lumber wagons, twelve two-horse plows, fifty scrapers and fifty log chains, four hundred shovels, ten crowbars, fifteen sets double harness, one log wagon, a lot of double trees, whipple trees, clevises and chains; also, one shanty, at Swab Run, in possession of Dennis Burk; one at French Creek, in possession of Roger Mack; one in the possession of Litey Patrick, near o'Selby's; one between Maquon and Haw Creek, occupied by Mooney; one near Dempsey's, in possession of John O'Harren; another close by, put up by Abner Brown; another at Haw Creek, occupied by John Long; a lot of hewed Timber, at Haw Creek, and a lot at Galesburg, delivered to S. A. Brown & Son, for the sum of five thousand dollars, duiy paid by the said Alexander Ewing to the said S. A. Brown & Son, the receipt of which is hereby acknowledged, to have and to hold all and singular the above described goods, chattels and personal property, to the said Alexander Ewing, his heirs and assigns, forever, as his sole, absolute property, hereby delivering and investing the said Ewing with the possession of said goods, chattels, and effects, and full and ample power to take possession of the same, wherever found, hereby imparting and conveying to said Ewing, complete and absolute control over the said goods, chattels & personal property, as fully and amply as we may have, hereby warranting and defending the title and possession of said goods chattels and personal property, to and in the said Ewing, his heirs and assigns forever. In witness whereof, we have hereunto set our hand and seal, this 27th day of August, A. D. 1856. S. A. BROWN & SON. [SEAL.]

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STATE OF ILLINOIS, } ss.
KNOX COUNTY. } On this 29th day of August, A. D. 1856, personally appeared before me (the undersigned Justice of the Peace) Smith A. Brown and Ira Brown, who acknowledged the foregoing bill of sale, signed S. A. Brown & Son, to be their voluntary act and deed, and that they acknowledged the execution thereof, under the description of S. A. Brown & Son, to be the signature of them, and each of them, and that said signature was the firm name of said Smith A. Brown and Ira Brown. Given under my hand and seal, this 29th day of August, A. D. 1856.

WILLIAM SANBURN, J. P. [SEAL.]

STATE OF ILLINOIS, } ss.
KNOX COUNTY. } I, Hiram T. Morey, Clerk of the Circuit Court, and Ex Officio Recorder, within and for the said County of Knox, and State aforesaid, do hereby certify, that the within and foregoing Instrument of writing was filed for Record on the 29th day of August 1856, at 2 o'clock P. M., and duly recorded in volume 2 of C. Mortgages, on page 106. In testimony whereof I have hereunto set my hand and affixed the seal of said Court, at Knoxville, this 29th day of August 1856.

[SEAL.] HIRAM T. MOREY, CLERK.

The Plaintiff then called S. A. Brown, who testified that the Bill of Sale was made on the day of its date, at Knoxville, for the purpose of securing his indebtedness to the Plaintiff Ewing: that Brown & Son were indebted to Plaintiff, to secure which they gave Ewing 12 notes, all dated 9th August, 1856, amounting to $1316 96: that he sold Ewing a span of horses for $325, which was to be credited on the notes: that some account was made with Ewing after the notes were given: that the Bill of Sale was given to secure said notes and account, and to pay the same: that at the time of the date of said Bill of Sale he was in the county of Warren, and came down to Knoxville a day or two afterwards for the purpose of signing and acknowledging said Bill of Sale: that the arrangement with Ewing for the Bill of Sale was made by his brother-in-law, Erastus Rice, and his (Brown's) son. That he sent his son, Ira A. Brown, with Rice, to arrange it with Ewing, and his son returned to Warren Co. and told him what had been done, and then he went to Knoxville to sign and acknowledge the Bill of Sale, which he did. That at the time of the making of the Bill of Sale, the property described therein was very much scattered in the counties of Knox, Fulton and Peoria, and along the line of the Peoria & Oquawka Railroad, between Knoxville and Elmwood in Peoria County, and some of it had been taken out of the State. That he had been contractor on said road, and employed a large number of hands. That he had failed, and was unable to pay them their wages, and some of them had taken some of the property and hid it in the woods and some of it was buried in the ground. The cattle and horses, some of them was levied on by attachment, some of them run off by workmen, and some hid in the woods.

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That some of the Irish on the road had threatened personal violence towards him and that he had left the work and gone home to Warren County, where his family resided.

On cross-examination, he further testified that all the property mentioned in the Bill of Sale was worth at least seven thousand dollars ($7,000.) That the same was sold to Ewing to pay the indebtedness of S. A. Brown & Son to Ewing, being the 12 notes and the book account. That the notes had never been surrendered, but were still held by Ewing. That they had never received any discharge of their indebtedness to Ewing excepting the Bill of Sale. That at the time the Bill of Sale was made, they, (said S. A. Brown & Son,) were in failing circumstances and owed more than they could pay, and had stopped business some days before sale bill was made. Ewing was fully aware of our condition and wanted to secure his claims against us. When we gave the notes, Ewing wanted security and proposed two ways: one by taking small notes and a power of attorney to confess judgments before a Justice of the Peace, and issue executions; the other by taking a mortgage on personal property; but this last was objected to because it might alarm his other creditors. That the first mode was adopted, and judgments were confessed by Keightley, before Sanburn, Justice of the Peace. Keightley came to my house in Warren Co. to get security for debt due Ewing, a few days before the date of the sale bill. He drew up a sale bill, same as the one here signed, which I agreed to sign to secure Ewing, but did not finally do it. At that time a number of attachment suits had been brought against us, and Keightley said if I would give the Bill of Sale the Plaintiff could replevy the property. That it was scattered all over the country. He agreed if I would give it to Ewing, then the attachment suits pending could be broken down, and Ewing could get the property together, and then I could give Plaintiff notes and security, on 6 and 12 months time, and then I or my securities could take the property and sell it, or turn it to pay my debts. On these conditions I agreed to sign it. Then Keightley and I went out doors, I asked him if he would go to selling off the property, and he said, Ewing must have money. Then I backed off, because, by the agreement, I was to have my property back after giving my notes. Keightley then left. Then I sent Erastus Rice to Knoxville, and told him the conversation I had with Keightley. I sent him to make full arrangements as to property and debts as he should see fit. Rice then sent me word what he had done — thought it the best thing that could be done, so I went to Knoxville and signed the Bill of sale, upon Rice's arrangement. At Knoxville, Keightley did the business in respect to the debt and Bill of sale. It was done at his, (K's,) office. Ewing came in once or twice. I signed the bill of sale because Rice told me to. He said it was the best thing that could be done, and I supposed so to. Some of the property had been attached in this Court and some before Justice Court, in Maquon. The attachments were issued and levied because people supposed I had gone out of the State, but I had not.

When I gave the notes, Plaintiff wanted security. He thought I would break up, but I thought not. I said I would give him any security, but declined giving

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chattel mortgage, because it would make it public. After Agreement at Warren, Keightley said, what should he do with the property after they got it together. This made me think something was not right, and I refused to sign it, (bill of sale,) until I saw Rice.

At Knoxville, Bill was signed, and also pleas in abatement filed to quash the attachment suits.

I did not sign the Bill of Sale with intent to hinder or delay creditors. That it was his understanding that Ewing was to gather the property together and pay himself for his trouble and expenses, then pay his indebtedness to himself, and if there was any left, to divide it among his creditors, in equal portions. That he agreed to pay Ewing for his time and trouble in looking up and getting together the property. That Ewing was to pay all liens upon the property, where the claims were honest and fair, by advancing the money. That he did advance, to one Thomas Kerns, the sum of fifty dollars, to pay his debt, which was just, said Kerns having attached a span of horses. And also to Jesse Pickrel the sum of fifty dollars, for a similar purpose. That the sale was in good faith for the purpose of having it gathered together for the benefit of his creditors, after paying Ewing's debt.

The judgments, by confession, before Justice of the Peace, were found to be illegal, and abandoned.

The Plaintiff then called Erastus Rice, who testified that S. A. Brown wanted him to come to Knoxville and make any arrangement he thought best for his benefit and for the benefit of his creditors, after stating to me his interview with Keightley, at Warren. I came up and, by my advice, Ira Brown came also. This Bill of sale was then executed, was then drawn up and executed as far as it then could be. The consideration was to pay Brown's debts and save the property from being squandered. It was my judgment, and Ewing's, and Brown's, that there was property enough to pay all the debts. Ewing's debt was about a thousand dollars. The intention was to sell all the property the Browns' had on the line of the Railroad. They were in a tight place. Some attachments were then issued at Knoxville, and some at Maquon, on the ground that Brown had left the State, and he believed these attachments were illegal. The sale was not made to hinder, or delay, or defraud any one. Ewing was to be paid expenses in collecting the property. If the Plaintiff got enough to pay his debt, he was to be paid, and his expenses. The same offer was made to James Price. Ewing took the Bill of sale. It was talked that Ewing might have to pay off some small debts, and if Brown agreed to it, I agreed that he might do so. In cases where a small debt was levied on property worth more than the debt, they were to be paid, if Brown agreed to it. Nothing said about paying Ewing for his trouble. Another talk was that when Ewing got all the property together, all Browns' creditors should meet and bid it off to pay their debts.

On cross-examination, he further testified that he agreed to have Brown sign

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this Bill of sale. It was not agreed to sell the property forever for Plaintiff's debt. The Bill of sale did not express all the agreement. Ewing was to gather up all the property and then it was to be disposed of for the benefit of all the creditors. The talk was, that if not much property was got, that Ewing was to be paid, and his expenses. It was thought there was enough to pay all the debts. It was part of the arrangement that the attachment suits were to be fought and broken down, and the property released and got together for the benefit of the creditors, and Keightley was employed by Brown for that purpose. The Bill of sale was made on these conditions. It was suggested by Keightley that Brown must sign pleas in abatement in the suits, and I agreed that Brown should do so. Keightley and Ewing were both present when the arrangement was made. I think Ewing was present. Several of the creditors were present — I think Hagey, Armstrong, and Price.

H. N. Keightley, being sworn, stated that I officiated in getting up Bill of sale. I first got judgments for Ewing vs. Brown & Son, before Sanburn, J. P., on the notes. Found that the judgments were void. Next day went to Warren, to see Brown. Drew up Bill of sale. Brown would not sign it. Ewing did not know that I went to Warren. Price came the next day and said the only way Ewing could be safe was to take the Bill of sale. The property was scattered and some attached before Justices of the Peace. Some in Knox, some in Fulton & Peoria, as I was told. Armstrong, James Price and Hagey, were out and in the office at the time the arrangement was made. Ewing first refused to take a Bill of sale. Said he had about as soon lose his debt as to gather the property. All appeared to be afraid of the risk. We suggested to Price to take the sale Bill. We offered it to James Price and to Hagey. Robert Price had nothing to do about this. I prevailed on Ewing to take the Bill of sale. It was agreed by all present for Ewing to take it, and to take out his debt first, if there was not enough to pay all. IIt was offered to Price and Hagey in the same way. They refused to take it. I offered to transfer the Bill of sale to them if they would pay Ewing's debt. The agreement was that Ewing was to have his pay and his expenses in getting the property together. There were attachments then pending, and I said to Rice — Brown, to save the property, must file pleas in abatement. I filed four pleas in abatement in each suit. I think the attachments were then issued but not levied. Rice came, and the arrangement was made the 27th of Aug. Some claims and debts were right and just, and Brown was not willing to let Ewing have Sale Bill without his agreeing to pay the just debts in suit in Justice's Court. One span spotted horses, in Fulton Co., claim on them was $50, by Carnes. Carnes said if Ewing would pay the $50, he might have the horses. Brown said the claim was right, and Carnes said Ewing paid it. Was a claim of $50, by Pickrel, on a team. Ewing spent twelve or fourteen days gathering up property, I notified the Defendant of the Bill of sale the very day it was made, and forbid his touching anything further. Do n't think he made any particular reply. James Price, Hagey, Joe Grimes, Burtnett and Thompson went along to help find property.

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Ewing brought home from 10 to 14 horses and two yoke of oxen. The oxen and two or three horses, and some plows and scrapers were afterwards sold on Executions, that were prior liens. Ewing got 4 or 5 double wagons, and two old wagons. One wagon and two horses were replevied by Potter, and retained. Cannot say Ewing gathered the ones replevied. Ewing got some chains. I went over Spoon River and quashed some attachments and got some little stuff, say $10 or $12 worth, but not more than enough to pay for trouble. First, rather than take mortgage, I took Cognovit of Brown & Son. After I got Bill of sale, James Price and G. F. Harding, (I cannot say others,) wanted Bill of sale released. I said I would not do it. Ewing refused to release it, and said he would rely upon it. At Court time Brown empowered Harding to act for him, and after Harding confessed judgments for other creditors, he wanted to give me judgment for Ewing and release Bill of sale. I refused, and told him that Ewing rested on the Bill of sale, and I would not disturb it. I told Harding I wanted judgment for the amount due Ewing for hunting up the property, and as Brown had not agreed on the amount there might be trouble about it. That if he had any power to give judgment for the amount, he might do so. Harding said he had no power to do that, but would see Brown and see what he said. He then came and said he would do it, if I would let him put in $300 for some oxen bought of his father. We then had some sharp words. He said I could not prevent him confessing judgment, as he had the power. I said he might do as he pleased, that I would have nothing to do with it. Afterwards he said to me, you had better take the judgment. I said, do as you please. That is all that was said. There was no suit pending of that character. I had no authority to do it from Ewing, and Plaintiff said he did not want judgment, or anything that would affect Bill of sale.

A. S. Brown, re-called. I said before that Keightley told me, in Warren, that Ewing sent him. I now say that he said Ewing did not know of his coming.

Keightley, cross-examined, stated that judgment was recovered in favor of Ewing, against the Browns, at the Sept. term of this Court, 1856. I, on the same day of judgment, ordered out execution. I might have given execution to Runkle, and given instructions, but do not remember about any instructions to him. I think H. T. Morey gave execution to Sheriff. I am, and was in 1856, son-in-law of Ewing. Have been his attorney and adviser. In the first place I told Plaintiff what to do, and he took the notes. He wanted me to go and see Brown, but I declined. What has been done in Plaintiff's claim, I have done and assisted in doing. In obtaining Bill of sale, I acted for Plaintiff. I and Plaintiff were there. Acted for Plaintiff in making arrangement with Rice. Whatever I have done was for him, (Plaintiff.) Since date of notes I have been attorney at law. It was no part of arrangement with Rice that attachments should be fought. Brown was to come and file Pleas in abatement in suits in Justices' Courts, and he did come and file them in I think about twelve to twenty suits. Part I beat them on,

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and part I appealed to this Court. In the settlement of suits appealed by Brown, the creditors took the property attached to pay them, and Ewing got notes for balance. Of $200 now in my hands for Ewing, two notes of about $70, both of them, $8 in cash, collected, got John Combs' note, for about $100, I think, may be more. Brown asked me to fight the suits. Bill of sale was given to secure Ewing's debt. If Plaintiff got more property than to pay his debt, Brown was to have the benefit of it in paying other debts. Before Bill of sale was made, executions issued on judgments confessed in Plaintiff's favor, before J. P., were in the hands of the constable, Peter Burtnett. He got some horses before Bill of sale was made, I think. Cash was paid to Carnes after Sale bill was made, and before this suit was brought. Brown spoke to me to defend the attachments in the Circuit Court. I afterward saw Harding in them, then I backed out. Fighting suits was no part of the consideration of the bill of Sale. It was for Browns' benefit. The object was to save the property for Brown, so as to apply it on his debts, and pay Ewing first, as Ewing got it together. He put some in his barn. Horses and cattle were sent on to a farm. I would not take same trouble that Plaintiff did for $300. Some he sold. Had one span of horses at the barn, and I had one span a month before they were taken on executions. Plaintiff sold one to Dr. Philips, and let Pitt Rogers have a pair. Can't say they were sold to Rogers. Executions took all Ewing had only what were sold on executions issued from Justice Court. Two horses sold on constable's executions. Two yoke of oxen, 3 horses, 2 wagons, and 2½ set of harness, Potter replevied and retained. One wagon was run off by Croucher. It was agreed that Ewing was to get the property together, pay himself, and let the other creditors have the balance.

John Ewing, having been sworn, stated that the debt due Ewing from Browns, 1st Jan. 1856, was $1331 10, less $325, for span horses. The book account afterwards was $65, paid out by Plaintiff in looking up property. Paying off claims &c. about $400. At time bill of sale was made it was supposed that Brown was broken up. The indebtedness was due the firm of A. Ewing & Co. Members of the firm are plaintiff, myself, and Albert Burdett. My interest in the property bought of Brown & Son is equal to my interest in the debt against them. My interest in the property sued for in this suit is equal to one fourth. This property was in the possession of the firm when Runkle took it. Can't tell to whom all the $400 was paid. Some paid to Pickrel, $50 to Carnes, $84 to Palmer. The items I know about of expenses paid for getting horses: services by Plaintiff, eleven days, worth $55, Roger's bill, $20 10; $38 71 of which we are to pay. These are all the items I know about. We went into partnership 1st Jan. 1856 The account against Brown & Son commenced October 4th, 1855. $440 85 of the account was made before the formation of the partnership. All the account was posted together. The rest of the account was due the new firm. Plaintiff took span of horses on debt, at $325. The firm paid all expenses in finding property. Plaintiff did all that was done in gathering the property. Property in suit was in our possession, out at Palmer's, he kept it for us.

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Peter Burtnett, sworn for Plaintiff, testified he helped look up part of the property for the Plaintiff. Found span of horses and half set of harness, at Bridgport. And three span of horses, 3 sets harness and 3 wagons, at Godfrey's. This was before the Bill of sale. These I got on the Plaintiff's executions, from Justices' Court. Defendant levied on two horses and wagon, while I was using them at the Jail. Some time after I brought them up. Horses were worth $300. Wagon worth $80. Harness worth $18 to $20. This is all I saw him levy on. He said he came to levy on the rest, and took a description of them. I brought up eight head of horses, some bay, some grey, brown and sorrel. Some mares, can't tell how many. He did not take them away from me. I put them in Plaintiff's barn, and never saw them afterwards. All the horses worth $150 each, but two, and they worth $100 each. The wagons worth $80 each. This property I took as constable, on void executions, issued by Sanburn, in favor of Plaintiff. Some time afterward, went for Plaintiff, and got two yoke of cattle. I charge Plaintiff $10 to $12 50. It was the attachments Defendant levied on. The two horses and wagon and harness. I gave him a description of the rest of the property, to levy attachments. At the time Defendant levied, part of the property was at Plaintiff's barn, and part at Rogers' stable. The cattle I brought up were put in Newman's yard.

Amos Palmer, sworn, stated, I kept, for Ewing, 13 or 14 head of horses. I kept some for Defendant, on his order. He took two spotted horses and sold them. Worth $250. Took from Rogers' stable. He sold 1 grey horse, 2 sorrels, 1 brown and 2 blacks. He sold one or two others. Grey worth $50 to $60. Two sorrels worth $235. Brown worth $95. Two blacks worth $250 to $275. The bay worth $80. Grey worth about $40. Dun mare worth $130. Plaintiff forbid Defendant selling. One or two wagons sold, I do n't know about them. This property was taken last Sept. or 1st of Oct. Only one mare among the lot of horses.

On cross-examination, he stated, Defendant took from me, 2 blacks, 2 sorrels, 1 brown, 1 bay, 1 dun mare, 2 greys. I charge the Plaintiff with keeping, and some to the Defendant.

Pitt Rogers, sworn, stated, Defendant took two spotted horses from my barn, that I got from Ewing, worth $250, and sold them.

Cross-examination, he stated, I got the horses of Ewing, considered them mine. Was to pay for them in 3 or 4 months. No conditions in the sale, and bid on them when Runkle sold them. One of them was bad in the wind, the other was sound. One sold for all it was worth, the other for five or ten dollars less than value. I have not paid for them.

Marcus Smith, sworn, stated, I had three wagons in my possession. Defendant got them and sold them. Worth seventy or seventy-five dollars each. Sale was about 1st of Oct. One span blacks worth $90. Grey worth $50 to $60. Spotted horses worth $200. Grey worth $50.

12532-G

It was also agreed that four of the horses sold by Runkle, as the property of Browns, had not been levied upon by the attachments, but had been seized and sold on the executions, *after the sale from Brown to Ewing*.

A. Thompson, sworn, stated, I knew the horses at Palmer's. Saw the Defendant sell them. I appraised them, as follows:

One Sorrel, worth	$72	One Spotted, worth	$125
" Grey, "	50	" Sorrel, "	125
" Spotted, "	125	" Brown, "	70

Here the Plaintiff rested.

The Defendant then called Isaac Masten, who testified as follows:

Isaac Masten, sworn, stated, the value of the property. I was at sale of property. Bought spotted horse, at $108. Might have been worth five or ten dollars more. The spotted horse sold for $102. The lame grey sold for $30. Most of them brought their worth.

A. H. Potter, stated that Masten took Cream Colored mare from Runkle. Runkle levied attachments on some property, horses, and wagon, and harness, at my stable in Maquon. I had a conversation with Ewing, after the Sale Bill was made, at Maquon. He said he was looking up property. He first demanded the property in the stable, by virtue of Chattel Mortgage. Afterwards, he said it was a Bill of Sale. I asked to see it. He refused. He said he intended to secure himself first, and then he did not care what became of the balance. Said Browns were owing him about a $1000.

George F. Harding, being sworn, stated, I had a Power of Attorney from Brown & Son, to confess judgment in favor of Browns' creditors, against them. I had power to confess in favor of Ewing, for $1000. Afterwards, $500 was added to this amount, $325 of which last amount was a debt due my father, for oxen sold Browns. Keightley and I had a talk about confessing a judgment in favor of Ewing, for the amount of his debt against the Browns. I had some sharp words with Keightley, because I confessed judgment in favor of other creditors of Browns, at that court. Thinks the $1000 mentioned in Power of Attorney was the residue due Ewing on the notes. After this, Keightley came to me in court, and I told him he had better take judgement for the amount due Ewing. Keightley then agreed that judgment might be entered. Keightley knew about the judgment, for he told me to confess it. This is all that passed.

He also offered the following Power of Attorney, as follows:

E/2582-64

POWER OF ATTORNEY.

Know all men, by these presents, that we, Smith A. Brown, and Ira Brown, being now justly indebted to Alexander Ewing in the sum of one thousand and fifty-five dollars and forty cents, do hereby authorize and empower, constitute and appoint George F. Harding, for me and in my name, to appear in the Circuit Court of Knox County, Illinois, for me and in my name to confess a judgment against me, and in favor of Alexander Ewing, for the said sum of money, and for that purpose to do all necessary, proper and needful things on the premises, hereby ratifying the acts of my Attorney in the premises, and assuming all errors.

SMITH A. BROWN. [SEAL.]
IRA BROWN. [SEAL.]

The amount is to be increased five hundred dollars.

SMITH A. BROWN. [SEAL.]
IRA BROWN. [SEAL.]

Filed Sept. 24th, 1856.
HIRAM T. MOREY.

GEO. F. HARDING,
Attorney in fact.

He next offered in evidence the Writs of Attachment before mentioned, which were in due form, and dated 20th August 1856. The following return was endorsed thereon:

By virtue of the within attachment, I did, on the 20th day of August, A. D. 1856, levy upon one brown horse, one brown mare, one grey horse, one brown horse, one dun mare, 2 double lumber wagons, two and a half sets double harness, and three shanties, as the property of S. A. & Ira Brown, and also one bay horse, one brown horse, one roan horse, and an iron grey horse, one set double harness, and two double lumber wagons, in the possession of J. Laman Camsold, under attachment from Justice Court, as property of S. A. & Ira Brown, and also on the 23rd day of August, A. D. 1856, I levied the same upon one small grey horse, and common size dark bay, white stripe in face, one span large chestnut sorrel horses, one span of dark bay horses, one of which is little largest. One small brown horse, and one small black horse, two yoke of oxen, one yoke red and white, and one yoke black and white, and one ox yoke, three double lumber wagons, three sets double harness, in the possession of Peter Burtnett, Constable, under execution against S. A. & Ira Brown. All of which was so levied upon as the property of S. A. & Ira Brown, and served the within writ by reading the same to S. A. & Ira Brown, on the 29th day of August, 1856.

Filed Sept. 20th, 1856.
H. T. MOREY, *Clerk.*

C. RUNKLE, *Sheriff.*

The Defendant then proved judgment was entered in each of said attachments, that executions issued and were placed in Defendant's hands as sheriff, as fol-

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lows: Execution in favor Robert C. Price, 28th Sept. 1856. And was afterwards returned with the following endorsement:

I, Cornelius Runkle, Sheriff of Knox County, Illinois, do hereby certify, That in the following cases in the Circuit Court of said County, commenced by attachment against the parties hereafter named as Defendants, returnable at the September Term of said Court, A. D. 1856, to wit: Hugh & Washington Hagey, vs. Smith A. & Ira Brown. Thomas P. Benson, vs. Smith A. & Ira Brown. John Eiker & others, vs. Smith A. & Ira Brown. Miles Smith, vs. Smith A. & Ira Brown. Robert C. Price, vs. Smith A. & Ira Brown. Nathan Barbro, vs. Smith A. & Ira Brown. And John Pendegratt, vs. Smith A. & Ira Brown. In all of which cases, general judgment was given, except the last two, which were continued. The following property being the same property named in my return written on the attachments issued in said Court, was levied upon by me, to wit: seventeen horses, four of which and one sett of double harness and two double wagons I never had in my possession, the same having been levied upon by Joshua Lowman, a Constable, on attachment from Justice Court, issued and served on the same before the levy in the above causes, which suits are undetermined, and I could not find the property, to sell the same, as it was secreted from me. Also, said attachments were levied by me upon two yoke of oxen, and yoke, seven double wagons, and six and a half sets of double harness, and three shanties. Three of said horses, two yoke of oxen and yoke, and two sets of double harness were sold by M. Smith, Constable, upon executiou in his hands, which were prior liens, as against said attachments, and two and a half sets of harness, three horses and one wagon were replevied out of my hands by A. S. Potter, which suit is undetermined, the said four horses stated as being in Joshua Lowman's hands, two wagons and one set of harness, were levied upon by said Lowman, under attachment from Justice Court, before my levy, which suits in Justice are undetermined. The said shanties were claimed by other parties than the Defendants, and were removed, so the same could not be sold by me; the remainder or other harness never came to my hands. And I further certify, That by virtue of executions issued out of the Circuit Court on the judgments as aforesaid, recovered by virtue of an execution issued out of the same Court, in favor of Alexander Ewing vs. said Smith A. & Ira Brown recovered at the same term I levied upon and sold property as follows, that was attached for the following prices, to wit; which sale was made on the 20th day of October 1856, excepting the property sold to B. Booth, and W. H. Smith, which was sold on the 1st day of November 1856.

One double wagon to H. D. Hagey, for	$72 00
One " " to R. Benson, for	79 75
One " " to T. Carmes, for	84 25
One black horse, to J. Pendegratt, for	99 00
One " " to J. Smith, for	116 00
One bay " to Casteel, for	63 00

L12532-66

Received from M. Smith, balance on sale of oxen, 18 78

One sorrel horse to B. Booth, for 72 00

One grey " to W. H. Smith, for 30 25

And I further certify, That under said Executions I levied upon as the property of Smith A. & Ira Brown, and sold on 1st of November 1856, property not attached, as follows:

One spotted horse to Isaac Masten, for 108 00

One " " to H. D. Hagey, for 102 00

One sorrel " to E. Lotts, for 96 00

One brown " to E. Patrick, for 70 00

And I further certify, That one wagon levied on by the attachment writs by me, was replevied by Alexander Ewing, and has not yet been returned, and that two of the horses attached were run off by one Croucher and have not been returned. And I further certify, That the property levied upon as aforesaid, by the above named attachments, was after said levy attached by me on a writ of attachments from Warren Circuit Court, in case of Armstrong and others, vs. said Smith A. & Ira Brown.

C. RUNKLE, *Sheriff.*

The execution in favor Hugh D. & Washington Hagey, was issued 1st October 1856, and had a return similar to the above.

The execution in favor of Thomas P. Benson was issued the 1st day of October 1856, and was returned with a similar endorsement.

The execution in favor of John Eiker, and D. M. Eiker, was issued on the 6th October 1856, and returned with similar endorsement.

The execution in favor of Miles Smith was issued 6th Oct. and had a similar return.

The execution in favor of Alexander Ewing was issued 28th Sept. 1856.
On this execution was the following return:

I, Cornelius Runkle, Sheriff of Knox County, Illinois, do hereby certify, That in the following cases in the Circuit Court of said County, commenced by attachments against the parties hereafter named as Defendants, returnable at the September Term of said Court, A. D. 1856, to wit: Hugh and Washington Hagey, vs. Smith A. & Ira Brown. Thomas P. Benson, vs. Smith A. & Ira Brown. John Eiker and others, vs. Smith A. & Ira Brown. Miles Smith, vs. Smith A. & Ira Brown. Robert C. Price, vs. Smith A. & Ira Brown. Nathan Barbro, vs. Smith

[18532-67]

A. & Ira Brown. And John Pendegratt, vs. Smith A. & Ira Brown. In all of which cases general judgment was rendered, except the last two, which were continued. The following property being the same property named in my return written on the attachment issued in said Court. was levied upon by me, to wit: seventeen horses, four of which and one set of double harness, and two double wagons I never had in my possession, the same having been levied npon by Joshua Lowman, a Constable, in attachment from Justices Court, issued and levied on the same, before the levy in the above causes, which suits are undetermined, and I could not find the property, to sell the same, as it was secreted from me. Also, said attachments were levied by me upon two yoke of oxen and yoke, seven double wagons, and six and a half setts of double harness, and three shanties. Three of said horses, two yoke of oxen and yoke, and two setts of double harness, were sold by M. Smith, Constable, upon executions in his hands, which were prior liens as against said attachments, and two and a half sets of harness. Three horses and one wagon were replevied out of my hands by A. S. Potter, which suit is undetermined. The said four horses stated as being in Joshua Lowman's hands, and two wagons and one set of harness were levied upon by said Lowman, under attachment from Justices Court, before my levy, which suits in Justices Court are undetermined. The said shanties were claimed by other parties than the Defendants and were removed, so the same could not be sold by me. The remainder or other harness never came to my hands. And I further certify, That by virtue of Execution issued out of the Circuit Court on the judgments as aforesaid recovered, and by virtue of an execution issued out of the same Court, in favor of Alexander Ewing, vs. said Smith A. Brown & Ira Brown, recovered at the same term, I levied upon and sold property as follows, that was attached for the following prices, to wit: which sale was made on the 20th day of October 1856, excepting as to the property sold to B. Booth, and W. H. Smith, which was sold on the 1st day of November, 1856.

One double wagon to H. D. Hagey, for	$72 00
One " " to R. Benson, for	79 75
One " " to T. Carnes, for	54 25
One black horse to J. Pendegratt, for	99 00
One " " to J. Smith, for	116 00
One bay " to Casteel, for	63 00
Received from M. Smith, balance on sale of oxen,	18 78
One sorrel horse to B. Booth, for	72 00
One grey horse to W. H. Smith, for	30 25

And I further certify, That under said executions, I levied upon is the property of Smith A. & Ira Brown, and sold on 1st day of November, 1856, property not attached as follows:

One spotted horse to Isaac Masten, for	108 00
One " " to H. D. Hagey, for	102 00
One sorrel " to E. Lotts,	96 00
One brown " to E. Patrick,	70 00

[12532-68]

And I further certify, That one wagon, levied on by the attachment writs by me, was replevied by Alexander Ewing, and has not yet been returned; and that two of the horses attached were run off by one Croucher, and have not been returned. And I further certify, That the property levied upon as aforesaid, by the above named attachments, was after said levy attached by me on a writ of attachment, issued from Warren Circuit Court, in the case of Armstrong & others, vs. said Smith A. and Ira Brown.

C. RUNKLE, *Sheriff.*

The Plaintiff objected to the introduction of the judgment and execution in favor of Ewing, but the objection was overruled.

The Defendant then offered in evidence a Writ of Replevin, issued from the Circuit Court of Knox County, on the 28th day of August 1856, in favor of Alexander Ewing vs. Cornelius Runkle, directed to Isaac Masten, an Elisor, for service, which writ was returned served, by taking one brown horse, one grey horse, one cream mare, two and a half double set of harness, two double wagons and delivered the same to Plaintiff.

And on the 2nd day of October, 1856, the following order was entered in open court in said cause:

ALEXANDER EWING,
vs.
CORNELIUS RUNKLE. } *Replevin.*

By agreement of parties, the property replevied herein is to be restored to the Defendant, and this suit dismissed, at the Plaintiff's costs: therefore it is considered by the Court that the Defendant have and recover of the said Plaintiff his costs by him in this suit expended, and may have execution therefor.

for the purpose of showing that the plaintiff had relinquished all property therein described, to the defendant.

To the introduction of which the plaintiff objected, and filed exceptions.

It was then agreed that Keightley ordered out an execution on the judgment confessed in favor of Ewing, on the day the same was confessed.

Dr. Pollock testified that Keightley filed an order for execution in favor of Ewing, and thinks he gave the execution to the Sheriff, but do n't know.

It was then agreed that Defendant was acting sheriff of Knox County at the time of the levy and sale, and acted as such in so doing.

Here the Defendant rested.

L12532-49

It was then admitted that the property replevied by the plaintiff, in the suit against Runkle, had since been taken out of his possession, by one Potter, on a writ of Replevin, and that Potter held said property, except one wagon.

The Plaintiff then recalled Amos Palmer, who testified as follows:

Amos Palmer recalled by Plaintiff, stated that Defendant came out to his place in last week of September, to levy on property. That Craig came with him. Levied on span of blacks, and others. (Motion by Defendant to exclude this evidence, because it is an attempt to show a trespass at two different times before the 1st November, the time stated in the Declaration. Motion over-ruled by the Court; to which ruling of the Court, Defendant, by his counsel, then and there excepted.) The first time he came he levied on horses in the barn: one span black horses; two greys, one of them flea bitten; one sorrel; he saw no others then. He got there in all horses:—two blacks; large grey, flea bitten; grey dun mare; small brown horse; dark bay; two sorrels; small bay. He got ten or twelve all together. Large bay and small bay were taken by Smith, Constable, and sold. Three of the horses were replevied by Potter, and retained. Defendant sold three wagons. Sales were on two different days. Don't know what sort of process, whether on execution or attachment these levies were made. When at the barn, Defendant said charge the keeping to me from that day. He had paper and pencil. Looked at the horses, and asked if there were any marks on them. I understood he levied on them. Can't say by what process.

He then recalled H. N. Keightly, who testified as follows:

Keightley recalled. Ewing brought up altogether from fifteen to seventeen horses. Three horses were taken by Potter. Three were taken by Marcus Smith, and sold on prior executions. The others were all before the Court House, for sale, at two different times. Defendant sold nine. Ewing had five wagons in his yard. Defendant sold two or three wagons. I had conversation with Runkle, last August or 1st September; we had been quiet about the Bill of Sale, as Burtnett told how the Levy was. I told Defendant I thought the levy good for nothing. I believe his reply was, 'we will try it.' I told him he had not seen the property levied on by the attachments. That he got the description from Burtnett. He said he had seen part of the property, two horses and wagon, took the rest from Burtnett's description. This talk was after I got the Sale Bill recorded, and I felt safe in posting the Defendant up on his levy. I think the property was brought up from the line on the 20th August, perhaps 21st. It may be it remained here in town a day. I heard of no levy. I had a spat with the Defendant, before or after this conversation. Some of the property was in town, some at Rogers', and some in Plaintiff's yard. I was not in Plaintiff's yard, nor Rogers' nor Palmer's that day; neither 20th, 21st, nor 23rd day. I did not stay with the property.

[1a.532-76]

Levy might have been made and I not know it. Burtnett got eight horses, and two wagons on the void executions, before the Bill of Sale was made. Defendant was hunting for property on the 20th August.

Plaintiff next called A. Thompson, who testified as follows:

A. Thompson re-called by Plaintiff. I heard Keightley and Defendant talk about the levy. Defendant said he saw the property, with the exception of some. Can't say what he said the exceptions were.

Defendant then called A. M. Craig, who testified as follows:

A. M. Craig being sworn for Defendant, says: It was immedietely after the September Term of the Circuit Court, that I and Defendant were at Amos Palmers. I saw no levy made. We all went to the barn, and saw the horses. Defendant had a paper. And, if I recollect right, he looked at the horses with a view to advertise on executions.

This was all the evidence in the case.

The Plaintiff then asked the Court to instruct the jury as follows:

1. Before the Jury can find the Sale from Brown to Ewing *fraudulent*, they must believe from the evidence that Ewing intended to *delay*, hinder or defraud the creditors of Brown.

2. If the sale was made in good faith, for the purpose of gathering the property, and paying Ewing first, and dividing the balance of the property among the crditors, such sale is valid and binding, and passed the title to so much of the property as Ewing was able to reduce to possession.

3. If the creditors knew the object and intention of the Bill of Sale, and assented thereto, they cannot afterwards insist that it was fraudulent.

4. If the sale was fair and honest at the time it was made, the legal title to so much of the property as Ewing reduced to possession, passed to him; and any effort on the part of the creditors, or of Ewing to procure judgments afterwards against Brown, would not render the sale void.

5. If the sale was *fair* and *honest* when it was made, the obtaining of a judg-

Dasaa-71

ment afterwards by Ewing against the Browns, would not render such sale fraudulent or void.

6. If the judgment in favor of Ewing against the Browns was obtained without his knowledge or consent, and if he did not consent to it when informed of its existence, such judgment cannot be used to his injury.

7. A debtor, in failing circumstances, has a right to prefer one creditor over another, and pay him in full, if he chooses to do so. And he may lawfully assign all his property to pay one creditor, and divide the remainder, after such payment, among his other creditors.

8. Brown had a legal right to defend against the attachments, and to employ counsel for that purpose, and his doing so is of itself no evidence of fraud.

9. If the attachments were illegally issued, and without any cause, everybody interested in the property attached had a right to defend and defeat them, and the doing so is no indication of fraud.

10. The return of the officer upon the attachments and executions, in this case, are only prima facia evidence for the Defendant, and may be disproved or contradicted by parol evidence.

11. If the jury believe from the evidence that the attachments from the Circuit Court were *levied* upon the property in controversy *without seeing* it, and without the property being present when the levy was made, such levy is illegal and void, as against subsequent purchases in good faith.

12. If the agreement between Browns and Ewing, with the knowledge and consent of Browns other creditors, was that Ewing was to receive the property in controversy on the Bill of Sale read in evidence, and to either first pay himself, and the balance to go to the other creditors, or for the property to be divided amongst all the creditors, and he did so receive the possession of the property, then, in either event, Ewing was the legal owner of the property, and held it as Trustee for himself and other creditors.

Unless the same was fraudulent in fact.

All of which was given, except No. 5, which the Court refused, and the Plaintiff excepted.

The Defendant then asked the Court to instruct the jury as follows:

1. If the Jury believe from the evidence, that the several writs of attachments issued in favor of Browns creditors, were duly issued and levied by the Defendant, as Sheriff, in the proper discharge of his duties, on the property in controversy in this cause, before the sale of the said property by the Browns to Ewing; and that this is the only trespasss complained of; then they will find for the Defendant.

2. If the Jury believe from the evidence, that the sale of the property in controversy, from the Browns to Ewing, was made with the intent to *hinder* or *delay* the other creditors of the Browns in the collection of their debts, then such sale is void, as to such creditors; and in such case, it makes no difference if Ewing was a creditor of the Browns, and was to have his debt paid by such sale.

3. If the Jury believe from the evidence, that the Sale Bill to Ewing was only intended to be a security for the payment of Ewing's debt, and that after the making of such Sale Bill, either by himself or attorney, with his knowledge and consent, Ewing voluntarily took a judgment in the Circuit Court, against the Browns, for his said debt, in lieu of the said Sale Bill, then such judgment was an extinguishment of said Sale Bill, and the property became released therefrom and liable to be taken on execution or attachment issued against the Browns, notwithstanding the said Sale Bill.

4. If the Jury believe from the evidence, that a part of the property described in the Sale Bill was sold to Ewing to *hinder* or *delay* Brown's creditors, or any of such creditors, in the collection of their demands against the Browns, then the said Sale Bill is void entirely, and cannot give the Plaintiff any right to recover in this action.

5. If the Jury believe from the evidence, that the sale bill to Ewing was made with a private or secret understanding between the parties thereto, that Ewing's debt should first be paid out of the property therein described; and that then the balance should, at *Ewing's discretion* be applied for the benefit of Brown's other creditors, then such bill of sale is void as to all such other creditors as have not assented to such secret understanding. And if this is so, and the said bill of sale is the only foundation and evidence of the Plaintiff's title in this case; and the Defendant levied legal writs on the property in the due discharge of his duty, and this is the only trespass proved against Defendant, the Jury must find in favor of the Defendant.

6. If the Jury believe from the evidence, that at the time of the making of the bill of sale, there was any secret or private trust, injurious to the rights and interests of the other creditors of the Browns, and in regard to the manner in which

[12532-72]

the property or its proceeds should be applied, and different from that expressed on the face of the bill of sale, then such sale bill is void as against such other creditors of the Browns, if the carrying out such trust would hinder or delay such creditors in the collection of their debts.

7. If the Jury believe from the evidence, that the sale bill to Ewing was only intended as a payment of Ewing's debt against the Browns, which amounts to only something over one thousand dollars; and that said bill of sale was not intended as an absolute and *bona fide* conveyance of such property; and that said sale bill conveyed property of the value of from five thousand to seven thousand dollars, then such bill of sale is voluntary as to the excess of the value of such property over Ewing's debt; and as such, void as against Brown's other creditors.

8. The sale bill from the Browns to Ewing, is absolute on its face, and if at the time of making the same, there was any secret understanding between the parties to such bill of sale, as to the disposition of the property thereby conveyed, which would be injurious to the rights and interests of the creditors of the Browns, then such sale bill is void as against such creditors' rights and interests; and therefore, if the Jury believe from the evidence, that the writs given in evidence were duly issued and levied on the property by Defendant, and such writs were in favor of such creditors, and that said sale bill shows the only title which the Plaintiff had to such property, they will find in favor of Defendant if such levy is the only trespass proved against Defendant.

9. If the Jury believe from the evidence that it was a part of the agreement upon which the bill of sale from the Browns to Ewing was given that the attachment suits then pending against said Browns should be defended, and the Plaintiffs in said suits prevented from obtaining judgments, and collecting their just debts, or hindered or delayed in so doing, this renders the said bill of sale void against such creditors, if the Jury believe from the evidence that said suits were rightfully brought, and that the Plaintiffs were entitled to maintain them.

10. If the Jury believe from the evidence, that it was a part of the understanding or agreement, and that it was secretly made between the Browns and Ewing, upon which the bill of sale was made, that said Ewing should account to said Browns, or either of them, or to any other person for their benefit, for all of the property mentioned in, or conveyed by said bill of sale, not necessary to pay said Ewing's debt. This secret agreement or understanding would render the bill of sale void as against the creditors of the Browns, and would not authorize the Plaintiff to recover in this suit, so as to injure their rights.

[12532-44]

11. If the jury believe the Plaintiff, by himself, or attorney with his knowledge and consent, obtained a judgment against the Browns, for the same debt intended to be secured or paid by the Bill of Sale, after the execution of such Bill of Sale, that he caused the execution in his favor shown in evidence to be placed in the hands of the Defendant, as Sheriff, to execute, and that he or his proper attorney gave the Defendant license to levy the same on the property described in the declaration, and that the Defendant levied said execution accordingly, with other executions, and that these levies are the only trespasses proved in this cause, then they will find for the Defendant.

12. If the jury believe from the evidence that Ewing obtained a judgment as mentioned in the last instruction, and caused by himself or Attorney an execution to be issued thereon, which came duly to the hands of the Defendant, as Sheriff, to execute, this would be *prima facia* evidence that said Ewing gave the Defendant authority to levy such execution on the property of the said Browns, wherever he might find the same in said Defendant's County.

13. The jury is instructed that if they believe from the evidence that the property in controversy at the commencement of this suit was the property of Alexander Ewing, John Ewing, & Albert Burdett, and not of the Plaintiff alone, and that the property was taken from the possession of the said Alexander Ewing, John Ewing, & Albert Burdett, or from the possession of their agent, they will find for the Defendant.

All of which were given except No. 13.

To the giving of these instructions the Plaintiff, by his counsel, then and there objected, but the objection was overruled, and Plaintiff excepted.

The case was then submitted to the jury who found for Defendant

The Plaintiff then filed the following motion for a new trial.

ALEXANDER EWING, } In the Knox C C.
vs.
CORNELIUS RUNKLE. } Oct. Term, 1857.

The Plaintiff comes now and moves the Court for a new trial, for the following reasons :

1. Because the verdict is contrary to law.

12530-19

2. It is contrary to the evidence.

3. The instructions given on the part of the Defendant were illegal and improper, and calculated to mislead the jury.

4. The Court refused proper instructions on the part of the Plaintiff.

5. The Court permitted improper evidence to be given to the jury on the part of the Defendant.

By KELLOGG & WEED,
his Attorney.

The Court refused to grant a new trial, and the Plaintiff then and there excepted to the decision of the Court.

WEED & WILLIAMSON,
Attornies for Plaintiff.

12533-16

97

Alexander Ewing }
vs } In the Supreme
Cornelius Runkle } Court April
Term A.D. 1858

Argument for plaintiff in Error
by Reed & Williamson

The evidence in this case shows that the plaintiff bought the property in controversy of S.A. Brown & Son on the 27th day of August 1856 by a Bill of Sale of that date

That the property was at the time very much scattered, part of it was claimed by others, part of it run off, some of it hid in the woods and a great deal of it levied on attachments. That the value of the property described in the Bill of Sale was about $7000, but of this amount the plaintiff never was able to recover more than about $1,500.00 worth

That Brown & Son were indebted to the plaintiff & others in a large

S.1252-47

sum of money, among whom was Price Stagg & Armstrong. That these men & plaintiff met together in Keightleys office & talked over the matter & as it was unsafe for Brown to go on the line of the Rail Road where the property was situated, and protect the property, it was agreed that Ewing should take a Bill of sale of the property, gather it together — pay himself, and then divide the balance among the creditors of Brown & Son Ewing took the bill of sale with the consent of Price Stagg and Armstrong, three of the creditors He proceeded to gather the property hired men for that purpose, paid out money to redeem it from liens, brought it up to Knoxville when Price, Stagg, Armstrong & others, creditors of Brown placed Executions in the hands of the Sheriff who seized the property on the Executions as the property of Brown & Son, & sold it at auction

Ewing brought this action against the Sheriff to recover the value of the property

The defendants set up, not only the seizure of the property on Execution, but that a part of it had been seized on Attachments before the sale to Ewing. The defendant proved (see abstract Page 17 & 18) but it was agreed that 4 of the horses sold by Rumble as the property of Browns had not been levied on by the attachments but had been seized and sold on the Executions after the sale from Browns to Ewing. See abstract Page 11

When Ewing took the Bill of Sale he did not surrender the notes he held against Brown Hon but kept them — afterwards a judgment was rendered in the Circuit Court of Knox County ~~for~~ without his knowledge or consent, for the amount of his debt & more. The judgment was confessed by George Harding as

12532-78

the Attorney of Brown & Son without
the knowledge of Ewing, and
after a quarrel between Harding &
Keightley who had been the Attorney
of Ewing, but who then had no
authority to take such a judgment
See Page 8. abstract

Ewing got 12 or 14 horses, 2 yoke of
Oxen & 4 or 5 double waggons under
abstract the bill of sale. Of these — the
Page 8 oxen & 2 or 3 horses & some ploughs
& harrows were sold on Executions
that were prior liens
Same One waggon & 2 horses were replevied
by Potter & retained by him.
The balance of the property were
seized on the Executions against
Brown & Son set up in the pleadings

We contend I That Price, Hagey
& Armstrong, who were creditors
& who had executions levied upon
the property were in no position
to attack the bill of sale, because
they had sanctioned & agreed to it,
& could not therefore attack it.

II The plaintiff asked four several instructions, all of which were given except the 5th That instruction was refused, and is as follows "If the "sale was fair and honest when it was "made, the obtaining a judgment "afterwards by Ewing against the "Browns would not render such "sale fraudulent or void"

The judge manifestly held, in refusing this instruction, that the obtaining of a judgment after the sale would release the property, and to this effect was the 3d instruction given on the part of the defendant This is obviously wrong and erroneous.

12532-99

III The instructions of defendant were erroneous without exception

Our Statute of Frauds provides that "every conveyance of goods and
" chattles, had and made or contrived of
Purples " malice fraud covin collusion or
Statutes " guile to the intent or purpose to
Vol 1 " delay hinder or defraud creditors
Page 585- " of their just and lawful actions suits
586- " debts &c, shall be deemed and taken
" only as against the person or persons
" whose debts suits demands &c by
" such guileful and covinous devi-
" ces and practices as aforesaid, shall
" be in any wise disturbed hindered
" or delayed to be clearly and utterly
" void "

This Statute does not make all conveyances void which are made to hinder & delay creditors, but only such as are made and contrived of malice &c to the intent to hinder &

and delay creditors by such guile-
ful and covinous devices

Such has been the uniform
Burrill construction. See Burrill on Argu-
375 ments Page 375. & cases there
& cited
387.

It must be made & contrived
of malice covin or fraud
Burrill 387. 388. 389.

The intent must be covinous & fraudulent
Burrill 381-2
The Statute in New York & many other
States is different & hence the different
decisions. Burrill 389.

I now proceed to an examination
of the instructions given on the
part of the defendant

1st This instruction substantially assu-
-mes that the only trespasses
committed were under the Attachment
It ignores the fact that 4 of the
horses were never levied upon by
the Attachments, but were taken

[12532-80]

on the executions long after the sale to Ewing. It was calculated mislead the jury. It also ignores the fact that Price Hagy & Armstrong had agreed to the sale, and says they were not guilty

2 The 2nd instruction is incorrect in several particulars

1. If the sale was made with the intent to hinder or delay creditors In other words" if Brown made the sale with that intent the jury is told the sale was bad. This was wrong. Ewing must have taken it with that intent

2. The intent to hinder & delay is erroneous. — it must have been made with ~~fraud~~ malice Corrupt or fraud

3. If Ewing received the property bona fide, and it was sold by Brown to hinder & delay his creditors, this did not make

the sale void. Indeed if Ewing received it to pay a just debt & also to hinder & delay creditors it would not have been a bad sale. If the property was sold for a fair consideration, it would not be void even if Ewing did intend to cheat creditors. And in every aspect this intent must have been malicious corrupt or fraudulent, all which is omitted in the instruction

3. The 3d instruction says that if the Sale Bill was intended as a security for Ewings debt & he afterwards took a judgment in lieu of the Sale bill, then the Sale bill was extinguished &c.

I The general principle here asserted is incorrect & this instruction taken in connexion with plaintiffs 5 instruction which was refused, will show how the Court & jury understood it.

[12532-81]

2. There was not a particle of proof about the "judgment being taken in lien" of the Sale Bill

The proof was, that the judgment was confessed by George Harding ~~without the~~ as Attorney for Brown without the knowledge or consent of Ewing, and when he was informed of it he repudiated it

34 In other words "If Brown
" sold a part of the property to Ewing
" to hinder & delay creditors it is
" void entirely" This instruction
makes the sale void as to every
body, whether Ewing had a
bad intent or not

1 It is wrong to say that if Brown sold with an evil intent, Ewing must suffer. Ewing must have participated in that intent or the sale was good

2. The intent must have been malicious covinous &c. The instruction did not require even a fraudulent intent

3. The Statute only makes the sale void as to the creditors attempted to be hindered, & not as to other credetors &

4. It must have been made to hinder them of their just and lawful actions debts &c

See the Statute

5. How could the sale be void as to Hagy Armstrong &c. who had agreed & consented to it

5. This instruction is based upon the presumption that any secret understanding, not put into the bill of sale would make it void Now the extent of this doctrine is this. If any secret benefit or advantage to the debtor is reserved, it would undoubtedly

[12532-82]

render the sale void, But there was no reservation to the debtor — his whole property was turned over for the benefit of his creditors, nothing was reserved, no benefit, no expectation, and surely a secret agreement for the benefit of creditors would not avoid the sale Recollect Ewing were to get the property together first, pay himself & then divide the balance. The property never would have been gather but for Ewing

2. There was no proof whatever that the balance of the property was to be divided at Ewings discretion

6. The same objections lie to this instruction that are urged against the last one.

Unless there was a secret trust for the benefit of Brown the sale was good. Even if this was law it should be done of malice &c

2 An agreement injurious to creditors will not avoid a sale. It must be to maliciously &c, hinder & delay them in the collection of their lawful demands.

3. Price Hagy & Armstrong had agreed to this very sale, was it fraudulent as to them? The instruction says it was.

7. This is not law, nor was there any proof to justify it. All the proof was that it was intended as an absolute & bona fide conveyance. There was no pretence otherwise. But who must have had the intention? It means Brown

[12532-83]

or in other words if Brown intended it as a payment — and did not intend it as an absolute & bona fide conveyance then it is void as against Brown's other creditors, whether they were hindered or delayed or not

How could it be a payment of Ewing's debt by Brown & so intended, & yet not an absolute & bona fide conveyance. Is not this absurd? He intended to pay a debt, conveyed the property for the purpose, and the jury are told if he did not not intend it as a bona fide conveyance, it is void
Now if he actually did convey it, with intent to pay his debt how could he intend that it should not be absolute & bona fide

But what has Brown intent to do with it? Much less an intent that it should not be absolute & bona fide? The Statute does not make a sale void for an "intention that the shall not be absolute & bona fide

It is the intent of malice &c to hinder & delay creditors and the jury might have been told that the intention above alluded to, was a circumstance from which they might infer that the parties maliciously intended to delay & hinder creditors

8 A secret disposition of the property conveyed, after the sale, injurious to the rights & interests of creditors, would not make the sale void.

If the property was sold bona fide, how could they be injured by its disposition after such sale? Ewing had a right to do with it as he pleased

Besides how would an agreement simply injurious to the interests of creditors make the sale void? A sale of the property to Ewing was necessarily injurious to the other creditors, because it diminished the fund out of which their debts were to be paid, but this would not

[1563-84]

make the sale void

Again it could not be void as to Price Hagey & Asa Strong But there was no proof whatever that the property was to be disposed of to the injury of the creditors. It was to be disposed of for their benefit. The instruction was not justified by the evidence,

9. This instruction is calculated to mislead and was so intended. There was no proof whatever that creditors were to be prevented from obtaining judgments and collecting their just debts. The attachment suits which were to be defended were the attachment suits before Justices of the peace chiefly at Mayon. These suits were commenced by attachment upon the ground that Brown had run off & left the State, but he had not

See abstract Pages 4 & 5. & Erastus Rice's testimony Page 6. abstract — also of Keightley

on page 8. abstract. It was agreed ~~that~~ between Brown & Keightley that Keightley should defend these Attachment causes for Brown by filing Pleas in Abatement (Page 8) Keightley did file the pleas in abatement and beat many of them. This is what this & the instruction is aimed at.

Brown had an undoubted right to defend these suits, because they were unlawfully commenced by Attachment Even Ewing had a right to defend these & his doing so could not be objected to. The Statue only makes the sale void as to creditors who are unlawfully hindered in the collection of their debts. To defend either because the suits were illegally commenced, or because the Court had not jurisdiction, or because the debt was not due, is not unlawful or fraudulent. And an agreement to thus defend is no circumstance of fraud. It was a lawful honest agreement, and for the benefit and advantage of the honest creditors of Brown. To defend and beat a dishonest claim, would be a meritorious act.

[12582-85]

There was no pretence of proof, that the debts were to be defended to prevent honest creditors from obtaining judgments unlawfully, or of hindering or delaying creditors unlawfully.

The instruction means if the creditors of Brown were to be hindered or delayed in the collection of their debts the sale is void. Now this makes any hindrance or delay unlawful, whereas the Statute says the hindrance and delay must be unlawful — "If the "jury believe from the evidence that the "suit were rightfully brought". There was no proof whatever upon that point. Keightley testifies that he beat many of them — the record was not offered in this case, & the jury could not say & had no right to decide whether they were rightfully or wrongfully brought. This instruction like all the others is founded partly upon the testimony, but chiefly upon matters which the counsel for defendant imagined, without a particle of proof —

The instruction asks the jury to

by the old attachment suits over and to decide whether the creditors had brought them rightfully and whether they were entitled to maintain them, and yet no man on the jury the name of the plaintiff in one of those twenty suits, & there was no proof whatever as to whether they had been rightfully brought or not. Those cases had been tried long before, and the record thereof were not produced on the trial of this case

The instruction says * ~~if these~~ substantially "if these facts existed" the sale is void. Now this is telling the jury that certain acts are fraudulent, and denies to the jury the right to say whether those acts amounts to fraud or not. The jury were empannelled to decide the question of fraud — but the court says "it is not for you to decide" "I say if the parties did so & so" the Sale Bill was void, whether you find it was fraudulent or not —. This did not leave the question to the jury

5/2532-847

10. This instruction assumes at once that if there was a secret understanding (not incorporated in the Bill of Sale) that Ewing was to take the property in payment of his own debt-, and if there was a surplus, hand it over to the creditors, this makes the sale void! Is this so? and if so why?

An agreement to defraud hinder or delay creditors might be bad, but an agreement obviously for their benefit how could that make the sale void? Who ever heard this before? Because a sale made to cheat, is bad, therefore a sale made to benefit creditors is void This is logic with a vengance!

Besides, this instruction takes the question of fraud from the jury & only leaves them to find whether the facts are proved — not whether the sale was fraudulent And this makes the sale void as to Price Hagy & Armstrong, who Keightley testifies agreed to the Sale to Ewing & who were creditors

Again, the instruction says the sale is void as against the creditors- all the creditors, whereas the Statute makes

void only as to the creditors attempted to be hindered or delayed

There was no proof that Ewing was to account to Brown for any part of the property

11. To the 11th instruction I object because of these words "And that he or his proper
" attorney gave the defendant licence to
" levy the same on the property described
" in the declaration" Keightley says on Page 17. of abstract "I had a conversation
" with Runkle (defendant) last of August
" or 1st Sept — we had been quiet about
" the Bill of Sale as Burnett told how the levy was (this was in reference to the levy on the attachments in the Sheriff's hands and was long before the levy of the Executions) "I told the defendant I thought
" the levy good for nothing. I believe his
" reply was "we will try it" "I told him that
" he had not seen the property levied on
" by the attachments" &c The Executions were levied on the property or rather delivered to the Sheriff from the 29th

[12532-87]

to the 6th Oct. The judgment ~~by~~ in favor of Ewing was obtained without his knowledge or consent, as testified to by Keightley on page 5 of abstract, and when informed of it "he said he did not "want a judgment or any thing that would "affect his bill of sale.

Here is all the proof of a license except that Keightley ~~afterward~~ ordered out an Execution on the judgment in favor of Ewing. Suppose he did put an Execution in the Sheriffs hands against Brown, did that authorize the Sheriff to levy upon Ewings property?

It is a new way of granting a license to say, if I put an Execution against my debtor in the Sheriffs hands, the Sheriff may levy it upon my property. There was then no proof to sustain this part of the instruction. It was like most of the instructions based upon a hypothetical state of facts, which were not proved. It was clearly error,

12. This instruction is correct, but it did not authorize the defendant to levy the Execution upon Ecoing's property.

Lastly. All these instructions are calculated to mislead — take them in connection with the facts, and the jury could not find for the plaintiff. They are nearly all incorrect and based upon ~~an incorrect~~ incorrect ideas of the law — they are so expressed as to be capable of divers constructions, written for the purpose of enabling the jury to draw conclusions fatal to the plaintiff and yet coming so near the law as to make one hesitate before deciding them incorrect. But they were fatal to the plaintiff, and ought not to receive the sanction of the Court —

Respectfully

Read & Williamson

[12532-88]

97=26

Alexander Ewing

vs.

Cornelius Rankle

Argument for
Plaintiff by

Reed & Williamson

Filed May 4 1858

L. Leland
Clk.

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

TO THE CLERK OF THE CIRCUIT COURT FOR THE COUNTY OF Knox 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 Knox County, before the Judge thereof, between Alexander Ewing

plaintiff, and Cornelius Runkle

defendant 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 June 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. ~~WALTER B. SCATES~~ John D. Caton, Chief Justice of our said Court, and the Seal thereof, at Ottawa, this 15th day of March in the Year of Our Lord One Thousand Eight Hundred and Fifty-eight

S. Leland
Clerk of the Supreme Court.
by J. B. Rice Deputy

12532-89

Alexander Kennedy

vs

Alexander Kennedy

Writ of Error

Filed March 18 1858

C. Leland

Clerk

Alexander Ewing
vs
Cornelius Runkle
In the Supreme Court April T 1858

Brief
Wend & Williamson for Plff

1 The first instruction asked for by defendant is erroneous, because it was agreed that 4 of the horses sold by Runkle as the property of Brown had not been levied upon by the attachments, but had been seized & sold on the executions after the sale from Brown to Ewing Abstract P 11.

2. Defendants 2° instruction is irrelevant & improper. There was no proof to sustain it. An assignment or sale for the benefit of creditors is good though other creditors may be thereby delayed
Grover vs Wakeman 11 Wendell 200
1 American Leading cases 73 - 76
Who must have had the intent? Brown or Ewing? In fact Ewing must have received the property with a bad intent.

Burnell vs Assignments 375 - 388

[illegible]

3. The 3° instruction of defendant is bad. When a creditor receives a horse or other security for a note does the giving of the note release the security. If so, why? unless there is a contract not to sue. It was the debt that was secured

4. The 4th instruction is contrary to the Statute. The Statute says the sale shall be void only as to the creditors attempted to be defrauded. The instruction says it ~~shall be~~ is void as to every one. Purples Statute Chap 45. P 585-6

{12532-91}

5. The 5th instruction is bad because there was not a particle of proof as to the property being distributed according to Ecuigs direction

2. Such an apiguement would be good 2° Kent

6. The 6th

6. The 6th instruction is not law

7. The 7th instruction is not law

$12532-92

8. There is no such law. The sale must be to hinder defraud or delay creditors in the lawful collection of their debts An arrangement injurious to creditors wont do. It could not be void against such creditors as were not hindered from the lawful collection of their debts

2 The instruction is illogical; the conclusion is not sustained & it is calculated to mislead

3. The sale was made to benefit creditors and not to hinder

$12582-93

9. This instruction embraces all attachment suits then pending

1. The Mayson Attachments do not claim, of course they were not delayed

2. It says "if the suits were to be defended" the sale is void &c

This is clearly error. Both Ewing & Brown had a right to defend if the suits were illegally brought. The Statutes say the creditors must be hindered in the lawful collection of their debts

3. If who was to defend Brown or Ewing? It certainly means if Brown should defend

[12532-94]

10. This instruction amounts to this. If Ewing agreed to pay the creditors out of the proceeds after his own debt was paid, or if he agreed to devide the proceeds, then the sale was void because it was not inserted in the Bill of Sale

2 There was no secret agreement all was open. Known & understood

11. As to the right to assign & prefer one creditor over another

Burrell on assignments 18.–19

12. The verdict was against evidence

[12532-95]

9 = 28 - 07

Alexander Conroy

vs

Cornelius Rankle

Brief

4/2552-64

Alexander Ewing
vs
Cornelius Runkle

April Term of
Supreme Court
A.D. 1858.

Points Meade by Sawder for Appellee

1st A new trial will not be granted because the Verdict is against the Evidence and against ~~the instructions~~ the instructions of the Court nor because of misdirection of the Court provided the Court is satisfied from the whole Record that Justice has been done

Gillett vs Sweet 1 Gilm 475.
Sprigg vs Storer 3 Gilm 202
3 Scam 17
1 Scam 491
~~1 Gilm 475~~

2nd There must be strong probable grounds that the merits have not been tried to induce the Court to set aside the Verdict of the Jury

2 Scam 95-2 (Wheeler vs Shields)

12532-97

3rd

In this Case there ~~were~~ were questions of Credibility of witnesses for the jury which they have passed upon and their Verdict ~~will~~ will not be disturbed upon that point

~~1 Sikes 81~~

~~3 Scam 97~~ 3 Scam 784

In this Case there is a Contrariety of Evidence which the jury have passed upon and their Verdict will not be disturbed

1 Sikes 81

3 Scam 97

Verdict will not be set aside because the Evidence may incline the mind to a different Conclusion

Sullivan vs Dobbins 17 Ills 85.

It must be a glaring Case to induce the Court to set aside the Verdict of the jury

Johnson vs Moulton 1 Scam 532

3 Scam 97

4th This is a fight between Executors each trying to secure his own debt; Ewing after the Sale bill having obtained judgment against the Browns issued his Execution & levied it upon the very property in question will come in for an Equal Share with other Executors provided the Verdict of the jury is allowed to stand. his judgment was for the same debt to secure which the Sale bill was given—

The very fact that Ewing died after his Sale bill obtain a judgment for the same debt intended to be secured by such Sale bill, issued his Execution & levy upon the property Sold (all of which the jury have found) is strong Evidence of his want of faith in his Sale bill. And the only question in the Case being the validity of the Sale bill, if the Court is satisfied that the jury passed upon the merits under the Evidence their Verdict will not be disturbed even though the Court had given wrong instructions

12592-98

5th This Court in passing upon the Instructions, will Consider all that were given on both sides Making one explane another,

It is objected that the 1st of defendants instructions had no application to the Evidence because 4 of the horses in question were admitted not to be levied upon by the attachments, we answer that 9 horses & 2 wagons were attached as to which the instruction was proper, and as to the property not attached the jury are negatively told not to Consider; this Instruction Could not have misled

2nd Instruction is objected to because it does not confine the intent to delay or hinder Creditors & Suing as well as the Powers; we answer that if it includes one it includes both but even if it was objectionable on account of its generality, when Considered with the Plaintiffs 1st Instruction which fixes the Character of intent, and Confines the same to Suing. the objection is remo=

=ved

The 9th Instruction is objected to, because, the proposition that the judgment obtained for the debt secured by the sale bill, was, ~~an~~ an Extinguishment of the sale bill, is not Law

That a judgment extinguishes the debt upon which it is obtained see

Chit. Con. p 786. 681. 677.
Bacon's Ab. Vol 4. p 149 "H"
2 Gilm 355.
Green 52
1 Seam 355
6 John R 85
17 Conn. 146
1 Spencer 340 (New Jersey)
2 Rich 340 (S Carolina)
8 Ala 793
17 Barber 492

The question is one of intention of the parties but the law implies that intention

2 Rich bot. (South Carolina)

The language of the Instruction "in lieu of the said sale bill" gave it into the hands of the jury to say whether Ewing intended to release his sale bill by taking the judgment, in this there is no error, if he took the judgment intending by the arrangement to release the property sold from the sale bill it would be an Extinguishment

2/2532-99

The 4th instruction is objected to for the same reasons that the 2nd is,
to which we make the same answer that is made above, that the Pltffs. first instruction given, fixes the kind of intent requisite, and makes it only participate in the finding the jury could not have misunderstood the same

The 5th instruction is good; an absolute sale bill of personal property with a secret understanding that part of the property is (after paying the vendee) to be applied at the vendees discretion to the payment of other creditors of vendor is void as to creditors who do not assent thereto

The 6th 7th & 8th instructions only assert the law applicable to the case once

Can not be objectionable as to the 7th instruction that the sale bill is voluntary as to an excess over amt above Irving's debt. See 20 Pick 404. 397.

A sale made to pay a debt & also to prevent a sacrifice of property by Executors is void as to such Executors

8 Ala 104.

We are unable to see any Error in the balance of the instructions

Irving Can not claim enough of the property to pay his debt out of the sale bill if the same was void in part It is void in toto Clift Com. p 692 & 693. note 2. 9 Ala 305. 4 N H 176.

A Secret trust inconsistent with the terms of an absolute bill of sale is Evidence of fraud 2 Kern 553. 20 John R 61. 8 N H 288. trust being proved the law infers the fraud

(12532-160)

An absolute sale bill intended as a security, with a secret trust or defeasance is void as to creditors 6 S & R 67. 9 ib 37. 7 S & R 219. 1 Rawl 492 7 Cow 732 8 S & R 444. 19 Vt. (4 Washb) 427. 7 Humph 170. 1 Dredell 340. 4 Hib 251. (Pa) 18 Vt (3 Washb) 460

A Conveyance which naturally delays sheriffs creditors is void 7 S & M 394.

Ewing }
Rinkle }

The 5th Instruction was properly refused. It is calculated to mislead, even if it were law.

"If the sale was fair and honest when it was made", is the language of the instruction. In the common use of such language, this would mean fair and honest as between the parties to the sale, without reference to its being fraudulent in law as against third persons. The jury would probably so construe the language.

But there was evidence tending to show that between the parties, the intention was that the overplus, after paying Ewing's debt and expenses, should be distributed among the Browns' other creditors. This in the contemplation of the jury would be honest within the meaning of the instruction: Yet this secret trust, which might be changed at any time between Ewing & the Browns, and by which Ewing was not at all bound to the Browns' other creditors, beyond all controversy rendered the sale void as to those other creditors.

[12532-101]

So the instruction was based on a false hypothesis, when applied to the evidence in the case, and was properly refused.

In another view it was proper to refuse it. The instruction asked is, that if the sale was fair and honest, the taking of a judgment by Ewing would not render it fraudulent. This is an abstract proposition, and so the court might properly refuse it although it contained the law truly stated. It was only applicable to the evidence, if at all, when garbled. There was a judgment taken by Ewing, there was evidence tending to show that this was ~~taken~~ taken as a means of carrying out a fraudulent arrangement between Ewing and the Browns. This was for the jury to consider. Yet this instruction would seem to imply that the taking of such a judgment would not taint any of the transaction between Ewing and the Browns with fraud, as against the Browns' creditors.

The taking such a judgment fraudulently, might tend to show that the original contract was fraudulent, yet this instruction seems to be drawn

1/2532-182

for the express purpose of diverting the attention of the jury from that consideration.

In any event, the instruction was not proper to be given without qualification — and the court was not bound to qualify the plaintiffs instruction.

The verdict is most amply sustained by the evidence. The main question — ~~the only substantial question indeed~~ to be determined by the jury, was whether the pretended sale from the Browns to Ewing was fraudulent as against the other creditors of the Browns.

It is proved by S. A. Brown, the plaintiffs witness, that at the time of the making of the bill of sale, the Browns were in failing circumstances, and owed more than they could pay — that the property conveyed was worth $7000. and

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Ewings debt was only about $1000. That in the first instance, a mortgage was not taken because it might alarm the other creditors of the Browns. Keightly the son-in-law and attorney of Ewing transacted the business in regard to obtaining first the judgments before a justice of the peace which was afterwards abandoned, and in carrying on the negotiation with the Browns for a bile of sale.

The first agreement was that the bile of sale should be given so that Ewing could replevy the property, then the Browns should give his notes on 6 & 12 months time, and then the Browns or their securities could have the property, and on these conditions the witness Brown agreed to sign the bile of sale. This agreement however was not consummated.

The bile of sale was finally made on this understanding: that Ewing should gather the property, pay himself, and divide the residue among Browns creditors. This is a secret trust. It is against the legal rights of the other creditors. Seven thousand dollars worth of property is so transferred to pay a debt of one thousand dollars. The creditors have no security for their share of

S/2532-104

the residue of the property. But for this agreement they would have the right to levy upon that residue. By this secret understanding they are postponed until after Ewings debt is paid and then Ewing is in no wise bound to account to them for the residue of the property. This was no asignment for the benefit of creditors.

This secret trust was prejudicial to the interests of the other creditors, and that has ~~rendered~~ always rendered a contract void as against creditors, at least ever since Twyne's case. This secret understanding that Ewing should hold the residue for the benefit of other creditors is neither more nor less than, that he shall hold it for the benefit of the Browns. None of the creditors have an opportunity to accept the trust because it is secret; and so that residue is Browns, and he can control the disposition of it at any time, and keep it out of their way, upon the false statement on the face of the bill that it is all to be Ewings - that it is an absolute sale.

It also appears - or at least the jury had a right to find, and have found as is to be presumed from their verdict - that

[13532-105]

a part of this very contract was that the attachments then pending in favor of other creditors should be "broken down", without regard to their being just claims. S. A. Brown says so, though Keightly denies it. In truth the jury were amply justified in finding that this agreement although made to secure Ewing, was also intended by the parties to hinder and delay the other creditors of the Browns in the collection of their demands.

Even Rice who made the last agreement says: "It was not agreed to sell the property forever for the plaintiff's debt. The bill of sale did not express all the agreement." So here was a bill of sale which it was agreed between the parties should not operate as a bill of sale, which did not operate as a bill of sale. The plaintiff only shows title to the property, upon condition that this was and is bona fide an absolute bill of sale. His own evidence shows that it was not to operate as a bill of sale at all. He therefore shows no right to this property, as against other creditors. He cannot falsely and fraudulently pretend that this sale is good as an absolute sale, and thereby hold the property,

[12532-186]

~~while he proves~~ and thereby keep them from securing their legal rights in the property — while he proves that he was secretly holding the property for an entirely different purpose, and under an agreement by which they would have had a right to secure their demands upon the overplus of the property, if they had known the true agreement between the plaintiff and the Browns. He hinders and delays them by enforcing this bill of sale as an absolute agreement, and that contrary to his understanding with the Browns, and this bill was made absolute for the express purpose of enabling him to do this.

Again this bill professes to be an absolute sale on consideration of five thousand dollars. The actual consideration was a debt of one thousand dollars. This is done to deceive the other creditors. If the consideration was $5000. there would be $4000. coming to them after paying Ewings debt. They were to be deceived and cheated by this false pretence made on the face of the bill.

[12532-107]

There is another view of the case which renders it equally certain that the verdict should not be disturbed

Ewing obtained a judgment for this very debt. Keightly wishes to deny his agent to this, but Harding swears to it positively. Still, however that may be, Keightly afterwards as the attorney of Ewing ordered out execution on this judgment, and either placed it in the hands of the defendant, or procured it to be placed there to execute. For what purpose? To be levied on property.

This judgment was for the same debt which Ewing pretended then was paid by this bile of sale. The property of the Browns was all included in this bill of sale. There was no other property on which the defendant could levy. He therefore had a right to believe that the plaintiff ~~therefor~~ thereby abandoned his bile of sale and elected to come in and share with the other creditors. If the plaintiff by this conduct authorized, or put it in the defendants power reasonably to come to, such a conclusion - and the defendant honestly acted upon that conclusion in levying upon the property,

12532-108

this amounted to a license for the defendant to levy the executions upon this property. If the plaintiff by his acts, or those of his agents, induced the defendant to believe that he wished the defendant to levy his execution on this property, and the defendant acted accordingly, this would amount to an estoppel in pais against the plaintiff, and in law he would be barred from denying that he gave such license — much more would he be barred from having an action against the sheriff for doing the very act which he had induced him to do.

Finally, if a new trial is granted in this case it is for the purpose of giving the plaintiff another chance to recover against the sheriff, for levying the plaintiffs own execution on property, by which levy the plaintiff was entitled to share pro rata with other creditors of an insolvent debtor; and when the plaintiff only claimed the exclusive right in that property by virtue of a bill of sale most clearly fraudulent as against other creditors. Whatever defects, if any there may be in the record, will the court grant a new trial for this purpose? Hearing of Motion

[4 2532-109]

By this verdict substantial justice is done. A verdict against the defendants would be, equitably considered, great injustice. This verdict not only secures justice between the plaintiff and defendant, but between the plaintiff and the other creditors of the Browns. They all share pro rata in the afets of a failing debtor. So strong are the moral considerations in favor of such a distribution of the afets of a failing debtor, that some of the States have entirely abrogated the power of failing debtors to prefer one creditor to another in making payments of his debts.

The pro rata distribution alone is "even handed justice".

Manning J. Merriman
~~Lindsay~~ & Lander
for deft.

[12532-110]

Ewing
vs
Runkle

97=26

Brief of points &
Arg Manning & Lamar
for Appellee

Filed May 6. 1858
Leland
Clk