No. 14731

Supreme Court of Illinois

Miner

vs.

Phillips

71641 7

STATE OF ILLINOIS,

SUPREME COURT,

THIRD GRAND DIVISION.

No. 119

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

Turner
vs
Ridgway

State of Illinois. Sup Ct Apl Term 1864

Simeon K. Miner } Supplemental brief on behalf
Ludwig Phillips } Supplemental by Plff in error

It is said on the other side that the Bill of exceptions in this case does not contain all the evidence. We think it does to appear by the Bill that all the evidence is incorporated. The rule heretofore has been too rigid. When the judge below signs & seals a history of the trial it ought to be considered a full & true one till the contrary appears. The Court seems inclined to relax the old rule, in the case of Harris vs Minor. (Same Minor) tried at the last before last term. There Under the rule in this last case let us see whether there be not enough to reasonably satisfy the Court that there was no more evidence. The Bill of exceptions has closed up all the gaps where it could have entered. It recites that such a witness said so. Such a deposition was read, & then Plff recalled William Perry who testified "I was si" Plffs Counsel then asked the Court to instruct the jury as follows, & the instructions follow, & the jury then retired, returned &c Whereupon the defendant's Counsel moved for a new trial.

J. H.

If the other side have any cause of complaint in relation to the question of fraud it is that there is too much not too little evidence They are very unreasonable.

Leland & Blanchard

119 5

Simeon R Minor
vs
Ludwig Phillips

Supplemental brief
by plff in error

Leland & Blanchard
for plff in error

119

IN THE

SUPREME COURT OF ILLINOIS,

THIRD GRAND DIVISION.

April Term, A. D. 1864.

Simeon K. Miner, Appellant,

vs.

Ludwig Phillips, Appellee.

ABSTRACT OF RECORD.

APPEAL FROM JO DAVIESS COUNTY.

Filed April 1st 1864.
L. Leland clk.

GALENA:
W. W. HUNTINGTON, PRINTER, OVER BANK OF GALENA.
1864.

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Hellman and Benedict Mc.

ABSTRACT OF RECORD.

This was an action of REPLEVIN brought by appellee against appellant to recover two boxes of dry goods which had been siezed by the appellant as Sheriff on a special *fi fa* against one Joseph Horwitz.

1–10 AFFIDAVIT IN REPLEVIN, (by Almon B. Ives, Agent for appellee,) praecipe, bond for costs, and declaration in usual form filed February 10th, 1862.

WRIT OF REPLEVIN issued, Replevin bond and affidavit of Almon B. Ives [one of the sureties upon said bond] filed, and writ returned executed on same date by the Coroner, showing that the boxes of goods in controversy had been taken and delivered to appellee.

11–12 PLEAS:

No. 1. Non cepit.

13 No. 2. Non detinet.

les the same, to which the appellee by his counsel except-
14 l. Appellee's counsel filed affidavit and motion for contin-
nce, which was granted at his costs.

Affidavits of A. B. Ives, [Att'y for appellee,] in support motion for a continuance.

May 21st, 1863. The jury returned the following verdict:

No. 4. That at the time of taking, the said goods were the property of Joseph Horwitz, without this that they were the property of appellee.

March Term, '62. Cause continued at costs of appellee.

May Term, '62. Cause continued on motion of appellee.

15 REPLICATIONS:

No. 1. Issue joined on 1st plea.

No. 2. Issue joined on 2d plea.

16 No. 3. Traverse of 3d plea and issue joined.

No. 4. Traverse of 4th plea and issue joined.

August Term, '62. Cause continued.

October Term, '62. Cause continued.

17 March Term, '63.

The counsel for appellee file exceptions to the depositions

yberg

idera-

also

Third direct question and answer thereto, irrelevant, hearsay and not responsive.

Answers to all the cross interrogatories from the 3d to 19th inclusive, (excepting the 5th, 10th, 12th, 13th and 18th,) all
20 or in part objected to on the general grounds that said answers are hearsay, irrelevant and irresponsive.

2d. Objections to Marx Hellman's deposition:

Second direct question and answer thereto objected to as improper, irrelevant and immaterial.

Answers to all cross interrogatories from 4th to 17th inclu-
21 sive, [excepting 7th, 12th and 14th,] all or in part objected to on the general grounds that said answers are irrelevant, immaterial, hearsay or irresponsive.

22 Objections to Benedict Meyberg's deposition:

The 2d and 4th direct interrogatories and answers thereto objected to as irresponsive to any issue in the case, improper, irrelevant and hearsay.

23 Answers to all the cross interrogatories from the 3d to 17th inclusive, [except 1st, 2d, 7th, 12th, 14th and 16th,] all or in part objected to on the general ground that said answers are irrelevant, immaterial, hearsay or irresponsive.

24 Court in part sustains said exceptions and in part overrules the same, to which the appellee by his counsel excepted. Appellee's counsel filed affidavit and motion for continuance, which was granted at his costs.

26–26 Affidavits of A. B. Ives, [Att'y for appellee,] in support of motion for a continuance.

27 May 21st, 1863. The jury returned the following verdict:

"We the Jury find the issues for the defendant."

Appellee moves for a new trial.

Motion for new trial.

28 Causes assigned.

26 June 5th, 1863. Motion heard and taken under advisement.

June 6th, 1863. New trial granted on terms.

August 18th, 1863.

30 Appellee files exceptions to depositions of Jacob W. Brisbin and Daniel Cover, which are in part over-ruled, and counsel for appellee excepts.

Jury sworn.

31 Exceptions to depositions of Jacob W. Brisbin were as follows, viz:

The 4th question and answer objected to because irrelevant and opinion of witness.

The 5th answer and 6th, 7th and 8th questions and answers objected to because irrelevant, improper and opinion of witness.

The answer to 3d cross-interrogatory objected to as being statement of Horwitz and hearsay testimony.

Exceptions to depositions of Daniel Cover were as follows, viz:

32 The 3d answer objected to as irresponsive, improper and irrelevant.

The 6th, 9th, 10th, 11th, 12th, 14th, 15th and 17th questions and answers on same general grounds.

The answer to the 1st, 5th and 6th cross interrogatories objected to as hearsay, supposition of witness and not re-
33 sponsive.

August 20th, 1863.

34 The Jury returned the following verdict: "We the jury find the issues for the plaintiff."

Appellant moves for a new trial.

Motion for a new trial.

35 Causes assigned.

Sept. 1, 1863. Motion heard and taken under advisement.

36 Sept. 2, 1863. New trial granted on terms.

Oct. 22, 1863. Counsel for appellee files exceptions to depositions of John Toler, C. H. Welford, Abraham Horner and J. P. Bohannon, a part of which exceptions are over-ruled and appellee excepts; and appellant files excep-
37 tions to the depositions of John Horwitz, Harry Horwitz and J. P. Bohannon, a part of which exceptions are overruled and appellant excepts.

Jury sworn.

Exceptions to depositions of Joseph P. Bohannon:

38 Tenth and eleventh cross interrogatories and answers thereto, because improper and irrelevant.

The latter part of answer to 4th cross interrogatory, because the supposition of witness.

39 Exceptions to answers of John Toler:

Answers to 3d, 5th and 8th interrogatories, because uncertain, irrelevant and improper.

Exceptions to answers of Clayborn H. Wellford:

40 Answers to 4th, 5th, 6th, 7th, 9th, 11th, 12th, 14th, 15th and 2d, because improper, irrelevant and immaterial.

Exceptions to depositions of Abraham Horner:

41 Interrogatories from 4th to 11th inclusive and answers thereto objected to as immaterial, irrelevant and improper.

Answers to 2d, 3d and 5th cross interrogatories for same causes as above stated—for not showing that Phillips was present.

Also, the first and last questions and answers on the re-examination objected to as irrelevant and immaterial.

42 All of Abraham Horner's testimony being devoted to questions about boxes of Fur and nothing material elicited is objected to.

Exceptions to depositions of Harry Horwitz:

Appellant objects to the 10th, 11th, 12th, 13th and 14th questions and the answers thereto, because witness testifies to hearsay matters exclusively except as to snuff-box.

43 Exceptions to depositions of John Horwitz:

Appellant objects to the 9th and 10th questions and answers because secondary evidence and improper. Also, to the 19th question and answer, because it is secondary evidence and improper.

Also, to the 39th question and answer, because it evidently refers to another suit and because of uncertainty.

Exceptions to depositions of J. P. Bohannon:

The answer to the 3d interrogatory improper, because hearsay statements and refers to a newspaper advertisement which is not in evidence, and is an attempt to introduce secondary evidence.

44 Also, the 4th, 5th, 7th and 9th interrogatories and answers, because irrelevant and improper, and an attempt to make evidence of plaintiff's declarations.

Also, the 11th, 12th and 13th interrogatories and answers, because no effort seems to have been made to procure a certified copy of the paper or advertisement referred to.

45 Also, that the latter part of the answer to interrogatory 14th and the 15th interrogatory and answer are irrelevant and improper.

Also, the cross interrogatories 3d, 4th, 5th, 6th, 7th, 9th and 12th and the answers are irrelevant and improper.

46 October 24th, 1863. The jury returned the following verdict: "We the jury find the issues for the plaintiff."

47 Defendant moves for a new trial.

Motion for new trial.

Now comes the said defendant by his counsel and moves the Court for a new trial herein; and for cause shows,

1. That the verdict of the jury was against the evidence.

2. That the verdict of the jury was contrary to law.

48 3. That the Court gave improper instructions for plaintiff.

4. That there was no evidence upon which to base a verdict for the plaintiff, and said verdict should have been for the defendant, and for other good and sufficient reasons.

Filed Oct. 28, 1863.

Oct. 29th, 1863. Motion heard and over-ruled. Defendant excepted.

49 Judgment rendered in favor of plaintiff that he have his costs and the goods in controversy.

Defendant prays an appeal to the Supreme Court, which is granted, on condition that, in thirty days, he file his appeal bond for $200, with Ralph S. Norris or Wellington Weigley as surety, with the Clerk of this Court.

Bill of exceptions in said cause. Filed Oct. 30, 1863.

50 Trial of cause commenced October 22, 1863.

The plaintiff offered, to support the issue on his part, the following evidence:

1. T. R. Bird, *sworn for plaintiff.*

I know the goods in controversy in this suit; saw them in the Sheriff's office. Defendant admitted to me that the demands had been for the surrender of the goods by the plaintiff, and Mr. Shissler, representing him, and that defendant had refused to give them up because he had them under a writ of attachment. I do not know

whether the demands were made before or after the commencement of this suit.

2. O. P. Hopkins, *sworn for plaintiff.*

51 I know the goods in controversy. I saw two boxes of goods, marked "L. Phillips, Galena, Ills.," in the Sheriff's office; could not say where they came from. They were in defendant's possession when the demand was made; cannot say that the demand was made before or after the commencement of this suit. Miner refused to give them up when the demand was made. The defendant was Sheriff at that time.

3. *Deposition of* Harry Horwitz.

52 Ans. to Int. 1. My name is Harry Horwitz; age, thirty-five; residence, St. Louis, Missouri; occupation, rectifier and wholesale liquor dealer.

Int. 2. Do you know the plaintiff in this case, Ludwig Phillips? How long have you known him? A. I do; have known him from 1850.

Int. 3. Did Phillips ever live in Anna, Ills., if so, when and how long? A. He lived at Anna, I think, in 1861, but how long I don't know.

Int. 4. Do you know anything about Phillips having a stock of goods at Anna, Ills.? if so, how long did he
53 have the goods there? Describe the stock as well as you can. A. I know nothing about his having goods then.

Int. 5. Do you know anything about the pecuniary circumstances of the plaintiff, and if so, state all you know about them when he lived at Anna? A. I do. I don't know anything about his circumstances at Anna, but in 1860, he was worth about two thousand dollars.

Int. 6. Did you ever know a man named Horwitz, who kept a store in Anna? if so, what was his christian name? A. I did, John Horwitz was his name.

Int. 7. Had he any other name? A. Not to my knowledge.

Int. 8. How long have you known him? A. All my life. He is my brother.

Int. 9. Was he ever called by any other name than John Horwitz? A. Not to my knowledge.

54 Int. 10. Do you know anything about the plaintiff's getting any money from Europe? if so, state when it was, how much he got, and all you know about it. A. In 1860, he got from Europe [eight hundred dollars in money,] a gold snuff box, a diamond ring and a diamond breast-pin. He showed me a letter, and the things, when they came. } *Excluded.*

Int. 11. Give the value of the snuff box, ring and breastpin? A. I do not know their value.

Cross examined.

Int. 12. Did you see the 800 dollars referred to above. A. I did not see the 800 dollars, but saw the letter from his brother from Europe.

Int. 13. Is not all you know about this legacy derived from said letter, the declarations of the plaintiffs and the snuff box, ring
55 and breast-pin? A. That is all I know about it. } *Excluded.*

Int. 14. Except from the letter and what plaintiff said, do you know where the snuff-box, ring and breast-pin came

from? A. I know the snuff-box; I have taken many pinches of snuff out of it in Europe when his father owned it. I did not know the breast-pin or the ring.

Int. 15. Were you ever at Anna, Ills., if so, when, and how often? A. I have been at Anna. I was there in '59. I lived there in '58 and '59. The last time I was there was with Mayberg, when he attached the goods of Phillips.

Int. 16. Were you there in 1860? A. Yes, I was there.

Int. 17. Of what did the plaintiff's property consist, in 1860? A. Money and some Minnesota bonds; but I did not know their value. I saw the bonds.

Int. 18. Was he not clerking for your brother at Anna,
56 in 1860? A. Not to my knowledge; I can't tell.

Int. 19. How much money do you know, of your own knowledge, of his having in 1860? A. About $2,000.

Int. 20. Did you see this money? A. I did.

Int. 21. Did you count it? A. I did not. He loaned me once $1,000, and I saw more money in his possession at that time.

Int. 22. Where was this money loaned to you? A. at St. Louis.

Int. 23. Was not that your brother's money? A. not to my knowledge.

Int. 24. When did your brother come to this country? A. I cannot tell. I first saw him here in 1850, in Louis-
57 ville. When I left Germany, I left my brother there.

Re-examination.

Int. 25. Was your brother, John Horwitz, selling goods in Anna? A. He was.

Int. 26. Did you afterwards see any body else in possession of that stock of goods at Anna? A. I did not.

HARRY HORWITZ.

4. *Deposition of* John Horwitz.

Ans. to Int. 1. My name is John Horwitz; age, 40 years; residence, St. Louis; occupation, dealing in hides.

Int. 2. Did you ever sell goods at Anna, Ills., if so, when, and how long? A. Yes, from '58 to '61.

58 Int. 3. Did you sell out your stock of goods to any one; if so, when, and to whom? A. Yes; in 1861, on Jan'y. 31st; to Phillipps, plaintiff in this suit.

Int. 4. Of what did your stock consist at that time? A. groceries, hard-ware, dry-goods, clothing, hats and caps, boots and shoes.

Int. 5. About what was the stock worth when you sold it to plaintiff? A. $4,000.

Int. 6. Did the plaintiff pay you for the stock, if so, how? A. He paid $400 in cash, the balance he gave me in notes; the notes are payable every three months up to two years, and were for $500 each, except one, which was for something over $600.

Int. 7. Did plaintiff take possession of the stock of goods; if so, when?

Objected to, by Defendant.

59 Ans. He took possession Jan'y 31st, 1861.

Int. 8. What did plaintiff with the goods after he took possession of them? A. He commenced selling them, and continued to sell for about two months, and until they were attached. I left Anna about two weeks after the sale, and was away about two months.

Int. 9. After you sold out to the plaintiff, did he advertise in his own name; if so, how, and where? A. He advertised in the Jonesboro' *Gazette*, that he had bought me out, and was trading on his own account. } *Excluded.*

Objected to, by Defendant.

Int. 10. Was that the nearest newspaper to Anna? A. Yes; about a mile from his store. } *Excluded.*

Int. 11. Did you ever exercise any control over the goods after you sold them to the plaintiff? A. No.

Int. 12. Did you ever see the goods at Galena, in con-
60 troversy in this suit? A. No.

Int. 13. Do you know whether the goods at Galena in controversy in this suit are a part of the goods that you sold plaintiff? A. I cannot tell; I never saw the goods at Galena.

Int. 14. Did you ever see some goods attached in Bloomington, Illinois., on their way to Galena, by Amberg & Lindauer, and replevied by this plaintiff? A. I did not see the goods. I saw the boxes marked L. Phillips, Galena, with goods in them. There were some tobacco boxes, and I saw a box containing hardware; a part of the top was broken off; there were some coffee mills, log chains and knives in the box.

Int. 15. Were there any marks on any of these boxes or goods, by which you could identify them? A. The boxes were marked L. Phillips, Galena, that is all the marks I
61 can remember; I recognized the hardware and tobacco as part of the goods I sold to Phillips.

Int. 16. After you sold out to Phillips, what business did you go into? A. I went into dealing in hides, and have been in that business ever since?

Int. 17. Have you any other name than John Horwitz? A. I have not.

Int. 18. Have you ever had, or been called any other name? A. Not that I know of.

Int. 19. Was your sale to Phillips made in good faith or not?

Objected to, by Defendant.

Ans. It was in good faith.

Cross examined.

Int. 20. How much were you in debt January 31st, 1861? A. About six thousand dollars. I owed Aub, Frenkel & Co., from $1,500 to $1,800; Meyberg & Hellman, about $250; Louis Stix & Co., about $1,500 or $1,
62 600; Cohen, Guiterman & Co, between $300 and $400; Amberg & Lindauer $1,600 or $1,700; The American Co., 2200; I owed in Cairo $300 or $400; Shaw, Barber & Co. about $500.

Int. 21. Was not the most of that indebtedness then due or about becoming due? A. It was not then due; a small amount was due; most of it had about two months to run.

Int. 22. Had not Louis Stix & Co's claim only about a month to run? A. It might be; I don't know exactly.

Int. 23. Who was clerking for you at that time? A. A man by the name of Miller. I had no other clerk at the time.

Int. 24. Did the plaintiff ever clerk for you? A. No.

Int. 25. What was plaintiff's business at Anna? A. He was out of business.

63 Int. 26. What were you doing from Jan'y 31st, 1861, until you left Anna? A. Was selling dried fruit.

Int. 27. Were you in your store any during that time? A. Part of the time I was; and part of the time, about eight days in Springfield.

Int. 28. Were you not, on Jan'y 31st, 1861, in failing circumstances? A. I was not in failing circumstances. I lost a good deal of money.

Int. 29. What property did you own at that time. A. I did not own any real estate property.

Int. 30. Did you have any property, except the stock of goods sold to Phillips, if so, what? A. I owned a lot dried fruit, worth about $1,200, and the store.

Int. 31. Were you intimate with the plaintiff? A. I know him well; have known him many years.

64 Int. 32. Was he acquainted with your business. A. I do not know.

Int. 33. Did you ever tell him about how much you owed? A. I did not.

Int. 34. Did you notify your Cincinnati creditors that you had sold out to Phillips? A. I did not.

Int. 35. Were you in Galena at the time the goods in controversy were attached? A. I can't tell; I saw Meyberg in Dubuque.

Int. 36. Did you not tell Hellman that you sold out to avoid being troubled by your creditors? A. I never saw Hellman since I sold out.

Int. 37. Did you not tell members of that firm to that
65 effect? A. I did not.

Re-examination.

Int. 38. Have you paid any of your indebtedness since your sale to plaintiff; if so, how much, and to whom? A. I paid Meyberg & Hellman from $100 to $150; I paid Lyons & Co., $480; I paid the Cairo bills; I paid some others, don't recollect the amount.

Int. 39. Have not these attachment suits prevented you from paying more, by preventing Phillips from paying you?

Objected to, by Defendant.

Ans. Certainly they have.

Int. 40. At the time you sold out to Phillips did you have any money due you; if so, how much? A. Yes; About $600 or $800. My books were attached, and my creditors collected it.

Int. 41. During the two weeks after you sold out to Phillips before you moved to Anna, how much of the time were you in the old store, and what were you doing then?

Cross int. 6. Did you see John Horwitz in Anna frequently after you saw the notice? A. I did not see him often. He left there sometime after, I don't recollect when.

Cross int. 7. Was it before or after you saw the notice that you saw the boxes about the door? A. It was after.

Cross int. 8. Was John Horwitz in Anna when you
75 saw the boxes about the door? A. I don't know.

Cross int. 9. Can you tell with any degree of certainty what time you saw this notice, or how long you saw Phillips afterwards? A. I think it was in the spring of 1861, I can't say how long Phillips remained; he was there till the goods were attached, and at the trial of the right of property.

Cross int. 10. How long after you saw the notice were the goods attached; and by whom; against whom was the attachment; and were the goods on shelves or boxed up at the time? A. Some two or three weeks; by Horwitz' creditor, I don't know his name; against John Horwitz' as I understood; I can't tell whether the goods were on shelves or in boxes.

Cross int. 11. At the time you saw Phillips behind the counter what was he doing; and how long was it before
76 the store was closed by attachment? A. I would not say whether I saw him selling goods or not; nor can I say how long it was before the attachment.

Cross int. 12. Are you certain whether this notice in the paper was given by Horwitz or Phillips, or by whom it was signed? A. I am not.

Int. 13. What business was John Horwitz engaged in when in Anna, and what name had the store in which he did

business? A. Selling goods and buying furs and skins and shipping them. I think it was called the Egyptian Store.

Cross int. 11. State whose store this was called from the time Horwitz first commenced business there up to the time the goods were attached? A. It was called Horwitz' store—better known as the Jew Store.

JOSEPH P. BOHANNON.

77
78 7. John C. Hawkins, *sworn.*

I have seen the goods in controversy in this suit—saw them first at McCloskey's store, and took them thence to the Sheriff's office by order of the defendant; there were two boxes marked "L. Phillips, Galena, Ills." I learned from defendant that he took the goods as Sheriff, and I replevied them from him under the writ in this suit as coroner, and gave them to Mr. Ives. I know nothing of a demand.

Cross examination.

I know the goods were turned over to Phillips and Ives. Think I saw Phillips, but not sure; I know two men came, Ives and another man. The goods were delivered to them
79 on a dray in front of the Court House, to the best of my recollection.

8. Wm. Perry *sworn.*

I live at Bloomington, Illinois. I know these goods in controversy. I sold them, and paid the proceeds to Ives, who was surety on the bond in this case. The goods sold for a little over $600, including expenses. They were dress goods, clothing, &c. I saw the same goods at Anna in possession of Horwitz in September, 1860. I was at Anna from August 17, to October 1, 1860, and know Horwitz; was frequently at his store. I become acquainted with

85

Cross examination by Plaintiff.

Ans. to int. 1. My name is Benedict Frenkel; aged 47; years; business, selling at wholesale dry goods and clothing. I am of the firm of Aub, Frenkel & Co.; reside in Cincinnati, Ohio.

Cross int. 2. Do you know Ludwig Phillips, Joseph Horwitz, John Horwitz, or either of them, and how long have you know them respectively, and when and where did you become acquainted with them? A. I know Ludwig Phillips by reputation. I know Joseph Horwitz,
86 I do not know John Horwitz. I have known Joseph Horwitz since March, 1860. I became acquainted with him in Cincinnati. He came with a letter of recommendation from his brother Harry. I was not intimate with him. I only knew him by commercial dealings.

Cross int. 3. Are you acquainted with a stock of goods of which those in controversy are a part, which were in possession of Phillips at Anna? if so, state, if you know of your own knowledge, from whom Phillips purchased them, and for how much, and how long he was in posses-

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I do not know that the goods were delivered to Phillips at Anna, or any other place, [and do not believe they were.] } *Excluded.*

Cross int. 5. State how long Phillips remained in possession of the goods after his purchase of Horwitz. A. I know not how long, nor that they ever were in his possession.

Cross int. 6. State if you know anything about an attachment being issued from the Union County Circuit Court, and levied upon a portion of this stock of goods, and who made the affidavit to procure it. A. [The
88 firm of Frenkel & Co. attached some goods in the Circuit Court in Union County, and some money, but it was no part of the goods in controversy in this case. Phillips claimed the goods, and litigated and lost the case. It was tried in two Courts, and both times decided in our favor. The affidavit was made by Frederick Lewis, our agent, but not a member of the firm, and I have no interest whatever in the present suit or goods in the controversy.] } *Excluded.*

The plaintiffs were Aub, Frenkel & Co. and the defendant was Phillips, I believe. Horwitz had ran away with the goods in controversy in this suit.] *Excluded.*

Cross int. 7. Are you or were you at any time interested in the stock of goods sold to Phillips, a part of which are in controversy in this suit? and are you or have you ever been party or witness in a suit against Horwitz in Jonesboro? A. I am in no way interested in the goods in controversy in this suit. [I know of no goods being sold to Phillips. We attached certain goods in the possession of Phillips which belonged to Horwitz, and received our money; this is the only thing I know of the matter, of
89 interest. I was a party to a suit in Union County, but whether against Horwitz or Phillips, I cannot say. Phillips contested it. I was not a witness.] *Excluded.*

Cross int. 8. Are you acquainted with John Horwitz, and do you know about the suit referred to in the sixth cross interrogatory herein? if so, state whether John Horwitz is not the man referred to by you in the second direct intorrogatory to Meyberg. A. I am acquainted with Joseph Horwitz, but do not know John Horwitz. Joseph Horwitz is the one that kept the store at Anna. He may be called by mistake or otherwise, John. He said his name was Joseph when we sold him goods, and this is the man referred to by me. I cannot tell to whom Meyberg referred.

Cross int. 9. Are you acquainted with the person referred to in the third direct interrogatory as Horwitz? if so, state what is his name, whether Jonathan, John or Joseph. A. I am. He said his name was Joseph Horwitz, and we changed the goods to Joseph. I never knew any other Horwitz except his brother Harry.

90 Cross int. 10. State if the person referred to in the second direct interrogatory to Meyberg is John Horwitz, and as such has been prosecuted for a part of the goods sold to Phillips? A. I know not to whom Meyberg refers. I never knew John Horwitz, unless Joseph has gone by that name; and I knew of no prosecution against John Horwitz for stock sold Phillips.

Cross int. 11. De you know of your own knowledge, or is the information hearsay, anything in relation to the sale of the goods in controversy as [heretofore mentioned] from John Horwitz to Ludwig Phillips? *Excluded.* A. I neither knew by knowledge or information of a sale of the goods in controversy from John Horwitz to Phillips, and know not that a sale was made. [I understood that Phillips claimed a pretended purchase of goods of Joseph Horwitz.] *Excluded.*

Cross int. 12. Do you now, or have you at any time, held a claim or demand against John Horwitz, or Joseph
91 Horwitz, or either, and which of them, for goods sold them or either of them, a part of which are in controversy in this suit? or have you any interest whatever, directly or indirectly, contingent or otherwise, in the result in this suit? A. I held a claim against Joseph Horwitz for goods sold him, but there are no goods in this suit in controversey with me, and I have no interest, directly or indirectly, contingent or otherwise in the result of this suit.

Cross int. 13. If in answer to the direct interrogatories you state anything relating to the sale of the goods in controversy to Ludwig Phillips, from whom do you swear he purchased them; from Joseph Horwitz or from John Horwitz? Were you present at said sale? Do you swear to the sale from your own knowledge, or from hearsay?—How much of your answers and other facts concerning the sale are sworn to on your own knowledge, and how much

on hearsay? A. I cannot swear of whom Phillips purchased the goods in controversy, and do not know that he purchased them at all. I was not present at the time of the sale, and have no personal knowledge in relation to it.—
92 [I know he had no means to purchase, but know nothing of the transaction of purchase and sale between Phillips and Horwitz. I only know that Horwitz had the store before the goods in part were run off by him.] *Excluded.*

Cross int. 14. Do you know of your own knowledge, the time of the purchase of the goods by Phillips, or what was done with them immediately after the sale, or do you answer these facts from hearsay? A. I have no knowledge of any purchase, or its time if any were made. [I know that Phillips had possession of the part of the goods we attached, and that Horwitz carried off part, and this I learned by the suit, I did not see him do it.] *Excluded.*

Cross int. 15. How long have you known Phillips—when did you first see him—and how many times have you seen him? Do you state his character for responsibilty from your own knowledge or from hearsay; if from hearsay, state the names and business of those from whom you obtained your information. A. I only know Phillips by reputation; I have not seen him. I acquired my knowledge
93 of him as I would in relation to any other party. I heard of him at St. Paul, when I was there, as a clerk without means, [and as expending more money than he earned.] I cannot recollect the names or business of the parties. *Excluded.*

Cross int. 16. What facts or circumstances do you know tending to show fraud in the purchase of said goods by Phillips? Do you swear to your own knowledge or from hearsay? What facts or circumstances are stated on hearsay, and what on your personal knowledge. Who was

present at the purchase of said goods by Phillips? A. I have no knowledge of the purchase by Phillips, if he made any; nor who was present. I know that Horwitz was in debt in Cincinati in a large amount, and paid nothing for six months before his pretended sale. Phillips had no means, [and thus I judge there was fraud.] } *Excluded.*

Cross int. 17. What is your name, age and residence? How long have you resided there? What is your business? Are you connected in business or in any way related to Frederick Lewis? If so, in what manner? Where and how long have you known Phillips? Were you intimate
94 with him? Were you present at the sale of the goods spoken of? If so, what was sold; when, where, what amount, and what terms? What was done with the goods after the sale? How long did they remain there, and when and where were they removed? How do you get your information in regard to these facts? If from any person, what is his name? If you speak of the responsibility of Phillips, how do you get your information? From whom? Detail all facts and circumstances you know from your own knowledge; and the names of the persons from whom you obtained your information, not of your personal knowledge. A. My name is Benedict Frenkel; age, 47 years; residence, Cincinnati, Ohio; have resided there 22 years; am of the firm of Aub, Frenkel & Co., wholesale clothing and dry goods dealers. I am not connected in business or in any way, nor related to Frederick Lewis. I am not personally acquainted with Phillips, was not present at the sale of goods spoken of, and know not that any were sold; I therefore know not when, where, or what amount or on what terms they were sold, not what was done with them, or how long they remained there, nor when nor where they were removed. [I only know that we attached goods of Horwitz at Anna, and got our money out of him.] I get my } *Excluded.* information in relation to the responsibility of Phillips, as

I have stated, from parties at St. Paul, [and his reputation from parties in Cincinnati, that he was a clerk of expensive habits, and a small salary, and living beyond his means.] } *Excluded.* The name of the parties from whom I derived my knowledge I cannot state, as I paid little attention to it.

Cross int. 18. Who was present at the taking of this deposition? Do you answer with or without consultation with other witnesses or any other person? Have you any religious belief; if so, of what persausion? A. Myself, the commissioner, the usual employees of the commissioner. I answer without consultation of other witnesses or any other party. I have a religious belief; *I believe in a God and future state of rewards and punishments, and that all rascality transacted in this world, not repented of, will be hereafter punished in Hell.* This is my persuasion, and the longer I live the more I am persuaded it is the true persuasion.

Cross int. 19. If, in answer to direct interrogatory 3rd you state that you learned anything tending to show fraud, state from whom you learned it? A. [What
96 we learned we learned from our proceeding in attachment, from the small amount of goods at Anna, from the statements of various parties, the decision of the Court in our case, and the opinions of attorneys. From whom specifically I learned particular facts, I am unable to say.] } *Excluded.*

BENEDICT FRENKEL.

2. *Deposition of* Marx Hellman.

Int. 1. Do you know the parties in this case, or either and which of them; and how long have you known them respectively; also state if you know one Joseph Horwitz, how long have you known him, and where did he reside?

A. I know Phillips. I do not know Miner. I have known the plaintiff six or eight years in this country; I also knew
97 him in Europe eighteen or twenty years ago. I know one Joseph Horwitz, I have known him for the last four years. He resided at Anna, Illinois.

Int. 2. State fully all you know respecting Phillips' responsibility for his debts or contracts, and state further and particularly any and all facts tending to show fraud in the sale of merchandise at issue in this case by Horwitz to Phillips. A. In Europe he was a clerk at a small salary, and spent more than he received, and had debts that he could not pay, as tailor's bills, &c. I saw him at St. Paul about six years ago; he was clerking then. I saw him again in 1858, and then he was out of employment, and complained that his employers had failed and had not paid his wages. That they owed him some three or four hundred dollars, and it was entirely lost. His reputation at St. Louis was that he had no means or responsibility; and there he had no credit. [The following year Joseph Horwitz told me that Phillips was his uncle; that he was doing nothing, was a spend thrift, and always spent more than
98 he made.] I knew in Europe that Phillips was in some way related to Horwitz. I know nothing about the sale of Horwitz to Phillips personally, but know that Horwitz was largely in debt when he pretended to sell to Phillips, [and Horwitz has run away, and is understood to have gone to Europe, having run away from here several years ago. Horwitz told me that he left Europe on account of his wife.]

Excluded.

Excluded.

Int. 3. State any other matter or thing of advantage to the defendant in this case. A. I know nothing else that I am aware of.

Cross Interrogatories by the Plaintiff.

These are identical with those propounded to Benedict Frenkel *supra*, to which reference is made.

Ans. to Cross int. 1. A. My name is Marx Hellman, age, 43 years; occupation, wholesale hat and cap dealer; of the firm of Meyberg & Hellman; residence, Cincinnati.

99 Ans. to Cross int. 2. I know Ludwig Phillips, and Joseph Horwitz—do not know John Horwitz, unless Joseph Horwitz went by that name. His real name was Joseph; and there was only one doing business at Anna, Illinois, and trading here at the time Joseph was in busines. I have known Phillips six or eight years in this country, and knew him in Europe some eighteen or twenty years ago. I have known Horwitz four years; became acquainted with him at Cincinnati. He came to buy goods, introduced by his brother Harry. My acquaintance with him was in a business way—was not intimate with him. I cannot say I was intimate with Phillips, yet he talked to me of his matters as to an old acquaintance.

100 Ans. to Cross int. 3. I am not acquainted of my own knowledge with the stock of goods referred to. I know not that Phillips had any part of it in possession in Anna. I was not present at any sale, if any was made, and have no personal knowledge on the subject.

Ans. to Cross int. 4. I have no personal knowledge on the subject. I know a man named Joseph Horwitz had a store and a stock of goods at Anna, [and understood from others that he pretended to sell out to Phillips, but know nothing personally about the sale. But I do know from
101 the statements of Phillips and his general reputation that he had no money to pay for them, and his notes were worthless.]

Excluded.

Cross int. 5. I know nothing about it personsonally.—No John Horwitz owned goods there to my knowledge or sold them to Phillips, nor do I know how long Phillips was in possession. [I understood from others that the goods at Anna were attached and sold for a debt of Joseph Horwitz by the name of John Horwitz, soon after the pretended sale.] *Excluded.*

Ans. to Cross int. 6. [I understood an attachment was issued against the goods at Anna, that had been run off.] I have no personal knowledge who made the attachment nor the affidavit, nor who the parties were. [I have understood that the plaintiffs were Aub, Frenkel & Co., and the defendant the man known to me as Joseph Horwitz, for I know he bought of Aub, Frenkel & Co., and owed them.] *Excluded.*

102 Ans. to Cross int. 7. I do not know of my own knowledge that Phillips bought a stock of goods at Anna. Joseph Horwitz owed us—that is Meyberg & Hellman—but I have no interest in any stock of goods sold to Phillips. I have never been party nor witness in a suit against John Horwitz in Jonesboro'.

Ans. to Cross. int. 8. I do not know John Horwitz; no such man ever did business at Anna, nor owed Aub, Frenkel & Co., but the man whose goods were attached by them was Joseph Horwitz, [and if he was called John it was a mistake in the writ, or Joseph must have called himself John.] Joseph Horwitz is the man referred to in my answer to 2nd direct interrogatory. *Excluded.*

103 Ans. to Cross int. 9. I am acquainted with the person

referred to in the 3rd direct interrogatory as Horwitz. His name was Joseph, as he and his brother Harry told me. [He may have passed himself off as Jonathan or John, or by any other name, for aught I know.] *Excluded.*

Ans. to Cross int. 10. Joseph Horwitz is John Horwitz, as I understand, [if he claims to be John. I know by report that Joseph Horwitz has been prosecuted for a part of the stock sold to Phillips, by the name of John, but have no personal knowledge.] *Excluded.*

104 Ans. to Cross int. 11. I know nothing of my own knowledge of the sale from Horwitz to Phillips, call him John or Joseph, [By reputation I understood that Joseph Horwitz made a sham sale to Phillips, left part of the goods at Anna, and run the residue off in the night.] *Excluded.*

Ans. to Cross int. 12. Horwitz owed us about $200, and owes us yet. We never had any suit against him, and know not that the goods in controversy in this suit are the goods we sold him. I have no interest whatever, directly, or indirectly, contingent, or otherwise, in the result of this suit.

105 Ans. to Cross int. 13. [If Phillips purchased goods in controversy, it must have been from Joseph Horwitz—there was no John, except that was his nickname.] I was not present at the sale, and know not of any sale being made. [I do not believe any sale was made,] but know no facts in relation thereto. *Excluded.* *Excluded.*

Ans. to Cross int. 14. I have no knowledge of the purchase by Phillips of these goods, nor of what was done with them immediately after the sale.

106 Ans. Cross int. 15. I knew him twenty years ago in Europe, and have known him six or seven years in this country. In these six or seven years, I may have seen him three or four times. I know of my own knowledge that Phillips is no man of responsibility, [and I have no confidence in his character.] I know this from my own knowledge and experience and without information from other parties. *Excluded.*

Ans. to Cross int. 16. [My own firm belief is that the sale from Horwitz to Phillips, is a fraudulent one, however] I was not present when the sale was consumated, and I know it from
107 information. I know that Horwitz was largely in debt long past due, and promised soon to pay. I know that Phillips had no means to buy; and three years ago, he told me he had nothing, and was cheated out of his salary at St. Paul. *Excluded.*

Ans. to Cross int. 17. My name is Marx Hellman; age, forty-two years; residence, Cincinnati. Have resided in Cincinnati fourteen years. Was one of the firm of Mey-
108 berg & Hellman. I am in no way connected, in business or in any other way, or related to Frederick Lewis. I have known Phillips for twenty years in Europe, and six or seven years in this country. I was well acquainted with him. I was not present at the sale of the goods spoken of, and cannot state what amount was sold, nor what, when, where, nor on what terms. [My information is, as soon as the goods were sold, a great portion of them were sent away by railroad. I do not know the exact time they were removed. I got this information from Frederick Lewis, and Benedict Meyberg.]— *Excluded.* I know about the responsibility of Phillips from my own knowledge. When I knew him in Europe, he was a clerk and had no means, and as long as I knew him in this country, he was either peddling some trifling goods, or he was a clerk at St. Paul, in a clothing house.

Ans. to Cross. int. 18. Myself, the commissioner, and the parties belonging to his office. I answer without consul-
109 tation with any other witness or any other person. I have a religious belief; I believe in one God; I am born a Jew.

Ans. to Cross int. 19. I have answered no question addressed to Benedict Frenkel. I make my statements as to fraud only in answer to question as above asked.

MARX HELLMAN.

3. *Deposition of* Benedict Meyberg.

Int. 1. Do you know the parties to this suit, or either, and which of them; and how long have you known them
110 respectively? A. I do not know Phillips personally, nor do I know the defendant.

Int. 2. Do you know Joseph Horwitz, and how long have you known him? What was his business and residence when you knew him? Do you know of his making a pretended sale of his stock to Phillips? If so, state all the circumstances respecting such sale. A. I know John Horwitz; have known him four or five years. He was keeping a store when I knew him at Anna. He made a pretended sale of his stock to Phillips. I talked to him about it.— [I asked him how he came to transfer his stock to Phillips, a man without means and of not good reputation. He said he was afraid his creditors would come on, and he sold out; that Phillips had paid him nothing, but expected some money from Europe.] Phillips was his clerk. *Excluded.*

Int. 3. State where said merchandise was kept at the
111 time and previous to such sale, and what was done with

it immediately after said sale? A. It was kept at Horwitz' store at Anna prior to the sale; part were kept afterwards at Anna and part were sent away. Part were sent to Galena; part to other places. I saw Horwitz three or four weeks after the pretended sale, at Dubuque, Iowa.

Int. 4. If you know Phillips, state his character for responsibility; and any circumstances tending to show fraud between him and Horwitz, respecting the pretended sale. State also if the goods at issue in this case were a part of those which were sold at the pretended sale. A. I only know Phillips by reputation. He was considered as worth nothing; entirely without means. He was a countryman of Horwitz'; had been a clerk, [and his reputation was bad, even with Horwitz' brother, who said he did not see how his brother could sell to a man without means or reputation, and that Phillips would swindle him out of the stock.] The goods in this suit are a part of that stock. } *Excluded.*

112 Int. 5. State all other facts which you know respecting the matters in dispute in this suit, or which will be of advantage to the defendant. A. I know nothing more.

Cross Interrogatories by the Plaintiff.

These are identical with those propounded to B. Frenkel *supra*, to which reference is here made.

Ans. to Cross int. 1. My name is Benedict Meyberg; age, forty-two years; business, merchant; residence, Cincinnati.

Ans. to Cross int. 2. I do not know Phillips personally. I know Joseph Horwitz; do not know John. Have known Joseph about five years at Anna. My acquaintance with him was in business.

113 Ans. to Cross int. 3. I have no knowledge of the goods referred to, except those attached. I do not know from whom Phillips purchased them, if he purchased them at all. [I saw Aub, Frenkel & Co. attach certain goods in the possession of Phillips.] I do not know how long they had been in his possession, nor how many they were, and was not present at the sale. } *Excluded.*

114 Ans. to Cross int. 4. I know nothing about the sale, nor whether any purchase money was paid or any notes given by Phillips to John Horwitz. I never knew John Horwitz; I know Joseph and Harry. [I know that Phillips was clerk for Joseph Horwitz, as Joseph Horwitz told me, but know nothing about the posssession of the goods.] } *Excluded.*

Ans. to Cross int. 5. I cannot say how long Phillips remained in possession of the goods. [They were attached soon after Horwitz ran away.] } *Excluded.*

Ans. to Cross int. 6. I know that an attachment was issued by Aub, Frenkel & Co., and some goods were at-
115 tached; the affidavit was made by Frederick Lewis; the plaintiffs were Aub, Frenkel & Co. I think the defendant was Joseph Horwitz, [and that Phillips defended the suit.] } *Excluded.*

Ans. to Cross int. 7. I am not interested, and never have been, directly, or indirectly, in the stock of goods sold to Phillips at Anna; nor am I, nor have I been a party or witness in a suit against John Horwitz, in Jonesboro'.

116 Ans. to Cross. int. 8. I am not acquainted with John Horwitz. I knew about the suit. John Horwitz is not the man referred to by me, unless John Horwitz is Joseph Horwitz.

Ans. to Cross int. 9. I am acquainted with Horwitz; his name is not Jonathan nor John; it is Joseph, unless he stated what was untrue. I know Joseph and Harry.

Ans. to Cross int. 10. The person I refer to is Joseph Horwitz, and not John, whoever was prosecuted. [If prosecuted by the name of John it was a mistake for Joseph.] *Excluded.*

117 Ans. to Cross int. 11. I have no knowledge that any sale was made by John Horwitz to Phillips. [I understood Joseph left part of his goods with Phillips, his clerk, and went off with the rest.] *Excluded.*

Ans. to Cross int. 12. I have now a claim of about $200 against Joseph Horwitz. I cannot tell whether any of the goods are in controversy in this case. I have no interest whatever, directly, or indirectly, contingent or otherwise, in the result of this suit.

118 Ans. to Cross int. 13. I know nothing of the sale to Phillips, or that one was made. I know not if he purchased, and know nothing of John Horwitz; was not present at any dealing between them. [Joseph Horwitz told me that he had sold out to Phillips. I asked him how; he told me Phillips was to pay from money received from Europe. This is all I know about it.] *Excluded.*

119 Ans to Cross int. 14. I do not know personally the time of the purchase, nor what was done with the goods.

Ans. to Cross int. 15. I know Phillips only by reputation; I never saw him. I state his reputation for responsibility as I would any other man's, by what people say of him. Harry Horwitz said Phillips was irresponsible,

[and would swindle his brother out of the property.] I heard it from others, but do not recollect their names. *Excluded.*

120 Ans. to Cross int. 16. [Joseph Horwitz told me that he had lost money in Peaches and other things, but would in this way try to make it right.] Horwitz was in debt, and Phillips was his clerk. [Horwitz never claimed that Phillips had any money, but that Phillips expected some from Europe.] *Excluded.*

121 Ans. to Cross int. 17. My name is Benedict Meyberg; age, 42 years; residence, Cincinnati; have resided there thirteen or fourteen years. I am a merchant. Am not connected in any way or related to Frederick Lewis. I do not know Phillips personally—was not present at the sale of goods; do not know what was sold, when, where, what amount or on what terms; nor what was done with the goods. [Part remained at Anna, part were moved away, and Horwitz wanted to take charge of them at Galena. I have no personal knowledge on the subject. I cannot recollect where I got my information from, except from Horwitz; and as to the responsibility of Phillips, I heard that from Harry Horwitz, also his character.] *Excluded.*

Ans. to Cross int. 18. Myself, the commissioner, and the parties belonging to his office. I answer without consultation with the witnesses or any other persons. I have a
122 religious belief; I believe in God, and the authority of an oath. I am an Israelite.

Ans. to Cross int. 19. I did not answer question 3, to Benedict Frenkel; know not what his answer was, nor what any witness answered besides myself, and I know not on what they based their statements of fraud. Was not present at any of their examinations, and have answered for myself as to my opinion, and facts showing fraud.

B. MEYBERG.

123
124 4. *Deposition of* J. M. Brisbin.

Int. 1. Do you know the parties in this suit, or either
125 and which of them, and how long have you known them respectively? A. I know Phillips, have known him four years, am not acquainted with Miner.

Int. 2. Were you ever in the employ of J. Horwitz; if so, when, where, and in what capacity? and in what business was he engaged. A. I was employed by him as a book keeper and salesman in the year 1860 and 1861, at Anna. Horwitz was engaged in a general trade of merchandise.

Int. 3. When did you first enter the employ of Horwitz, as book keeper and salesman; and at what time did you leave his employ? A. I think it was sometime in September, 1860, that I entered his service, and left in February, 1861.

Int. 4. State if you know where Horwitz bought his goods, and how the packages and boxes containing the goods purchased by him were marked when received at the store,
126 if marked at all? A. [It is my opinion he bought his goods in Cincinnati, I understood from him he bought them there. The packages that I noticed coming were marked J. Horwitz.] } *Excluded.*

Int. 5. State what you know about Horwitz employing a clerk to take your place when you left the store; if any was employed, who was it, and how long did he act as clerk for Horwitz? A. When I left I understood Phillips was employed in my place. I know he was employed as a clerk for a week—I could not exactly say how long.

Int. 6. Had the store kept by Horwitz any particular name; if so, what was it? A. Egyptian store.

Int. 7. Do you know what became of the goods owned

by Horwitz and kept in this store? were they shipped off any where? if so, where? A. Some of the goods were
127 shipped away; I cannot say to what place.

Int. 8. How long after you left the employ of Horwitz was it that the goods were shipped away? A. I think within three weeks.

Int. 9. At the time you left the service of Horwitz, who was the owner of the goods in the store, or who claimed them? A. Horwitz was the owner at the time I left him.

Cross-examined by Plaintiff.

Cross int. 1. How long did Horwitz remain in possession of said stock of goods after you left? A. I cannot say, except from hearsay.

Cross int. 2. Do you know of Phillips being in posses. sion of the stock after you left? If so, how long? A. He
128 was; How long I can't tell; perhaps three weeks.

Cross int. 3. Do you know of your own knowledge that Phillips was employed as clerk in said store at any time? If so, at what salary or wages, and how long? A. [I know that he took my place, for that Horwitz told me; do not know how long or at what salary.] } *Excluded.*

Cross int. 4. Do you know that Phillips took your place, except what Horwitz told you? A. Phillips also told me.

JACOB M. BRISBIN.

5. *Deposition of* Daniel Cover.

129 Do you know the parties in this suit, or either, and which of them? and how long have you known them respectively? A. I know Phillips—have known him about one year; don't know Miner.

Int. 2. Are you acquainted with Horwitz; if so, when and where did you first know him, and what business was he engaged in, and where? A. I am; first knew him at Anna; he was engaged in clothing and dry goods business, and buying up furs; he first brought on a stock of clothing and then dry goods. I think it was in the fall of 1860; would not be positive.

Int. 3. How long was Horwitz engaged in merchandising in Anna, and when, if at all, did he close up them? A. I think about a year. I cannot tell when he closed up—[I think the Sheriff closed up for him.] } *Excluded.*

Int. 4. When did Horwitz stop selling goods in Anna? A. It was in the fall, or perhaps in the winter.

130 Int. 5. In what year did he stop selling goods in Anna? A. I am not positive whether in 1861 or 1862.

Int. 6. State whether the store in which Horwitz did business had any particular name; if so, what was it? A. [It went by the name of the Egyptian Store; some called it the Dutch Jew Store.] } *Excluded.*

Int. 7. State what you know about Horwitz shipping off his goods; when and where were they shipped; were they all shipped at one time or at different times; was Horwitz present when any of them were shipped, and did he assist in shipping them? A. I saw some goods located there taken to the freight house, but where they were shipped I do not know. I don't recollect of seeing goods going off but once; could not be positive if he was present. Phillips was round there.

Int. 8. State what your best recollection is about Horwitz being present when the goods were shipped. A. I
131 can't be positive about it.

Int. 9. Did you see any one packing or boxing the goods;

if so, who was packing them, where, and how long before they were shipped? A. They were packed in the Egyptian Store in Anna. Phillips and Horwitz I think were packing them. I think it was a few days before I saw the goods shipped that I saw them packed.

Int. 10. State what you know about the goods of Horwitz being attached, and who attached them? A.—[They were attached by the Deputy Sheriff.] } *Excluded.*

Int. 11. Were the goods attached before or after you saw the goods packed or boxed. A. [Afterward.] } *Excluded.*

Int. 12. How long after the shipment of the goods was it that the attachment was made? A. It was a day or two.

132 Int. 13. Were Phillips and Horwitz both selling goods in the store at the same time? A. I have seen them both sell goods there at the same time.

Int. 14. State about how long Horwitz remained in the store after Phillips came there? A. From his first coming, I presume Phillips must have been there five or six months. Phillips never remained there long at a time.

Int. 15. State whether during these times you saw Phillips about the store he was acting as clerk for Horwitz? A. He was, as I thought, but I never made inquiry.

Int. 16. How long a time did Phillips stay altogether? A. I do not suppose more than a couple of months. I would set no definite time on it.

Int. 17. At the time you saw Phillips and Horwitz pack-
133 ing goods in the store, who was the owner of the goods? A. [I don't know—1 supposed Horwitz was.] } *Excluded.*

Int. 18. Was the store at the time last spoken of by you

(when the goods were boxed) carried on in the name of J. Horwitz? A. I never knew it carried on in any other name.

Int. 19. Did you do business in Anna at the time Horwitz did? if so, how far was your place of business from his? and were you in his store frequently or not. A. I was doing business there. My place of business was in an adjoining building, a space of 12 or 18 inches between; was in his store frequently.

Cross-examined by the Plaintiff.

Cross int. 1. You state that an attachment was issued, and levied upon the stock of goods by the Deputy Sheriff; will you state whom it was against? A. [I did not see the attachment; it was said that it was against John Horwitz.] *Excluded.*

134 Cross int. 2. Do you know of more than one man by the name of Horwitz having done business in Anna; If so, state their names in full? A. There was another man, Harry Horwitz, who assisted in the store when first opened; there were only two, one went by the name of Harry, the other, that of John.

Cross int. 3. When you use the name of J. Horwitz in your direct examination, do you not refer to John Horwitz? A. Yes.

Cross int. 4. Do you know anything about the sale of the goods in question from Horwitz to Phillips? If so, when was it made? A. I do not know of any.

Cross int. 5. Do you know of Phillips being in possession of said stock of goods at any time; if so, when and how long? A. I suppose he was in possession while Horwitz was not there, when he was acting as clerk. One winter when Horwitz was at Springfield Court he was absent per
135 haps a week—I think Phillips was there then.

Cross int. 6. Do you know of Phillips exercising acts of ownership over said stock? A. I do not, only in Horwitz' absence.

Cross int. 7. Did you, during the winter and spring of 1861., take or read the Jonesboro' *Gazette*; if so, did you see an advertisement in said paper in the months of February or March, 1861, that Phillips had purchased the goods of Horwitz, and his notes, books, and accounts? or anything to that effect? A. I took the Jonesboro' paper at that time, but did not see that in it.

Re-examined by Defendant.

Int. 1. Did you ever see Horwitz write his name? if so, how did he write it? A. I do not think I ever did.

Int. 2. Did you ever hear J. Horwitz say what the letter J. stood for in his name? A. I did not.

Int. 3. State how the boxes containing the goods received by Horwitz were marked, as regards his name? A. They were marked J. Horwitz.

D. D. COVER.

136

137 5. *Deposition of* John Toler.

138 Int. 1. Do you know the parties in this suit, or either and which of them, and how long have you known them respectively? A. I was some acquainted with Phillips; he stayed at Anna about twelve months; am not accquainted with defendant.

Int. 2. When and where did you first get acquainted with Phillips, and what business was he engaged in? A. The first I ever saw of him was at Anna; I think he came there in the year 1860. When he first came he was doing nothing; finally he was clerking for John Horwitz.

Int. 3. State how long Phillips was clerking for the Horwitz's, and what was the name of the store he was in? A. He might have been there five or six months, I could
139 not be positive. I have heard it called Horwitz' Store, the Jew Store, and the Egpytian Store.

Int. 4. How far did you live or do business from Horwitz' Store; and were you in the store frequently while Horwitz was doing business there? A. When they first came, they set up in a room adjoining where I was doing business. They then moved down some twenty steps to Williford's house.

Int. 5. State what became of the goods kept in his store. A. The Sheriff attached and sold them.

Int. 6. State whether you saw Horwitz boxing or shipping goods from the store before the attachment; if so, how long before? A. I don't recollect that I did.

Int. 7. Was John Horwitz about the store at the time of the attachment or just before? A. I do not think he was there when the attachment was served.

Int. 8. How long before the attachment was it that you
140 saw Horwitz about the store? A. He was round there sometimes after it was said Phillips had charge of the store.

Int. 9. During the time Horwitz was about there last spoken of by you, did you see him in the store selling goods or doing anything in the store? A. I can't recollect now that I saw him selling goods, [but I guess he did.] he was round there to the best of my recollection helping. } *Excluded.*

Cross-Examined by Plaintiff.

Cross int. 1. You say in your direct examination that Phillips was clerking for John Horwitz, will you state from

your own knowledge whether Phillips was ever clerking, or ever received any salary as clerk, or charged any, against John Horwitz alone? A. No, I can't say he ever charged or got any salary, but he was there doing business and selling goods.

Cross int. 2. Do you know of his clerking for John
141 Horwitz? A. No, not for John alone.

Re-examined by Defendant.

Int. 1. State from your best recollection whether you saw Phillips acting as clerk in this store after Harry Horwitz left Anna? A. All I know about it is, he was there all the time. He was there after Harry Horwitz left Anna. JOHN TOLER.

7. *Deposition of* Claiborne H. Williford.

Int. 1. Do you know the parties in this suit, or either and which of them; and how long have you known them
142 respectively. A. I am acquainted with Phillips; became acquainted with him about the latter part of the year 1860, or the early part of 1861. Am not acquainted with the defendant.

Int. 2. What is your age and place of business? A. My age is near 42 years; residence, Jonesboro', Ill.

Int. 3. Are you the owner of a store building in Anna, Ill? A. Yes.

Int. 4. State whether you ever rented your store building to Horwitz, if so, at what time; and how long did he occupy it? A. I rented the building to John Horwitz and his brother Harry, as I understood it; they went into it I think, on the 19th of January, 1860, [agreeably, as I understood it; John occupied it longer than Harry.] I think John was there } *Excluded.*

about fifteen months. When we settled, it was my understanding that Harry was out—I mean when I settled for rent the last time, in 1861.

Int. 5. State as near as you can recollect, how long
143 John Horwitz did business in the house after Harry left it? A. [I do not know, from the fact I don't know when Harry did leave.] } *Excluded.*

Int. 6. When did you settle with John and Harry Horwitz, and how long after the settlement did John Horwitz remain there doing busines alone? A. Isettled with the firm about the 19th or 20th of Jan'y, 1861; Phillips wrote the draft; John Horwitz signed it; J. Horwitz and I got the money on it. That was for rent to date. I cannot say how long he remained there doing business after the settlement. When we settled, John wanted me to take another man's account who was working for me. I refused to do so at first, but told him if he wanted the house longer I would take it in. His answer was that he did; and at the rate he had been paying for the house, that account paid for about three months in advance, which would be about the middle of April, 1861.

Int. 7. During the time you were acquainted with Phillips, what business was he engaged in? A. [He
144 pretended to be officiating about the store then; the store in question.] } *Excluded.*

Int. 8. *Waived.*

Int. 9. When you saw Phillips about the store, what was he doing there? A. He appeared to be acting as a clerk and salesman.

Int. 10. State what became of the stock of goods kept in the store? A. The Sheriff attached them about the 1st day of March, 1861, and the store was shut up.

Int. 11. Against whom was the attachment? Ans. [I understood that it was against John Horwitz, or the firm of John Horwitz & Brother.] } *Excluded.*

Int. 12. State whether the goods, when attached, were boxed or on shelves; or in what condition they were? A. [I do not know in what condition they were.] } *Excluded.*

145 Int. 13. State whether you ever saw Horwitz boxing or shipping goods from the store. If so, whether before or after the attachment? A. I never did.

Int. 14. Did Phillips ever pay you any rent for the building? and how long have you owned it and controlled the rent. A. He never did. I finished building the house January 19th, 1860, and have owned it and rented it ever since.

Int. 15. Did you ever see Phillips doing any business in any capacity in any other store than your's in Union County? A. I never did.

Cross-Examined by the Plaintiff.

Cross int. 1. You state in answer to the 19th interrog-
146 atory, that Phillips appeared to be acting as salesman or clerk, will you now state to what time you refer in that answer. A. From the latter part of the winter of 1860, up to the time the store was closed; that was about the first day of March, 1861.

Cross int. 2. At that time had you any knowledge or information that Phillips had purchased the goods in question of Horwitz? (Objected to by defendant.) A. I was informed towards the end of February, 1861, that Horwitz had sold out; and by another party, I think, that he had sold to Phillips.

Cross int. 3. State if you know of any goods being ship-

ped from this stock. If so, who shipped them, and how were the boxes marked? Was it after the purchase? A. I do not know of any goods being shipped from this stock. I saw boxes shipped by Phillips and the ware-
147 houseman; but don't know from my own knowledge what they contained.

Re-examination by Defendant.

Int. 1. Do you know of your own personal knowledge anything about any sale of the goods from Horwitz to Phillips? A. I do not.

Int. 2. You say in answer to plaintiff's 3rd interrogatory, that you saw Phillips and the warehouseman shipping goods; state if they were marked, and how, and what was claimed they contained by the parties shipping them? A. They were handling boxes when I stepped into the store; if there was any mark on them I have no recollection of it; the parties handling them said they contained *furs*.

C. H. WILLIFORD.

8 *Deposition of* Abraham Horner.

148 Int. 1. Do you know the parties in this suit, or either and which of them, and how long have you known them? A. I am acquainted with Phillips; have known him from the summer of 1860 up to the time he left. Am not acquainted with defendant.

Int. 2. State your age, occupation and residence. A. My age is 33 years; occupation, a carpenter, and in winter, teaming.

Int. 3. Are you acqainted with Horwitz; if so, when and where did you first know him, and how long have you known him; and in what business was he engaged, and where? A. I am; I think it was in 1859; he was keeping store in a room adjoining the Messrs. Goodman at Anna; then he

moved about 150 feet below to the Egyptian Store, owned by C. H. Williford. I knew him from the last of 1859 until he left here, which was the last of 1860 or first of 1861. He
149 was selling goods, and buying and selling furs.

Int. 4. Did you ever assist in boxing, handling or shipping goods from the Egyptian Store at Anna; if so, about what time; who assisted you; what was contained in the boxes; how many boxes were there, and how marked? A. I helped pack furs when Harry Horwitz was there, and hauled it to the depot. I don't know how many loads I hauled, but pretty nearly all their fur. The last load I hauled for them was June 14, 1860, Phillips hired me to haul two loads to the depot; one load was hides; there was also a box of mink skins, and another box, 3 ft. 6 in. long, 2 ft. 6 in. wide, and 2 ft. 4 in. high; it was packed very carefully, there was paper between the box and the goods. This was on the 9th of February 1861. W. O. Miller assisted me. The boxes were marked H. Horwitz, St. Louis. The smallest box contained mink skins; the other, I think
150 had in it the finest goods that were in the store. I was in the store and saw that the goods were taken away.

Int. 5. Do you know whether the box you think contained fine goods was shipped as furs or goods, or under what name it was shipped? (Objected to by plaintiff's Attorney.) A. It was shipped as Fur to Harry Horwitz.

Int. 6. In what capacity was W. O. Miller acting in the store when he helped you to ship the boxes? (Objected to by plaintiff's Attorney.) A. He was some kind of an outside clerk then—sold goods sometimes.

Int. 7. Was Phillips present when you and Miller were shipping the boxes? A. Yes, he was in the store.

Int. 8. Have you any knowledge who packed the box containing fine goods? A. I think Phillips packed them; they were packed the evening before I hauled them.

151 Int. 9. Were you informed by Phillips or his clerk or agent what the box spoken of by you as containing fine goods, contained? (Objected to by plaintiff.) Answer. [I was informed by his clerk that it was the finest kind of goods—that they could not sell it here. The clerk said he did not see it packed.] *Excluded.*

Int. 10. State if you had any knowledge of the amount of furs in the store at the time you and Miller shipped these goods? If so, how much fur was there, and how large a box or how many boxes would it take to hold it? A. There was but very little fur bought there. The box was a shoe box about 2 ft. 6 in. long, about 12 in. wide and 14 in. high. It was about three quarters full, and not packed tight at that. I think that was all the fur there was in at that time.

Int. 11. Did the box of mink skins you spoke of contain all the fur there were on hand at that time? A. I think so.

152 *Cross-examined by the Plaintiff.*

Cross int. 1. Do you know of your own knowledge who packed the box of goods? A. I do not.

Cross int. 2. Do you know of your own knowledge what kind of goods was in the box? A. All I know about it is that the goods were carefully packed with newspapers between the goods and box inside; the top was not jointed very tight, I could see in; I saw that the goods were missing from the shelves. Did not see them put in.

Cross int. 3, (same as 2.) A. [No, I don't.] *Excluded.*

Cross int. 4. Do you know of your own knowledge that the box was shipped to St. Louis as furs? A. Yes, it was.

153 Cross int. 5. Will you state how you know it? A. Miller gave it in as furs.

Cross int. 6. Were there any furs given in at the same time? A. two boxes were shipped as furs.

Cross int. 7. Is that all you know about that box being shipped as furs, what you heard Miller say at the time and what you saw from the R. R. books? A. Yes.

Re-examination by Defendant.

Int. 1. In answer to the 6th interrogatory, you say there were two boxes shipped as furs; do you mean by this that there were two boxes of furs shipped, or one box of goods shipped as furs, and the other as furs, or what do you mean. A. I think that the big box that contained goods was shipped as furs, and the other one was shipped as furs, and was furs.

154 *Re-examination by Plaintiff.*

Int. 1. Will you state if you know anything about some boxes of goods being shipped to Galena? if so, state by whom, how they were marked, how many there were and where they were shipped? A. Yes, they were a lot of boxes shipped—I think six or eight—there might have been more—they were marked L. P., Galena, Illinois; were shipped by Phillips towards the last of March, 1861.

[155] *Re-examined by the Defendant.*

Int. 1. Were these boxes of goods, or any other boxes shipped by Phillips, boxed or hauled to the depot in the night or in the day time? State fully all you know about it. A. I do not know when they were hauled—was not there. They were marked about eight o'clock in the evening. They asked me whether I had any team to haul

them—they wanted me to haul them. I told them my team was out and I could not haul them.

ABRAHAM HORNER.

156 The defendant then offered in evidence the papers and the judgment in the suit of Frederick Lewis vs. Joseph Horwitz; to which the plaintiff objected, because said papers and judgment in said suit were immaterial, and against another person than John Horwitz; which objection was overruled, and plaintiff excepted. And the same were read, to-wit:

157 The affidavit of Frederick Lewis, in due form, stating in substance that Joseph Horwitz is indebted to him upon a promissory note dated Aug. 23, 1860, payable six months thereafter to the order of Louis Stix & Co., for the sum of $1,471 07-100, with ten per cent. interest after maturity; that Louis Stix & Co. endorsed said note to this affiant, who became its owner; that it was signed "J. Horwitz;" that it is due and wholly unpaid; and that Joseph Horwitz conceals himself, so that the process cannot be served upon him.

FREDERICK LEWIS.

158 Bond for costs in the usual form entered into by John Brendel on same date.

Praceipe in attachment in usual form, returnable to May Term of Jo Daviess County Circuit Court, A. D., 1861.

159 Attachment bond in usual form, by Frederick Lewis as principal and John Brendel as surity, to Joseph Horwitz, in $3,000.

160

161 Writ of attachment issued in usual form.

162

Writ duly returned executed by attaching two boxes of goods marked L. Phillips, Galena, Illinois, supposed to contain dry goods, March, 15th, 1861.

S. K. MINER, *Sheriff.*

163–4 Alias writ in usual form issued July 10, A. D., 1861, returnable to August Term, 1861.

Declaration filed Aug. 9, 1861.

165–6

167

168 Copy of Instrument sued on:

$1,471:07. Cincinnati, Aug. 23rd, 1860.

Six months after date, I, the subscriber, of Anna, County of Union, State of Illinois, promise to pay to the order of Louis Stix & Co., fourteen hundred and seventy one 7-100 dollars, without any relief whatever from valuation or appraisement laws. J. HORWITZ.

169 Value received, payable at——; with 10 per cent. interest after maturity.

Endorsed: Pay the order of Frederick Lewis.

LOUIS STIX & Co.

Judgment that plaintiff recover of defendant $1,569 13-
170 100 with costs, and that he have special execution therefor against the property attached herein.

Special writ of execution issued Nov. 18, 1861, against
171 two boxes of goods marked "L. Phillips, Galena, Illinois," as the property of Joseph Horwitz, to make sum of $1-569 13-100 damages, and $15 25-100 costs.

Endorsed: Received this execution for collection this 20th day of November, 1861, at 4 o'clock, P. M.

S. K. MINER, *Sheriff, Jo Daviess Co., Ill.*

Returned that the property described had been replevied
172 Feb. 14, 1862.

S. K. MINER, *Sheriff.*

The plaintiff then recalled Wm. Perry, who testified: I

was introduced to John Horwitz, in the winter of 1859. I never heard him called Joseph Horwitz until this suit.—Every body at Anna called him John. Phillips never was clerk there for John Horwitz.

Cross-Examination.

After the first of October, 1860, I did not know personally whether Phillips was clerk there or not.

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

1. The jury are hereby instructed that the fact alone of the sale from Horwitz to the plaintiff, Phillips, having been made on credit, by the giving of Phillips' notes, is not evidence of fraud. *Given.*

2. The jury are instructed that fraud cannot be inferred from the fact alone that Horwitz was indebted, at the time he made the sale to Phillips. *Given.*

3. If the jury believe from the evidence that Horwitz
173 sold out his stock of goods to Phillips, and that Phillips took possession of the same, yet the fact alone that Horwitz may have sold some goods for Phillips will not destroy the apparent good faith of the transaction. *Given.*

4. The Court instructs the jury that to impeach a sale of property as fraudulent, it is necessary to show that both the vendor and purchaser intended to hinder and delay creditors, or that the purchaser had notice of such design on the part of the seller; and if the Jury should even believe from the evidence that Horwitz sold the goods in controversy to the plaintiff with the intent to hinder and delay creditors, still if it is not proven by the evidence that Phillips participated in or had notice of such design at the time of the sale, the Jury must find the issues of property in favor of the plaintiff. *Given.*

5. If the jury believe from the evidence that the witnesses, Benedict Frenkel, Marx Hellman, Benedict Meyberg, swore intentionally and wilfully falsely, to any *one* material fact in their depositions read on the trial of this case, then
174 the jury are at liberty to disregard their entire testimony. *Given.*

6. If the jury believe from the evidence that Phillips bought the goods in controversy from John Horwitz, and paid a valuable consideration for the same, and had taken the possession of the said goods, then in order to impeach said sale, the defendant must not only prove by the evidence that the sale was made by John Horwitz with the design to hinder and defraud creditors, still the defendant must go further and prove by evidence that Phillips participated in such design to hinder and defraud creditors or had notice of it, and in case it is not proven by the evidence that Phillips participated in such design to hinder and defraud creditors, or had notice of it, the jury must find the issues of property for the plaintiff. *Given.*

7. The jury are instructed that when fraud is set up as a defence to avoid a sale, the proof of such fraud is on the party asserting it, and fraud is a fact that must be proved by the evidence and cannot be inferred by the jury with-
175 out circumstances to infer it from. *Given.*

To the giving of which instructions the defendant excepted.

The defendant's counsel then asked the Court to instruct the jury as follows:

1. If the jury believe from the evidence that the circumstances attending the pretended or actual sale from Horwitz to Phillips, show an intention on the part of Horwitz to defraud his creditors, and that Phillips had a knowledge of such intention, then they should find for the defendant if he attached the goods in favor of a creditor of said

Horwitz; and it is not necessary for defendant to prove the fact of fraud directly; sufficient circumstances showing fraud are all the law requires. *Given.*

2. If the jury believe from the evidence that Phillips was a relative of Horwitz, that he was not a man of responsibility, and that he was a clerk for Horwitz at or about the time the goods in controversy were shipped away, these are circumstances which the jury may consider as to whether or not they tend to show fraud, and if in connection with these circumstances it appears from the evidence that Horwitz was in debt at the time of the real or pretended sale and that he made said sale to Phillips with a design to defraud his creditors, and if the circumstances of the case as found by the evidence show Phillips' knowledge of such intention or design, then they should find for the defendant if he attached the goods in favor of a creditor of J. Horwitz. *Given.*

3. It is within the province of the jury to decide upon the weight or the confidence which may be reposed in the statements of witnesses, and to take into consideration the circumstances under which they testify, the inducements to testify falsely, their interests in the suit, and connection with the matters in this controversy, and if the jury believe from the evidence that the witness, John Horwitz, did testify wilfully falsely to any *one* material fact in the case, then they may reject his whole testimony. *Given.*

4. The jury are instructed that the burden of the proof is upon the *plaintiff* to prove his title to the goods in question,
177 and *not* upon the defendant to disprove it, and if they believe from the evidence that the plaintiff has failed to prove his title to the goods in controversy, then they should find for the defendant. *Given.*

5. If the jury believe from the evidence that J. Horwitz swore wilfully falsely to any material fact in his testimony, then they may disregard his whole testimony. *Given.*

6. If the jury believe from the evidence that the plaintiff has failed to prove that a demand was made for the goods in controversy *before* this suit was commenced, then they should find the issue of *non detinet* for the defendant; and if they also believe that the plaintiff has failed to prove his title to the goods in controversy, then they should find all the issues for the defendant. *Given.*

7. If the jury believe from the evidence that the plaintiff has failed to establish his title to the goods in controversy, then it is not necessary for the defendant to prove circum-
178 stances showing fraud, and they should find for the defendant. *Given.*

To the giving of which the plaintiff's counsel excepted.

The jury then retired to their jury room, and returned with their verdict, (for which see page 9, supra.)

Whereupon the defendant's counsel made and filed their motion for a new trial, (for which see page 10, supra.)

After argument of which, said motion was overruled; and the defendant's counsel then and there excepted to the decision of the Court, and prayed an appeal to the Supreme Court.

BENJ. R. SHELDON. [SEAL.]

Endorsed: Filed October 30th, 1863.
W. R. ROWLEY, *Clerk.*
By T. R. BIRD, *Dep'y.*

And afterwards, to-wit, on the 24th day of November, A. D., 1863, the plaintiff filed in the Clerk's office of our said Circuit Court his appeal bond, in the words and figures following, to-wit:

179 Know all men by these presents, That we, Simeon K.

Miner, as principal, and Louis Stix & Co., and Ralph S. Norris, as sureties, are held and firmly bound unto Ludwig Phillips in the penal sum of two hundred dollars ($200,) for the payment of which well and truly to be made we bind ourselves and each of us, our heirs, executors, and administrators, severally and firmly, by these presents.—Sealed with our seals and dated this 24th day of November, A. D. 1863. The condition of the above obligation is such, that whereas the above named Ludwig Phillips did on the 23d day of October, A. D., 1863, before the Hon. Benjamin R. Sheldon, Circuit Judge of the 14th Judical Circuit of Illinois, and sitting in Jo Daviess County, recover a judgment against the above named Simeon K. Miner for costs, from which judgment the said Simeon K. Miner wishes to appeal to the Supreme Court of the State of Illinois; Now if the said Simeon K. Miner, shall prosecute his appeal with effect, and shall pay Ludwig Phillips whatever judgment shall be rendered upon the dismissal or trial of said appeal, then the above obligation to be void; otherwise, to remain in full force and effect.

SIMEON K. MINER, [SEAL.]
LOUIS STIX & CO. [SEAL.]
R. S. NORRIS. [SEAL.]

180 Taken and entered into at my office, in Galena, this 24th day of November, A. D. 1863.

WM. R. ROWLEY, *Clerk.*
By T. R. BIRD, *Dep'y.*

Endorsed:
Filed November 24th, 1863.

WM. R. ROWLEY, *Clerk.*
By T. R. BIRD, *Dep'y.*

Making Transcript, $39,60
Cent., Seal, and Stamp, 40——$40,00.

State of Illinois,
Jo Daviess County. } ss.

I, William R. Rowley, Clerk of the Circuit Court, in and for said County, do hereby certify the foregoing to be a full, true and correct transcript of the proceedings in the above entitled cause of Ludwig Phillips vs. Simeon K. Miner, as the same appears of record in my office.

In testimony whereof, I have hereunto set my hand and affixed the Seal of said Court, at my office, in Galena, this 5th day of Jan'y A. D. 1864.

§SEAL.§

Attest: WM. R. ROWLEY, *Clerk.*
By T. R. BIRD, *Dep'ty.*

119

IN THE

SUPREME COURT OF ILLINOIS,

THIRD GRAND DIVISION,

April Term, A. D. 1864.

Simeon K. Miner, Appellant,

vs.

Ludwig Phillips, Appellee.

BRIEF OF APPELLANT.

Leland & Blanchard and E. A. Small, Atty's for Appellant.

Filed Apr. 20. 1864
L Leland Clk

GALENA:
W. W. HUNTINGTON, PRINTER, OVER BANK OF GALENA.
1864.

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1864.

SUPREME COURT OF ILLINOIS.

THIRD GRAND DIVISION, APRIL TERM, 1864.

SIMEON K. MINER, APPELLANT.		
vs.		ERROR TO JO DAVIESS.
LUDWIG PHILLIPS, APPELLEE.		

BRIEF OF APPELLANT.

I.

Though there have been two verdicts for the plaintiff below there has also been one for the defendant below. The latter should balance one of the former, and consequently the plaintiff's position is no stronger here than as though there had been but one trial with a verdict for him.

II.

The 1st point we make is that the fraud in the supposed sale from Horwitz to Phillips, and the knowledge thereof by the latter, is plain, palpable, manifest, leaving no possible room for doubt in the mind of a rational being. The undisputed circumstances or badges of fraud make a case which the law must consider fraudulent, otherwise fraud cannot be established by any amount of fraudulent circumstances, for there are about all in this case

that ever exist in any. These circumstances briefly stated are as follows:

1*st.* The defendant in attachment, who seems to have sometimes been *John* and sometimes *Joseph* Horwitz, was, according to his own evidence, in debt at the time of the pretended sale, Jan'y 31, 1861, from $6,000 to $7,000 at least, to parties of whom he had purchased his stock of goods, all either due or soon to become due. (Record 61-62.)

2*d.* He did not put himself to the inconvenience of informing these creditors that he had retired, and that Phillips had taken his place [64], and he has not made it convenient to pay them since, [65]. The deposition of John Horwitz was taken April 30, 1863, [51].

3*d.* He swears he made a sale to Phillips on the 31st of Jan'y, 1861, and then delivered the possession of the goods to Phillips, [58 and 59]. Brisbin, who was his book-keeper and salesman, and who came in September, 1860, and left February, 1861, did not know of a sale before he left. At the time he left Horwitz was still the owner, claiming the goods, [126, 127 and 128]. The sale has probably been dated back to cover accidents. The plan at first was to run the goods off and hide them. The interruption of this scheme by the attachments rendered a *nunc pro tunc* sale necessary. Cover, the next door neighbor, did not know of the sale, [133 to 136], and the landlord of the store building did not find it out till the latter part of February, 1861, [146].

4*th.* He swears that Phillips never clerked for him, [62].—Brisbin says both Horwitz and Phillips told him that Phillips took his, Brisbin's, place, [128]. The fact that Phillips was a clerk there is stated by Meyberg, [120], by Cover, [132], and by Toler, [138, 140 and 141]. It may be, that, as the exigencies of his business did not require book-keepers and salesmen after Brisbin left, but only *runners*, that Horwitz did not call running and hiding clerking, and

so, strictly speaking, Phillips may not have been acting as a clerk, that is, he was not a clerk in a Horwitzian sense.

5*th.* Whenever creditors disturb these goods with their levies, though after Jan'y 31, 1861, there we find the ubiquitous John alias Joseph. He left Anna about two weeks after the sale as he says.—About two months after the sale the goods were attached. About two months after he left Anna he thereunto returned again, (59).—Brother Harry was undoubtedly drawn there too by the same attachment, (55). Some of this running stock is replevied by Phillips at Bloomington, McLean County, where creditors were taking it as it run with Phillips' mark on it, (60). How came this wandering Jew to be at Bloomington cotemporaneously with Phillips and the attached boxes of goods? How could he spare time from the pressing cares of the hide business, in which he had been engaged at St. Louis ever since he sold out to Phillips, (61), to make it convenient to be in the Galena neighborhood just when the goods in controversy were attached? (64). Perhaps he was engaged in that branch of the *hide* business which he and Phillips were carrying on in Anna when they were shipping *furs* to brother Harry at St. Louis, (149 to 153).

6*th.* The manner in which Phillips extended his business immediately after the sale is unusual in cases of the bona-fide purchase of a stock of goods. The time selected for a change of locality for retailing his stock is a little unfortunate, when taken in connection with the attendant circumstances. One might, however, get over this difficulty perhaps; but when part of the stock goes to the address of Harry at St. Louis, and part of it goes to Galena with Joseph as its traveling companion, one cannot help suspecting as Elder Bibbins did, while he was a member of the Legislature, that there must be some intrigue going on, and of saying of Joseph and Harry and Ludwig as the Elder did of some of his fellow members, "I declare, I believe that these men do not intend to act honestly."

7*th.* This Phillips might perhaps pass for a fraudulent grantee when better ones were difficult to be obtained, but he was totally

unfit for a bona-fide one. Horwitz does not mention whether Phillips paid up the notes which he gave for the goods, but we fear that his troubles with creditors of Horwitz, added to an utter irresponsibility generally, have rendered it inconvenient for him to do so.—He appears to be one of those happy dun proof mortals who are never under the painful necessity of dodging creditors, because they know well that the subject of payments is one upon which the creditor will never enter to the neglect of more profitable and agreeable topics. The brother of Joseph, the *fur* consignee, makes a feeble effort to set up uncle Ludwig a little. The snuff-box may have been a very fair old family snuff-box, but not of much use to raise money on. The jewels the Jew Harry does not know much about.—Whether the diamonds were of the first or second water, or of any water at all, he don't know. The money which Harry saw, and of which he says Phillips gave him $1000 as he was short, and which form of expression he changes by saying that he means loaning, (Record 58, the abstract does not do us justice,) evidently belonged to the concern. The expression, "not to my *knowledge*," (56), under the circumstances, creates an impression that there was a *belief*, not amounting in his opinion to knowledge, that the money was not the property of Phillips. It is impossible to put any other construction upon this statement, inasmuch as this same Harry told Meyberg that Phillips was irresponsible, (119). Hellman says he knew Phillips in Europe, and in this country as a clerk in a small way, spending more than he earned; who did not pay his tailor's bills, (98 and 107,) and as long as he knew him in this country he was peddling some trifling goods or was clerking at St. Paul, (108). Meyberg says Phillips was worth nothing, and that Harry Horwitz and others told him that he was irresponsible, (111). Frenkel says his reputation, while at St. Paul, was that of a man without means, (93).

8th. Phillips was a relative and hanger on of the Horwitz brothers, and whithersoever they go he goeth. Bohannon says he seemed to be related or an acquaintance, (71). Hellman knew Phillips and Horwitz in Europe 20 years ago, and that they were related in some way, (97 and 98), and Harry Horwitz says he took many pinches of snuff out of the Phillips' ancestral snuff-box in the Faderland, (55).

The first thought seems to be when they get separated, "when shall we three meet again."

9th. Phillips, Joseph Horwitz, and Harry Horwitz, are clearly shown to have been connected together in clandestinely running off the goods. Some are sent to Harry's address at St. Louis, and some to the address of Phillips at Galena. On the 9th of February, 1861, only 9 days after the supposed sale, Phillips hired Abraham Horner to haul some boxes of goods to the depot, addressed to Harry Horwitz, St. Louis. One of these boxes contained part of this stock sold to Phillips, *called furs and shipped as furs.* W. O. Miller, their outside clerk, assisted, (149 to 150). This Miller was undoubtedly an outside clerk for Harry and John Horwitz when they were in business together, (71). In the early part of March, 1861, 6 or 8 boxes of these goods were shipped by Phillips to Galena, (162), and, as we have before seen, John alias Joseph Horwitz goes with them. Harry and Joseph, alias John, had been partners. As Harry slipped out of the concern first, and introduced brother Joseph to Meyberg & Hellman, when he went to Cincinnati to buy goods, (99), it might occur to an enquiring mind that Harry was the best man of the two, in a pecuniary sense.

10th. The seller remained in possession after the sale. He went away from Anna, perhaps about two weeks after the sale, and was gone awhile it is true, but the stock was so scattered that he could not be with it all. Phillips and the outside clerk, Miller, were sending the goods in part to the address of Harry at St. Louis, and Joseph must go down there to attend to these goods. Creditors get scent of this track of the running stock, probably, and then the goods go North, and we immediately find the real owner, Joseph, in company with them. An attachment for the goods carried him to Bloomington, and a similar attachment drew him to the Galena neighborhood undoubtedly. He seems to be a little offish about acknowledging himself nearer than Dubuque, but that is near enough for all practical purposes, and so sly were they about the sale to Phillips, if any such thing did occur Jan. 31, 1861, that the owner of the store, the book-keeper and salesman, and the next door

neighbor, did not know it. In a town of considerable importance, with thousands of persons living in or near, *not one witness is found to testify* to the sale, to the possession of Phillips, or to any part of this transaction, save and except the man who pretends to have made it, and who is most interested to prove it bona-fide.

11*th.* Horwitz, on the 20th Jan'y, 1861, having paid rent in advance to about the middle of April on the store, (143), directed Bohannon, a Justice, when he collected money for him, and who also owed him a small amount, to pay it all to Phillips, (70).

12*th.* A very decided indication of fraud appears in the evidence of John Horwitz himself, showing, curiously enough, how little reliance can be placed upon his testimony. He says his stock of goods at the time of the sale was worth *about* $4000, [58]; that he had a lot of dried fruit worth *about* $1200, [63]; that he had accounts due him to the sum of *about* $600 to $800, [65]; taking these figures as they stand, and his aggregate assets at the time of the sale, in goods, dried fruit and accounts, were $5800 to $6000; of this sum the book accounts seem to have been attached and sold by his creditors, [65], but whether before or after the pretended sale does not appear.—When asked how much he was in debt Jan. 31st, 1861, he answers, giving the amounts due his creditors respectively, [62], and these figures show his liabilities at that time to have been not less than $6500. Of these liabilities it will be observed that the note upon which this suit was originally commenced, was due 23 days after the pretended sale, [168], and amounted to $1,471 07; that the claim of Aub, Frenkel & Co. amounted to $1,739 20, [85], and that an attachment suit had been commenced upon it; that some creditor had attached the book accounts to the amount of $600 to $800, [65], and also that Amberg and Lindauer had commenced suit at Bloomington upon their claim, which Horwitz says was about $1600 or $1700, [62]. Now taking these claims together, and we find that nearly $6000 of his indebtedness was either then entirely due or within a few days of maturity; that his assets were from $500 to $700 less than his liabilities *by his own showing;* that he had no means save the old stock of goods, his book accounts, and the dried

fruit, with which to pay these debts, and that these assets, by all mercantile rules and experience, could not have been worth 75 pr ct. of their cost, yet, when asked if he was not in failing circumstances on the 31st of January, 1861, he replied, with an admirable disregard of the hard logic of his own figures, that he was not in failing circumstances, [63].

There are other circumstances tending to prove the sale from Horwitz to Phillips fraudulent, and that Phillips had notice of the fraudulent intent of his grantor. The above, it seems to us, are enough to leave no doubt at all in the mind of a reasonable being. In this degenerate age, when it is so difficult to get a jury some of whom do not belong to one of the two great branches of the human family known as fraudulent grantors and fraudulent grantees, ought not a court, when there is no possible doubt about it, to set aside such a verdict as this, though in a case where, of three verdicts, the fraudulent grantee has won two.

III.

The next point we make is, that the declaration of John, alias Joseph, Horwitz to Meyberg, of the firm of Meyberg & Hellman, who, when asked how he came to transfer his stock to Phillips, a man without means, &c., said *that he was afraid his creditors would come on, and he sold out,* [110], should not have been excluded. This same Horwitz is asked whether he told members of that firm "*that he sold out to avoid being troubled by his creditors,*" and he says *he did not.* We think there are two or three legal reasons why this declaration should not have been excluded, and the 1st one seems entirely unanswerable. It was competent for the purpose of impeaching the witness Horwitz. The foundation was laid. The mere difference of the words by which the same idea is conveyed, can surely not affect the question. Neither argument nor authority can be necessary on an every day question of this kind.

2*d*. Though the general rule is that the grantor shall not, after the grant, be allowed to make declarations to destroy the title of the grantee to the thing granted, we find a case in the 3d of Watts, 230, *McKee* vs. *Gilchrist*, to the effect that where there is other evidence tending to show a conspiracy between grantor and grantee to defraud creditors, the declarations of each are competent for what they are worth.

3*d*. It is also decided in that State (*Helfrich* vs. *Stern*, 17 Penn. S. R. 143) that if the vendor of chattels hold possession after the sale, or if the delivery be doubtful, the declarations of the vendor, though made after the sale, are competent. These last two authorities may bear on other parts of the case, the 1st reason above seems enough for this point.

IV.

The statement of Horwitz that he made the sale to Phillips in good faith, ought not to have been allowed, (61). He should have stated the facts and circumstances, and let the jury judge whether it was made with or without intention to defraud creditors. This man may have a kind of Punic faith which makes him obtuse on such moral questions. He may think it all right for one Jew to jew another, a sort of diamond cut diamond operation that is all right. The Lord deliver us from such a standard of good faith as this Horwitzian one.

V.

The statement by Bohannon of the contents of the notice in the *Union County Record* should have been excluded, (69). It was admitted it seems because no objection was made when the deposition was taken. We understand that if objections of this kind are

made before the trial commences it is in time. 1 Gilm. 423. If it may be said that this is one of those remote collateral facts which may be proved by parol though there is a writing, there are many such excluded on the side of the appellant. This, however, though bearing remotely on the question of fraud, (and whether for or against, or only neutral, it is hard to tell,) bears more directly on the question whether there was a sale, and this is not remote or collateral enough to come within the exceptions to the rule disallowing parol evidence of the contents of writings.

VI.

It seems to us that on the question of fraud the fact that other creditors have attached the property of the supposed grantor, may be shown by parol. There are several instances of this kind; one is enough. Frenkel says his firm attached the goods in the Circuit Court of Union County, and this is excluded under the rule above we suppose. It seems to us to be an exception like the notes mentioned in the case in the 17 Penn. S. R. 143, cited above. The fact that the goods were attached by many creditors ought to be allowed without getting copies of the papers in the cases. Evidence of the contents of the papers is not gone into. The fact that goods were attached can, we think, be proved without producing the writings. Such is the writ, return of the officers, &c., where the contents are not mentioned in any other way than to show that a creditor seized the goods by attachment.

LELAND & BLANCHARD, and
E. A. SMALL, *Att'ys for Appellant.*

STATE OF ILLINOIS, SUPREME COURT,

THIRD GRAND DIVISION.

APRIL TERM, A. D. 1864.

SIMEON K. MINER, Appellant,
vs
LUDWIG PHILLIPS, Appellee.

Appeal from JoDaviess County.

BRIEF OF APPELLEE.

I.

The Court properly refused to grant a new trial in this case.

The record shows the evidence to have been in favor of Phillips, who was plaintiff in the court below, and to decide on the testimony and the credibility of the witnesses is the special province of the jury.

In this case there has been three trials; the first one resulting in favor of the defendant, and the second and third trials resulting in verdicts each time for the Plaintiff—Phillips.

In 5 Gilman, 569, the court says: the evidence as preserved in the records being inconclusive and contradictory, and a jury having passed upon it, the court will not make the refusal of the circuit court a ground for reversing the judgment. In 1 Gilman 84 it is laid down, that where there is a contrariety of evidence on both sides, and the facts and circumstances by a fair and reasonable intendment will warrant the inferences of the jury, courts will reluctantly, if ever, disturb their verdict, notwithstanding it may appear to be against the strength and weight of the testimony.

In 1 Scam. 532, the court declares that the weight of testimony is a question to be decided by the jury, and the court will not disturb their verdict unless the case is a flagrant one.

In 20 Ill 346, the court said: Much and conflicting testimony was heard on the trial, which it is the peculiar province of a jury in such cases to reconcile and an instance can scarcely be found in the books where a verdict has been set aside under such circumstances, even if it may appear to the the court that the verdict may be against the weight of evidence.

These are decisions of the Supreme Court on questions of new trials, and have been declared so repeatedly that no principles of law are more familiar and better settled.

II.

With the law governing the question of a new trial fully understood, it may be proper to take a brief survey of the testimony and the issues in the case. The 1st and 2d pleas of the defendant were that he did not take nor detain the property in controversy.

On this point such testimony as was incorporated in the record shows that T. R. Bird was sworn and stated :

I know the goods in controversy in this suit; saw them in the Sheriff's office; defendant admitted to me that the demands had been for the surrender of the goods, by the plaintiff, and Mr. Shissler representing him, and that defendant had refused to give them up because he had them under a writ of attachment.

The witness speaks of several demands made by the plaintiff Phillips, and also demands made by Mr. Shissler representing him. These demands were made weeks before the suit at different times and on different days. The affidavit for replevin was made on 10th February, 1862, the writ issued and executed forthwith, the goods being in the Sheriff's office.

O. P. Hopkins testified: I know the goods in controversy. I saw two boxes of goods marked "L. Phillips, Galena, Ills." in the Sheriff's office; could not say where they came from. They were in the defendant's possession when the demand was made. Miner refused to give them up when the demand was made. The defendant was sheriff at that time.

This testimony proves that the defendant did take and detain the goods in controversy.

The bill of exceptions does not pretend that it contains all the evidence in the case.

The main point in issue is to whom did the property belong. To Phillips, or to John Horwitz's creditors. Was the sale to Phillips valid ?

John Horwitz testified, p 58 in answer to 3, 4, 5, 6, 7, 8, interrogations : I sold out to plaintiff in 1861, on Jan. 31st. My stock consisted of groceries, hardware, dry-goods, clothing, hats,

caps, boots and shoes. Plaintiff paid $4000. $400 in cash; balance in notes. He took possession Jan. 31st, 1861.

J. P. Bohannan swears that Phillips bought out the stock of goods, went in possession and was selling the goods; that the notice of the sale by Horwitz and purchase by Phillips was published in the "Union County Record;" that the witness was owing Horwitz and he directed the money to be paid to Phillips after the sale had taken place; that the notice of the sale was in the usual form where partners give notice that they have sold out, and also authorized Phillips to settle the accounts. See answers to 3, 4, 5, 7 and 13 questions p 69.

Henry Horwitz testified: He had known Phillips since 1850, that Phillips was worth in 1860 $2000; that he saw the money in his possession; had borrowed of Phillips $1000 in 1860 at St Louis. Saw Phillips have Minnesota bonds. Saw him have a gold snuff-box which the witness had seen with Phillips's father in Europe; also saw him have a diamond ring and a diamond breast pin.

This was in 1860, and on the 31st, Jan. 1861, Phillips bought the goods in controversy from John Horwitz.

William Perry testified that the goods in controversy were the same lot of goods which he saw at Anna, Ills., in the possession of John Horwitz, previous to the sale to Phillips: he fully identifies the goods.

J. M. Brisbin, one of the defendant's witnesses, shows Phillips to have been in possession of the stock of goods. In answer to three cross interrogatories p 128, "Do you know of Phillips being in possession of the stock after you left. Answer—"He was; how long I cannot tell; perhaps three weeks."

Abraham Horner, another of the defendant's witnesses, proves that Phillips was in possession of the goods, selling them and packing them, exercising acts of ownership over them.

In answer to 7 interrogatory, "Was Phillips present when you and Miller were shipping the boxes?" Answer—"Yes, he was."

8 inter. Have you any knowledge who packed the box containing the fine goods." Answer—"I think Phillips packed them. They were packed the evening before I hauled them."

The evidence that the appellant has seen fit to embody in the bill of exceptions thus shows a valid sale to the plaintiff, Phillips; that he paid $400 in cash and gave his notes for the remainder; that he published notice of the sale in the "Union County Record," a newspaper published in the county, thus giving notice to the community of his being the owner of the store; that he went into possession of the goods and sold them; that he was a man of some means; had $2,000 in money, and Minnesota bonds; also a gold snuff-box, diamond ring and breast pin.

The plaintiff, Phillips, having thus proved a bona fide sale to him, and possession of the goods, the defendant attempts to show that the sale from John Horwitz to Phillips was fraudulent, and with an intent to defraud creditors. When the defendant assumes to show this sale fraudulent, he is required not only to prove that Horwitz sold out with an intent to defraud creditors, but he must go further and show that Phillips participated in such fraud or bought with notice of it.

The defendant first offers the deposition of three Cincinnati men, the most important witnesses for the defence. They are creditors of Horwitz. The first one, Benedict Frenkel, is a member of the firm of Aub, Frenkel & Co., who sued Horwitz, and in which suit the real defendant in this suit, Frederick Lewis, swore to the affidavit of attachment for Aub, Frenkel, & Co., so Frenkel now returns the favor by swearing for the defendant. The other two are Mayberg and Hellman, partners in business and creditors of Horwitz. These witnesses swore with such recklessness that the jury regarded their testimony as unworthy of belief.

Benedict Frenkel, in his first answer he states that he knows Phillips by reputation; acquainted with Joseph Horwitz since March, 1860, at Cincinnati.

As Horwitz sold out 31st Jan., 1861, this witness could have known him only about ten months. With this scanty information the witness proceeds to swear away the plaintiff's rights in this case.

In his second answer he says: "I know that Ludwig Phillips was clerk for Joseph Horwitz, at Anna, Illinois, and pretended to buy him out. This was about a year ago at Anna, Illinois. There was no consideration paid to my knowledge. Other parts of the stock Horwitz shipped away to different places.

This answer is untrue in every particular. He says: "Ludwig Phillips was clerk for Joseph Horwitz." The fact is, there was no man by the name of Joseph Horwitz doing business at Anna. These witnesses swear that his name is Joseph while the man's name is John Horwitz. Again Phillips never was clerk for John Horwitz. The witness says: "I know Ludwig Phillips was clerk," &c. How does he know it? In cross Inter. 15 page 93, he is asked how many times he has seen Phillips. He says, "I have not seen him." And yet this witness commences to swear in this wholesale manner about a man he has never seen, and would not know to-day if he should pass him in the streets. The language of the witness is the language used by him in the record, and in the abstract it is abbreviated and mutilated. The answer continues: "I know Ludwig Phillips was clerk for Joseph Horwitz at Anna, Illinois, and pretended to buy him out." Now he does swear to a sale, but says it was a pretended sale.

Why not state the facts and let the jury decide whether it was a pretended sale or not. That was the object in trying the case before a jury. Why does the witness thus slur the case. He says, "No consideration paid to his knowledge."—What does he know about it? "Other parts of the goods Horwitz shipped away to different places." Where and when?

With a view to ascertain his means of knowledge, we ask in the 17th Inter. "Were you present at the sale; what was sold? when? where? what amount and on what terms? what was done with the goods after the sale? how long did they remain there, and when and where were they removed.

What does he answer when we thus asked for facts, so that the jury and this Court may know whether the sale was valid or not? This witness then completely foiled, with his pomposity flattened out, says he knows nothing about the sale; contradicts his former answer to the 2d interrogatory and convicts himself of swearing positively to things about which he is entirely ignorant. He answers, "I am not personally acquainted with Phillips, was not present at the sale of the goods spoken of, and know not that any were sold." Aye, but he said it was a pretended sale. Give us the facts to judge whether it is pretended or not. Don't deny that there was any sale; it only takes him deeper in the mire of falsehood. "I therefore know not when, where, or what amount, or on what terms they were sold; nor what was done with them; nor

when nor where they were removed." But the witness stated, "Other parts of the goods Horwitz shipped away to different places." Such Wholesale swearing in his answer to 2d Interrogatory, and such a complete confession of swearing to reckless statements concerning things of which he knew nothing, is seldom found.

If his 2d answer in chief were taken as evidence, and we failed to have searched his mind for these facts, his testimony would have been injurious to the plaintiff. But we found an antidote to the poison, and the jury paid no attention to his testimony.

Then notice his 18th answer after convicting himself of wilful, deliberate, and reckless swearing, in order to defeat the plaintiff, he indulges in a moral lecture: "I believe, &c., that all rascality transacted in this world, not repented of will hereafter be punished in hell." If this witness were to come before the Prince of Devils, and ask for a conviction of some mortal for an alleged offence, on such testimony as he has given here, Lucifer would scorn to hear him.

In the 3d Inter. he answers, "Horwitz was indebted to Aub, Frenkel, & Co., at the time of the pretended sale, in the sum of $1739.20. He is asked what he knows about fraud, but this answer shows no fraud.

This witness, Benedict Frenkel swears to three things:

1st. That Phillips was clerk for Joseph Horwitz at Anna, Illinois.

2d. That the sale to Phillips was a pretended sale.

3d. That Phillips was irresponsible.

The 1st and 2d matters we have shown to be untrue on his own testimony, that he knows nothing about it.

In regard to the other matter of Phillips being irresponsible, we can show by his own statements that he knows nothing about Phillips.

In the 15th cross inter. he is asked? How long have you known Phillips? when did you first see him? and how many times have you seen him? Do you state his character for responsibility from your own knowledge or from hearsay? If from hearsay, state the names and business of those from whom you obtained your information.

Answer—"I only know Phillips by reputation. I have not seen him. I acquired my knowledge of him as I would in relation to any other party. I heard of him at St. Paul when I was there as a clerk without means." The record gives more than the printed abstract, which in many respects is incorrect. The record gives his answer, "The conversations were casual conversations, and which I did not pay much attention to" At the close of the 17 cross inter. this witness says; "The name of the parties from whom I derived my knowledge, I cannot state, as I paid little attention to it."

Let us analyze this answer. The witness says he was at St. Paul, not at Anna, Illinois. When was he there? Witness only knew Horwitz ten months. How long had he known Phillips? If the witness was at St. Paul why did he not see Phillips? Why hear of him? Can give us no names. The truth is, this is manufactured evidence. Witness says he did not pay attention to the conversation to what he says he heard about Phillips, and now he asks the court to pay attention to it. Testimony based on such light and trifling grounds is from necessity weak and unreliable. Take the best of such testimony, where a man does pay attention to what is said, and being hearsay it is weak and trifling. A witness might meet a man's enemies, whose stories would be unreliable and prejudiced. Next, the persons who told the witness might have no means of knowing the man's business of whom they speak—mere guess work. And yet this witness has the impudence and brazen affrontery to assail Phillips's responsibility, not knowing him; never seeing him; swearing to conversations with men he cannot mention, and conversations he paid little attention to, and now asks that such stuff should be regarded as evidence. Of what benefit is cross examination if it does not search the witness and separate the good from the untrue, enable us to arrive at the truth. No wonder the witness can give no names; paid little attention to the converaion. If he had given us names we could have had ample time to contradict him, by the men he might mention, and prefer charges of perjury against him.

The Court can appreciate the difficulty of getting the truth from such swift witnesses, when it is taken in the form of depositions. Here these Cincinnati witnesses sit down in their rooms in Cincinnati, deliberately con over and shape their testimony to suit them. We can only put written cross ques-

tions and endeavor to ascertain their means of knowledge as best we may. If they refuse to answer, or evade the question, or forget, we have no means of repeating the question in a different form; while on the other hnad, if the witness is on the stand, we have the opportunity of putting various questions; find out from whom he got his information; how many persons; how came it to be mentioned; were they enemies or not? did they possess any means of information, &c. Here the witness shows his information is light and trivial, and as he paid no attention to it, the jury treated it in the the same way. In fact, the entire testimony of the witness was regarded as not worth the paper it was written upon.

We now come to the deposition of Max Hellman. In his 2d answer he says, "In Europe Phillips was a clerk at a small salary, and spent more than he received, and had debts that he could not pay—as tailors's bills, &c. I saw him at St. Paul about six years ago; he was clerking there. I saw him again in 1858, and then he was out of employment, and complained that his employers had failed, and had not paid his wages; that they owed him some three or four hundred dollars and it was entirely lost. His reputation at St. Louis was that he had no means or responsibility, and there he had no credit."

Let us examine this answer. Witness says, "Phillips spent more money than he received." How much did he receive? how much did he spend? Give us facts. How could a man spend more than he received?

"Had debts that he could not pay." What amount of debts did he owe? How does the witness know this? Witness is speaking from personal knowledge. Give us the facts not opinions. Why undertake to drag in such stuff at the outset, under protection of this deposition.

The witness stated that he knew Phillips 18 or 20 years ago in Europe, in his answer to 1st inter., "To whom did Phillips owe tailor bills 18 or 20 years ago; and what has that to do with his responsibility at the present time? What was Phillips's responsibility at the time of the sale? that is the question. This is resorted to in order to prejudice the plaintiff's case, and in a vain and desperate attempt to swear a strong case for the defendant. Witness says, "In St. Louis his reputation was that he had no means or responsibility. How does he know this? Does it not show a desire to falsify? Harry Horwitz testified that he borrowed $1,000 from

Phillips at St. Louis in 1860 ; that Phillips had $2,000, a gold snuff box, diamond ring and diamond breast-pin ; had also some Minnesota bonds.

He further says, "I knew in Europe Phillips was in some way related to Horwitz." If he knew it what sort of relation was it? How did he know it. Some one tell him. If he knew it on his own knowledge he could state how related ; although an unimportant matter, it shows how unfair and reckless the witness is in his statements.

But the willfulness and recklessness of his statements transgresses all bounds in his answer to 8th cross inter., he says: "I do not know John Horwitz—no such man ever did business at Anna." Here is a clear and direct contradiction. Let us see what is the truth ; whether the witness is deliberately lying or not. John Horwitz is asked p. 61, inter 17, "Have you any other name than John Horwitz?" Answer—"I have not." Inter. 18. "Have you ever had or been called by any other name ?" Answer—"Not that I know of."

Harry Horwitz, p. 53, inter 6, "Did you ever know a man by the name of Horwitz, who kept a store in Anna ? if so, what was his christian name? Answer—"I did. John Horwitz was his name." Inter. 7, "Had he any other name ?" Answer—"Not to my knowledge."

Inter. 8. How long have you known him ?" Answer—"All my life. He is my brother.

Inter. 9. Was he ever called by any other name than John Horwitz ? Answer—"Not to my knowledge.

Herman Warch, p. 66, inter. 3. "What name have you known him by, and how long have you known him ?" Answer—I have known him by the name of John Horwitz ; have known him since 1851.

4th inter. Did you ever know or hear of his being called by any other name.' Answer—"Not that I know or remember.' Perry also testifies that his name is John.

'No such man as John Horwitz ever did business at Anna.' Now how mendacious and reckless is the testimony coming from such a witness.

In answer to 15th cross inter., the witness says, 'I knew Phillips twenty years in Europe and six or seven in this country ; in these six or seven years I have seen him three or

four times. I know of my own knowledge that Phillips is a man of no responsibility.

Examine this answer. Here the witness swears to his acquaintance twenty years ago. We have already shown how wilful he swore to his spending more money than he received &c. He knew Phillips six or seven years in this country, but only saw him 3 or 4 times during those six or seven years, and on this he attempts to swear as of his own knowledge. Did he know what Phillips was doing during these six or seven years. Did he see him every month. One would suppose from the wholesale and sweeping statements that he did nothing except attend to Phillips's matters during this period of time.

In his answer to 16th cross inter. witness says, "I know that Phillips had no means to buy, and three years ago he told me he had nothing, and was cheated out of his salary at St. Paul." How does the witness know? Was he with Phillips all the time? No, he has already sworn that he saw him but three or four times in six or seven years. Does he know what money Phillips received, and where he received it? The witness knew all about this in Europe. Has he some divine faculty by which he knows it ~~also~~ in the United States. Was he Phillips's guardian? Does not the zeal and interest he feels in the result of this case, cause him to swear positive and reckless, as to anything and everything.

Suppose Phillips did say that he had been cheated out of his salary. He might still have received it subsequently. He could have made money in the meantime. A salesman can make from $500 to $1,000 or $1,200 a year, and in three years he could have made a considerable sum.

In his 17th answer, after stating that he knew nothing about the sale, although he before called it a pretended sale, thereby showing an utter disregard for truth, he winds up with the same old stuff about Phillips being a clerk in Europe and had no means, &c., and as long as he knew him in this country, he was either peddling some trifling goods or a clerk at St. Paul.

As for his knowledge of Phillips in Europe twenty years ago, his condition at the time of the sale is the main inquiry. Men in this country make or lose fortunes several times in twenty years. Men in this country having industry and perseverance, may be poor to-day and rich to-morrow. There is

nothing to press a man down; he is the architect of his own fortune, and energy and industry is bound to bring prosperity. And now after frequent repetition of knowing Phillips in Europe, he introduces another thing, that while he knew him he was peddling goods. Well, then, Phillips did not have much time to be employed as a clerk; and from his own testimony he saw him but three or four times in seven years, the last time three years before this sale, in 1858, at St. Paul, and therefore knew very little about him. In his second answer the witness stated that Phillips had no credit at St. Louis. How about that? Why not lug it in here? Is the witness overdoing the work? Is he putting on the point of falsehood too thick? Has he not sworn too much, and overstepped the mark, in assailing Phillips as he has in swearing that no such man as John Horwitz lived at Anna, Illinois. The jury thought so, and we agree with them. The jury thought the truth was not in him, and threw his testimony out of the case.

Benedict Meyberg, answer to 2d inter., he states: "I know Joseph Horwitz; have known him four or five years. He was keeping store at Anna. He made a pretended sale of his stock to Phillips. Phillips was his clerk."

This answer contains two facts. A sale was made of the goods, but the witness calls it a pretended sale. In his 3d answer he states what became of the goods, "Part were sent to Galena, part to other places." Now how does the witness know it was a pretended sale. Give us the facts and let the jury or court judge whether it was a valid sale or not. In the 17th cross inter. he concedes that he knows nothing about it. He answers, "I do not know Phillips personally; was not present at the sale; do not know what was sold, when, where, what amount, or on what terms; nor what was done with the goods." If he knows nothing about the sale, why swear it was a pretended sale, and afterwards show that he is swearing wilfully and falsely. Why swear what became of the goods, and then state he knows nothing about them? why swear to such things if he does not know them. He further swears to Phillips being clerk for Joseph Horwitz. Now how does he know it? There is but one way to know this, to see Phillips as the clerk. Yet this witness with the same mendacity as his partner Hellmen, and also Frenkel, swears to Phillips being clerk for Joseph Horwitz, when he concedes in 17th answer that he does not know Phillips. There is as great a disregard of truth proven by this witness's answers as in the two proceeding witnesses.

In answer to 4th inter. Witness says: I only know Phillips by reputation. He was considered as worth nothing; entirely without means. He was a countryman of Horwitz; had been a clerk.

We now give the witness a dead rest and ask him 15th cross inter. "How long have you known Phillips, when did you first see him, and how many times have you seen him? Do you state his character for responsibility from your own knowledge, or from hearsay? If from hearsay, state the names and business of those from whom you obtained your information."

Answer to 15th cross inter.—" I know Phillips only by reputation. I never saw him. I state his reputation for responsibility as I would any other man's, by what people say of him." Harry Horwitz said Phillips was irresponsible.

Here is his means of information; he does not know Phillips; never saw him, and yet in his fourth answer has sworn in such a positive and reckless manner about a man he never saw. When asked questions, in order to hedge him up, the witness flattens out; cannot tell us how many persons told him; their names or business; where at, or anything in regard to it. And this is the witness who testifies that Phillips was clerk for Joseph Horwitz; that he was considered worth nothing; entirely without means, and who is so bold and mendacious in his other statements, showing a criminal disregard of truth. Did he hear it from these other fast and reckless witnesses. One is his partner, and they are all a band of Cincinnati jews, interested in assisting each other. Such witnesses are unworthy of belief.

These three witnesses are the main and most important witnesses for the defendant, and we thus endeavored to show even with this abbreviated abstract, which mutilates the record, that these witnesses contradicted themselves, so as to destroy their own testimony.

They swear to several different things: 1st. That the sale was a pretended sale. From their own lips we convict them of lying. They knew nothing about it.

2d. They all swear that John Horwitz's name is Joseph Horwitz. One witness, Max Hellman, is so zealous that he says no such man ever lived at Anna.

3d. That Phillips was irresponsible. In this Frenkel and

Mayberg swear they don't know him; retail some stuff to which they paid no attention when they heard it? cannot tell who told them, or anything about it. Max Hellman has seen Phillips, but only twenty years ago, in Europe, and three or four times in this country, and swears with as much recklessness ~~about~~ as when he declared no such man as John Horwitz ever lived at Anna. Independent of all this, none of them show the condition of Phillips at or before the time of sale. Harry Horwitz shows that Phillips had $2,000 in money; Minnesota bonds; gold snuff-box; diamond ring and breast pin.

4th. That Phillips was clerk for Joseph Horwitz. On this point not a single witness has sworn to seeing him there, or knows anything about it.

Another of detendant's witnesses is J. M. Bisbin. He is asked when he entered the employ of Horwitz, and answers, I think it was some time in September, 1860 that I entered his service, and left in February, 1861.

The witness seems not exact in dates, and speaks in loose language. "I think it was sometime in September, &c." It is clear from this witness's testimony that Phillips was not clerk during the time he was employed, that is from September to last of January.

William Perry testifies, p. 79, "I was at Anna from 17th August to October, 1860, and know Horwitz. I was frequently at the store." On page 81, re examination, "I did not see Phillips at Anna, while I was there in August, and September, 1860.

On page 172, Perry further testifies, "Phillips never was clerk there for John Horwitz." So here is a space of time from August, 1860 to 31st January, 1861, that Phillips was not clerk, and proved by Bisbin, one of the defendant's witnesses, and William Perry. John Horwitz, page 62, inter. 24, swears that Phillips never clerked for him. Harry Horwitz swears that in March, 1860 Phillips loaned him $1,000 at St. Louis.

Bisbin's deposition was evidently taken with the view to show that Phillips was clerk; buthis ans. to cross inter. 2 shows that Phillips was in possession of the goods after the sale on the 31st of Janaary, 1861.

Cross inter. 2. "Do you know of Phillips being in possession

of the stock after you left? If so how long?" Answer—"He was; how long I can't tell; perhaps three weeks." If Phillips was in possession of the stock, he was in possession as the owner of them.

Daniel Conner's deposition. He pretends to have kept an adjoining store, and yet he knows so little about the matter in controversy, that he can not tell what year John Horwitz sold out, or in what season of the year.

Inter. 4. "When did Horwitz stop selling goods at Anna? Answer—"It was in the fall, or prehaps in the winter." Wm. Perry shows he was there in the fall until October, and Brisbin was clerk until the last of January.

The witness being too stupid to tell the time, the question is repeated. Inter. 5. In what year did he stop selling goods in Anna? Answer—I am not positive whether in 1861 or 1862. Being unable to tell whether it was in the fall or in the winter; in 1861 or 1862; shows that he knows very little about these parties. This witness however does destroy the testimony of the Cincinnati Jews who swore Horwitz's name was Joseph. On page 134. cross inter. 2. Answer—"There was another man, Harry Horwitz, who assisted in the store when first opened. There were only two; one went by the name of Harry, the other by that of John.

John Toler's deposition, 2d inter. p. 138.—"When and where did you first get acquainted with Phillips, and what business was he engaged in? Answer—"The first I ever saw of him was at Anna. I think he came there in 1860. When he first came he was doing nothing; finally he was clerking for John Horwitz and Harry Horwitz.

The answer thus given is the answer stated in the record, but the appellant's printed abstract mutilates the evidence, and unfairly omits the words "and Harry Horwitz." The bill of exceptions does not contain all the testimony in the case, and it does not pretend or claim that it does contain it all; and even such as is embodied in the record, is unfairly stated, or mutilated in the printed abstract.

This witness is brought forward to prove that Phillips was clerk for John Horwitz, but he swears not only that Phillips was clerk, but clerk for John Horwitz and Harry Horwitz. Now this witness is clearly lying when he states that Phillips

was clerking for a partnership, John Horwitz and Harry Horwitz. Not a single witness on either side has spoken of a partnership or John Horwits and Harry Horwits carrying on business together at Anna.

The next question, inter. 3, page 139, enquires, how long Phillips was clerking, (not for John Horwitz,) for the Horwitzes? Answer—"He might have been there five or six months; I could not be positive."

Cross inter. 2d page 141. "Do you know of his clerking for John Horwitz alone?" Answer—"No, not for John alone." Let us analyze this testimony, and see how stupidly or wilfully this witness is lying.

Answer to 2d inter. He came there in 1860. When he first came he was doing nothing; finally he was clerking for John Horwitz and Harry Horwitz. And in the answer to 3d inter. he says Phillips might have been five or six months clerking for the Horwitzes; that is, for John and Harry Horwitz. Now if he came in 1860 and finally clerked five or six months, it must have been during the fall of 1860, for the sale took place from John Horwitz to Phillips on 31st Jan. 1861. But this witness is swearing with a vim and recklessness seldom surpassed. Harry Horwitz testified page 56, inter. 21 and 22 that Phillips loaned him $1000 at St. Louis. Wm. Perry testified on re-examination, page 81, "I did not see Phillips at Anna while I was there in August and September, 1860." On page 172 he testifies, "Phillips never was clerk there for John Horwits Then take the testimony of Brisbin, who was John Horwits clerk from September, 1860, to about the last of January 1861, and he swears that Phillips was not clerk during the time he was clerk. Now Brisbin does not pretend to do it although he was one of the defendant's witnesses. Here then we prove by Harry Horwits that Phillips was in St. Louis in 1860 and loaned him money there. We also completely cover the entire period of time from August 1860 to 31st Jan 1861, when Phillips bought out, and we prove conclusively by Perry and Brisbin, that Phillips was not clerk for either John Horwits or Harry Horwits, or both of the Horwitses, Then in regard to the partnership, "Phillips was cleirking for "John Horwits and Harry Horwits," "for the Horwitses," "not for John alone," and the witness's wilfull and mendacious statements overwhelm him with shame. Every witness thus far contradicts him. John Horwits, Perry, Harry Horwits, Brisbin, Cover, even the three Cincinnati jews who swore

so grandly about a pretended sale, and that no such man as John Horwitz ever lived at Anna, even these worthies swear that there was no partnership—that their favorite Joseph carried on the business. This witness, however, does tell one truth, that the name of Horwits was John, and not Joseph, in this respect contradicting the three Cincinnati witnesses.

The answer to 8th inter. would go to prove that Phillips was the owner of the store. The witness says, "Horwitz was around there sometimes, after it was said that Phillips had charge of the store." Phillips seems to have been in charge of the store, or why would Horwitz be around sometimes. If the store was in charge of Horwitz, and he was the owner of it, would it not seem more reasonable that Phillips would be around sometimes?

In answer to inter. 9th, the witness says, "I can't recollect that I saw him, (Horwitz,) selling goods." The recollection of the witness is bad, but suddenly it acquires courage, and he does now recollect; a contradiction of language in the same answer. What does he recollect? That Horwitz was around there to the best of his recollection helping. Helping what? Helping Phillips sell goods. Phillips was not helping him, but he was helping Phillips. The law as laid down in the decisions of the Supreme Court, hold that the purchaser may employ his vender to act as his clerk. If this witness Toler's testimony is worth anything, it is beneficial to the plaintiff, but he swears so far from the line of truth, that the jury regarded him as unreliable.

C. H. Willeford in answer to 6th inter. says, "I settled with the firm about the 19th or 20th day of January, 1861. The witness is clearly mistaken; there was no firm. And he continues "Phillips wrote the draft, and John Horwitz signed it." By this the witness would insinuate that Phillips was clerk, when in point of fact, Brisbin swears that he was clerk until the 31st January, 1861. So the witness is mistaken again. In answer to 9th inter. he says that Phillips appeared to be acting as clerk and salesman. Now he does not say that Phillips was a clerk, but was acting as salesman and clerk. The witness swears not to facts, but what he supposes, and it is as possible that he was mistaken in regard to the capacity in which Phillips was acting, as proprietor rather than clerk, as he was mistaken in regard to his previous answers, in respect to the existence of a firm, and his conclusion that Phillips was clerk on the nineteenth or twentieth day of January when the

rent was settled, and which is flatly contradicted by Brisbin, who says he was clerk at that time. But the witness knows better, for he shows by his answer to the 2d cross inter. that the sale was a matter of notoriety in the community, for he says: "I was informed towards the end of February 1861, that Horwitz had sold out, (not the firm had sold out,) and by another party, I think, that he had sold to Phillips.

This testimony of Williford's is so prejudiced and unfair that it cannot be of any advantage to the defendant. What he does really know is beneficial to the plaintiff Phillips. This witness further states that Phillips shipped boxes; showing acts of ownership by him, and that the goods were in his possession, and not of John Horwitz. See page 147.

Abraham Horner, in answer to 3d inter., speaks of John Horwitz. Does not seem to know anything about the partnership, of which the two previous witnesses testify.

In his answer to 4th inter. he says, Phillips hired me to haul two loads to the depot, &c. This was on the 9th of February, 1861. This answer shows that Phillips was in possession of the goods on the 9th day of February, 1861, having bought them on the 31st January, 1861. Phillips hired the witness. Phillips being the owner of the goods he could do with them what he pleased. Answer to 18th inter. shows that Phillips packed his goods. Answer to cross inter. 1 shows that Phillips shipped goods towards the last of March 1861, to Galena. If John Horwitz was the owner of the goods, and was around, why don't they show it? This testimony all proves the possession of Phillips, and his exercising acts of ownership over them, such as any man would over his own property.

We have thus gone over the testimony embodied in the bill of exceptions in order to point out the contradictions among the defendant's witnesses; some swearing that Horwitz's name was Joseph; others swearing that it was John; and that there was a partnership. Some swearing that Phillips appeared to be a clerk before the sale; others, such as Brisbin, swearing that it was untrue, that he was clerk. All these, and many other things show that the defendant's testimony was badly riddled, and sank with the weight of its own falsehood, and from the reckless and wilfull statements. The plaintiff's testimony was clear, concise and conclusive; Even such as the appellant has seen fit to embody in the bill of exceptions.

But having failed to embody all the evidence in the bill of exceptions and record, this court does not and cannot know all the testimony the plaintiff produced before the jury, and on which the last two verdicts were rendered for the appellee, Phillips.

The appellant may indulge in clap-trap remarks about goods being shipped and strewn along the line of the road. The fact is, Phillips desired to change his location. John Horwitz could make no money there, and Phillps desired to change his place of business to Galena, and while the goods were in transit, some were stopped at Bloomington by these creditors, and now they attempt to make their own misconduct operate as a disadvantage to the plaintiff.

Another matter which the appellant uses as buncombe, is what he styles as a misrepresentation by John Horwitz, that his name is Joseph. The testimony of John and Harry Horwitz shows that John Horwitz never was called Joseph, or represented as such, and the entire testimony outside of these Cincinnati worthies, proves that he never went by any other name. And who is it that states such misrepresentation? These Cincinnati Jews who swear to a pretended sale, and then swear that they know nothing about it; who swear that no such man as John Horwitz ever did business at Anna. Men thus reckless and wilfull in their statements, and who stand out in bold relief in this case, as witnesses, whose hands and oaths are raised against every other witness, and every other witness is like opposed to them.

II.

Another point we make is, that the defendant has no foothold in this case, that a judgment and execution in attachment against Joseph Horwitz, the affidavit stating that *Joseph* Horwitz is their debtor, is no defence in a suit where the plaintiff proves that he purchased tee goods from *John* Horwitz.

An officer cannot defend in replevin claiming property under a levy, unless he sets up the execution in his pleadings. 24 Ill., 40.

A special execution against Joseph Horwitz is no defence when the property is shown to have belonged to John Horwitz and sold by him to Phillips. They are as distinct as if no execution at all were set up in defence. A creditor of John Horwitz cannot be in position to impeach a sale by John Horwitz, until he has judgment and execution against *him*. A judgment and execution against Harry Horwitz or Joseph Horwitz is not a judgment or execution against John Horwitz. Hence the defendant was in no position to impeach the sale.

It is impossible for us in the limit which is ordinarily presented for a brief or argument to anticipate all the objections made by the appellant to the evidence introduced on the trial.

We feel satisfied that he has been pleased to incorporate sufficient evidence in the bill of exceptions to show that the verdict of the jury was proper right and just. In 21 Ill., 160, the Court says, "It is immaterial, as this Court has frequently decided, that improper evidence has been admitted, so that they find sufficient legal evidence in the record to sustain the verdict."

III.

The instructions given by the Court on behalf of the plaintiff, were correct and proper in law.

1st. "The jury are hereby instructed that the fact alone of the sale from Horwitz to the plaintiff, Phillips, having been made on credit by the giving of Phillips's notes is not evidence of fraud." Given.

This instruction was asked in order to meet the the position of defendant's counsel that a sale on credit was necessarily fraudulent. Such a principle would derange and destroy the entire commercial and financial business of the country, if the test of all sales must be, that the purchase money should be cash paid down at the time of the sale.

In 28 Ill., 495, the court says that "the fact that an uninventoried stock of goods is sold on a credit or to a relative, is not evidence of fraud."

In this case in 28 Ill., 497, the facts show that the purchaser was a relative and clerk of the vendor.

2d Instruction. "The jury is instructed that fraud cannot be inferred from the fact alone that Horwitz was indebted at the time he made the sale to Phillips." Given.

Any other principle would deprive men in debt of disposing of their property, and require every man to inquire whether the vendor was in debt or not previous to making a purchase. The title to personal property would then depend on the question, whether the vendor was in debt or not at the time of the sale. There is no law which deprives the poor man or the man in debt from disposing of his property. To be in debt may be a misfortune but it is no crime. In the same case, 28 Ill., 501, the court said, " Nor can fraud be inferred from the fact that the vendor was indebted at the time he made the sale." " The fact that the sale was on credit is not evidence of fraud. The fact that the sale was made to a relative is not unusual and is not a badge of fraud. Nor can fraud be inferred from the fact that the vendor was indebted at the time of the sale.

These facts whether considered separately or together we think fail to establish fraud in the sale."

3d Instruction. " If the jury believe from the evidence that Horwitz sold out his stock of goods to Phillips and that Phillips took possession of the same yet that fact alone that Horwitz may have sold some of the goods for Phillips will not destroy the apparent good faith of the transaction." Given.

In the 22d Ill., p 380, Read et. al. vs. Wilson, the court says: It is true he continued the mortgagors in the store to assist him in the sale of the goods, but we *know of no law* which forbids it. Indeed it was very proper that he should do so, for they, it must be presumed, were better qualified to assist him in

the advantageous sale of the goods than any strangers could be. Indeed the only fact in the whole case as worthy of any serious consideration as tending to a contrary conclusion is, that the sign of the mortgagors was continued over the door of the house after possession was taken. But this fact is by no means absolutely inconsistent with a bona fide change of possession. It may have been accidental or from inadvertance, or it may have been under the belief that an old and well-known sign would draw customers who were in the habit of trading with the mortgagors, and hence continued with upright intentions.

See also 22d Ill., 45—52. 27 Ill., 430. The 4th and 6th Instructions state the law correctly, that defendant must not only prove that the sale was made by John Horwitz with the design to defraud and hinder creditors but the defendant must prove by the evidence that Phillips participated in such design to defraud and hinder creditors or had notice of it.

In 22 Ill., 45—52, Brown vs. Riley, the law is clearly laid down. "To impeach the sale of property as fraudulent as to purchasers or creditors, it is necessary to show that both the vendor and purchaser participated in or had notice of such design at the time of sale." There is no principle more firmly established by adjudications than the one set forth in the 4th and 6th Instructions. The court will notice that there is not a particle of proof throughout the case, showing that Phillips was guilty of fraud, or had notice of any fraud on the part of John Horwitz, if any such existed on the part of Horwitz. This was a question for the jury and they found on the trials for Phillips. The 7th Instruction was also proper and correct. "The jury is instructed that when fraud is set up as a defence to avoid a sale, the proof of such fraud is on the party asserting it, and fraud is a fact that must be proved by the evidence and cannot be inferred by the jury without circumstances to infer it from."

In Wright vs. Grover, 27 Ill., 430, it is declared, "The law *never does* presume a fraud: that fact *must always be proved*, either by direct or circumstantial evidence. When there is no evidence of fraud, neither the court or jury have the right to infer or presume it." This decision lays down the law, with reason and strength to support it.

It is well settled by the decisions of this court, that where the bill of exceptions fails to state that all of the evidence in the case is embodied, the Supreme Court will not examine into the question, whether the Circuit Court erred in overruling the motion for a new trial, because the verdict is alleged to be contrary to the weight of evidence.

And especially where *two juries* have rendered a verdict for the plaintiff or appellee.

Nor is there any error in the instructions given by the Court.

L. SHISSLER, M. Y. JOHNSON, and W. E. IVES,
Attorneys for Appellee.

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Moner
vs
Phillips

Appellees brief

Filed April 21. 1864
L Leland Clk

State of Illinois
Jo Daviess County
Fourteenth Judicial Circuit } Pleas in the Circuit Court
-It begun and held at
Galena within and for the County of Jo Daviess
aforesaid on the third Monday of the Month
of October A.D. 1843. before the Hon Benj R.
Sheldon sole judge of the said fourteenth
Judicial Circuit of the State of Illinois.

Wm Cary Prosecuting Attorney Pro Tem.
Wm R Rowley Clerk
Johns C Hawkins Sheriff.

Ludwig Phillips
vs } Replevin
Simeon K Miner

Be it remembered
that heretofore to wit. on the
10th day of February A.D. 1842. the Plaintiff above
named by Johnson & Shissler his attorneys filed
in the Clerks office of our said Circuit Court
his affidavit and praecipe for writ of Replevin
together with a Bond for Costs and Declaration
in this Cause

The affidavit and praecipe filed by the Plain-
-tiff in this cause is in the words and figures
following to wit:

State of Illinois }
Jo Daviess County } ss

In the Circuit Court of said Jo Daviess County at the March Term thereof A.D. 1862.

Ludwig Philipps
vs
Simeon K Miner

Personally appeared before me, Alman B Ives of lawful age who upon being first duly sworn, on his oath says that he is the agent of Ludwig Philipps, and that said Ludwig Philipps is the owner of the property described as follows, Two boxes of goods and merchandise marked L Philipps Galena All of the value of about seven hundred dollars, and that the said Ludwig Philipps is lawfully entitled to the possession of the same. This affiant further states that the said two boxes of goods and merchandise have been wrongfully taken and are now wrongfully detained by Simeon K Miner, and that the same has not been taken for any tax assessment or fine levied by virtue of any law of this State nor seized under any execution or attachment against the goods and chattels of said plaintiff Ludwig Philipps liable to execution or attachment. Wherefore he prays that a writ of replevin may issue therefor in pursuance to law at the suit of the said Ludwig Philipps, and against the said Simeon K Miner who is the Sheriff of said Jo Daviess County

Alman B Ives

Subscribed & sworn to
before me this 10th day
of February A.D. 1842
Wm R Rowley Clerk
By T R Bird deputy

State of Illinois } ss
Jo Daviess County }

In the Circuit Court
of said Jo Daviess County
at the March Term
A.D. 1842

Ludwig Philippo
vs
Simeon K Miner

Upon filing the above affidavit the Clerk will please issue a writ of replevin in said suit directed to the Coroner of Jo Daviess County, the said Miner being interested in said suit
Galena Feby 10th 1842.

Johnson Shissler & Ives
Attorneys for Deft.

Endorsed
Filed February 10th 1842
W R Rowley Clk
By T R. Bird deputy.

The Bond for costs filed by the Plaintiffs is in the words and figures following to wit:

State of Illinois } ss
County of Jo Daviess }

In the Jo Daviess County Circuit Court. March Term A.D. 1842

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Ludwig Philipps Plaintiff
vs
Simeon K. Miner Defendant } In Replevin

I do hereby enter myself security for Costs in this cause and acknowledge myself bound to pay, or cause to be paid, all costs which may accrue in this action, either to the opposite party, or to any of the Officers of this Court in pursuance of the Laws of this State

Dated at Galena this 10th day of February A.D. 1862

Approved. M G Johnson (L.S.)
Wm R Rowley
by T. R Bird Deputy. Clerk of Jo Daviess County Circuit Court

Endorsed
Filed Feby 10th 1862
Wm R Rowley Clk
By T R Bird Deputy

The Declaration filed by the Plaintiff is in the words and figures following to wit:

State of Illinois } In the Circuit Court
Jo Daviess County } of said Jo Daviess County
March Term thereof
A.D. 1862.

Ludwig Philipps
vs
Simeon K Miner

Ludwig Philipps the plaintiff in this suit by Johnson Shipler & Ives his attorneys complains of Simeon K

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Wherein the defendant in this suit of a plea wherefore he took and unjustly detained the goods and merchandise of the said Ludwig Philipps against sureties and pledges until &c. For that the said defendant on the fifteenth day of March A.D. 1861 at Galena in said County of Jo Daviess and State of Illinois took the goods and merchandise to wit. Two boxes of goods and merchandise, marked, L Philipps Galena Ills. of the said plaintiff of great value to wit of the value of seven hundred dollars and unjustly detained the same against sureties and pledges until &c.

Wherefore the said plaintiff saith that he is injured, and hath sustained damage to the amount of One Thousand dollars and therefore he brings his suit &c

Johnson Shipler & Ives
Pltffs Atty

Endorsed

Filed Feby 10th 1862
Wm R Kirley Clk
By T R Bird Deputy

Upon the filing of which said Bond and praecipe, there issued out of the Clerks Office of our said Circuit Court a writ of Replevin in the words and figures following to wit:

State of Illinois }
Jo Daviess County } Set

The People of the State of Illinois to the Coroner of said County — Greeting:

Whereas Ludwig Philipps plaintiff, complains that Simeon K. Miner defendant, unlawfully and wrongfully does detain Two Boxes of Goods and Merchandise, marked. L Philipps Galena Illinois. of the value of about Seven hundred dollars ($700)

Therefore We Command You. That if the said plaintiff shall give you bond with good and sufficient security, in double the value of said goods and chattles, as required by law, to prosecute his suit in this behalf to effect and without delay, and to make return of the said goods and chattles, if return thereof shall be awarded, and to save and keep you harmless in replevying said goods and chattles, you cause the said goods and chattles 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 Jo Daviess County, on the first day of the next term thereof, to be holden at the Court House, in Galena, in said county, on the 2nd Monday of March next, to answer unto the said plaintiff in the premises. And have you then and there this Writ, with an endorsement thereon in what manner you shall have executed the same, together with the bond which you shall take from the said plaintiff as before commanded, before executing this writ.

Witness, William R Rowley. Clerk of our said Court, and the seal thereof, at Galena, in said County. the Tenth day of February A.D. 1862

Seal

W R Rowley. Clerk
by T. R. Bird Deputy.

Which said writ was returned into Court with the following return endorsed thereon Towit:

Executed this writ by replevying the within described goods and delivering them to the within named Ludynig Philipps also by summoning the within named S K Miner as I am herein commanded this the tenth day of feb A.D. 1862.

J C Hawkins. Coroner &
Jo Daviess Co. Ills.

The Replevin bond filed by the Plaintiffs, with the affidavit thereunto attached is in the words and figures following towit:

Know all men by these presents That We Ludwig Philipps and Almon B Ives & M G Johnson are held and firmly bound unto John C Hawkins Coroner of the County of Jo Daviess and State of Illinois in the penal sum of Fourteen Hundred Dollars current money of the United States for the payment of which well and truly to be made

and performed we bind ourselves each of us, our heirs executors and administrators jointly, severally and firmly by these presents.
Witness our hands and seals this 10th day of February A.D. 1872.
The Condition of the above Obligation is such that whereas the above bounden Ludwig Philipps has commenced an action of replevin against Simeon K. Miner in the circuit Court of said County, for the wrongful taking and wrongful detaining of the following goods & Chattels to wit: Two Boxes of Dry Goods. of about the value of Seven Hundred Dollars Marked L Philipps Galena Ills. The property of him the said Ludwig Philipps as he saith. Now if the said Ludwig Philipps shall personally be and appear at the Court House at the next term of said Circuit Court of said County in the City of Galena on the first day of the next term thereof. And shall then and there prosecute his said suit to effect and without delay. and doth make a return of the said property to the said Simeon K Miner if return thereof shall be awarded by the said Circuit Court. and shall save and keep harmless the said Coroner in replevying said property. and shall pay all Costs in case he shall fail to prosecute said suit to effect then this Obligation to be void otherwise to be in full force and virtue

Ludwig Philipps (Seal)
Alonzo B Ives (Seal)
M G Johnson (Seal)

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State of Illinois
So Davies County

Almon B Ives of the City of Bloomington and State of Illinois being first duly sworn doth depose and say that he is a resident of Bloomington McLean County Illinois and has been for the last eight years and of said State twenty eight years deponent further says that he is the owner of five hundred acres of land in situate in said McLean County worth at the present time four thousand dollars free and clear from all incumbrances that he has also property in the City of Bloomington consisting of Houses and lots worth at least five thousand dollars all free and clear from encumbrances. deponent further says that he has and is the owner of real estate situate in the Counties of Champaign Piatt Livingston Kankakee Iroquois Macon and La Salle in the State of Illinois free and clear of all encumbrances. Worth at least at the present time ten thousand dollars. deponent further says that he is worth clear of debt or other liabilities (Consisting in part of the before mentioned real estate) thirty Thousand dollars. deponent further says that above described property all stands recorded in affiants own proper name and that the same is all free and clear from all encumbrances & further that this affidavit is made

for the purpose of justifying as security in a suit of Replevin Commenced in the Circuit Court of said County by Ludwig Phillipps vs Simeon K Miner - and further deponent saith not

Sworn & subscribed before me this the 10th day of Feby 1862
Wm R Rowley Clerk
by T R Bird deputy.

Almon B Ives

Seal

Endorsed
Filed Feby 10th 1862
Wm R Rowley Clerk
By T R Bird deputy.

And afterwards towit. on the 26th day of March A.D. 1862 as yet of the March Term A.D. 1862 of said Co Davies County Circuit Court in the Record of the proceedings thereof in the above entitled cause. appears the following entry towit:

Ludwig Phillips
vs
Simeon K Miner
Replevin

On motion of the Plaintiff by his attorneys. the Defendant is ruled to plead by tomorrow morning.

And afterwards towit on the 27th day of March A.D. 1862 as yet of the March Term A.D. 1862 of said Circuit Court in the record of the proceedings thereof. in the above entitled cause, appears the

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following entry to wit:

Ludwig Phillips
vs
Simeon K Miner — Replevin

The Defendant files his plea.

The pleas referred to in the last above recited entry are in the words and figures following to wit:

State of Illinois
Ogle County — In the Circuit Court of Ogle County Illinois. of the March Term thereof A.D. 1862.

Simeon K Miner
als
Ludwig Phillips — Plea

1st Plea

And the said Simeon K Miner, Defendant, by Weigley & Small his attorneys, comes and defends the wrong and injury when &c — and says that he did not take the said goods and merchandise in said declaration mentioned or any part of either of them in manner and form as the said plaintiff hath above thereof complained against him. And of this, the said defendant puts himself upon the Country

2d Plea

And for a further plea in this behalf the said Defendant says Actio non because he says that he doth not detain the said Goods & merchandise in the said plaintiffs

declaration mentioned or any part or either of them in manner and form as the said plaintiff hath above thereof complained against him. and of this he the said Defendant puts himself upon the Country

3.rd Plea And for a further plea in this behalf the said Defendant says Actio non because he says that the time of the taking and detaining the Goods and Merchandise in the said plaintiffs declaration alleged he was the Sheriff of St Clair County in the State of Illinois, and as such Sheriff sieged said Goods under & by virtue of a writ of attachment issuing out of the Circuit Court of said County wherein one Frederick Lewis was Plaintiff and one Joseph Hornitz Defendant that afterwards a judgment was recovered in said attachment suit and a writ of special fieri facias was issued thereon commanding him the said Defendant to make the sum thereon mentioned out of said Goods & Merchandise and this Defendant avers that the said Goods & Merchandise were at the time of said taking, the Goods & Merchandise of said Joseph Hornitz and liable to siezure without this that they were the Goods and Merchandise of the said plaintiff as in said declaration alleged and this the said Defendant is ready to verify wherefore he prays Judgment &c

4th Plea And for a further plea in this behalf the said Defendant says Actio non

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because he says that at the time of the said taking: the said Goods and Merchandise were the Goods and Merchandise of one Joseph Cornitz without this that they were the Goods & Merchandise of the said plaintiff and this the said Defendant is ready to verify wherefore he prays judgment &c

Weigley & Small
Attys for Dft.

Endorsed
Filed March 27th 1862
W R Ruley Clerk
per T R Reid deputy.

And afterwards towit. on the 19th day of May A.D. 1862 as yet of the May Term A.D. 1862 of said Circuit Court in the record of the proceeding thereof in the above entitled cause, appears the following entry towit:

Ludwig Phillips
vs
Simeon R Minor
Replevin

On motion of the Defendant by his attorney. It is ordered that this cause be continued at his costs of this Term.

And afterwards towit on the 23rd day of May A.D. 1862. as yet of the May Term A.D. 1862 of said Circuit Court in the record of the proceedings thereof in the above entitled cause, appears the following entry towit:

Ludwig Phillips
vs
Simeon K Miner

Replevin

Now at this day comes the Plaintiff by Dickinson & Shipsler his attorneys, and files replication to the defendants plea herein

The Plaintiffs Replications to the defendants pleas, referred to in the last above recited entry are in the words and figures following to wit:

State of Illinois
Jo Daviess County } ss

In the Circuit Court of said Jo Daviess County at the May Term thereof 1862.

Ludwig Phillips
vs
Simeon K Miner

And the said plaintiff as to the said plea of the said defendant by him first above pleaded and whereof he hath put himself upon the Country doth the like.

And the said plaintiff as to the said plea of the said defendant by him secondly above pleaded, and whereof he hath put himself upon the Country doth the like.

And the said plaintiff as to the said plea of the said defendant by him thirdly above pleaded saith precludi non &c because he saith that the said goods and Merchandise were not at the time of said taking. The

goods and chattels of Joseph Hornitz and liable to seizure, as in said plea is alleged, but were the goods and merchandise of the said plaintiff, and this the said plaintiff prays may be enquired of by the Country &c.

And the said plaintiff as to the said plea of the said defendant by him fourthly above pleaded saith precludi non because he saith that the said goods and merchandise were not the goods and merchandise of Joseph Hornitz as in said fourth plea is alleged but were the goods and merchandise of the plaintiff. And this the said plaintiff prays may be enquired of by the Country &c

Weigley & Linall
Attys for Dft.

Johnson & Shiffler
Attorneys for Pltff.

Endorsed
Filed May 23rd 1842
W R Rowley Clk
by T R Bird Deputy.

And afterwards Term, on the 19th day of August A.D. 1842, as yet of the August Term A.D. 1842 of said Circuit Court in the Record of the proceedings thereof in the above entitled cause, appears the following entry to wit:

Ludwig Phillips
vs
Simeon K Miner
Replevin

By consent of the parties hereto, it is ordered that this cause be continued, at defendants costs of term.

And afterwards towit on the 20th day of October A.D. 1863. as yet of the October Term A.D. 1862. of said Circuit Court in the Record of the proceedings thereof in the above entitled cause appears the following entry towit:

Ludwig Phillips
vs
Simeon K Miner
Replevin

By consent of the parties it is ordered that this cause be continued.

And afterwards towit on the 13th day of March A.D. 1863. as yet of the March Term A.D. 1863. of said Circuit Court in the Record of the proceeding thereof in the above entitled cause, appears the following entry towit:

Ludwig Phillips
vs
Simeon K Miner
Replevin

Now at this day comes the plaintiff by his attorneys and files exceptions to the depositions heretofore filed by the defendant in this cause, which exceptions after argument by counsel are taken under advisement by the Court.

The exceptions referred to in the last above recited entry are in the words and figures following to wit:

State of Illinois } ss
Co. Davis County }

In the Circuit Court of said Co Davis County.
At the March Term A.D. 1865

Ludwig Phillips
vs
Simeon K Mann

And now at this day comes the said plaintiff by Johnson & Shipler his attorneys and moves the Court to suppress the depositions Benedict Frankel, Mary Hellman, Benedict Meyberg, witnesses of the said defendant, taken by and on behalf of said defendant — and also to suppress the direct interrogatories and answers of said witnesses both to the direct and cross interrogatories for the reason that the same are immaterial irrelevant, hearsay and irresponsive.

The exceptions & the objections to said depositions of said Frankel Hellman & Meyberg, are more particularly set forth as follows.

Exceptions & Objections to

Benedict Frankel's Deposition or testimony
2d Direct Interrogatory. objection. So much of said Interrogatory as relates to consideration: What became of the Merchandise sold & personal responsibility of Phillips

Objection to answer to 2d Interrogatory as hearsay, irresponsive, & immaterial.

3d Direct Interrogatory. objected Irrelevant & asking on hearsay.
Objection to answer to 3d Interrogatory as being Irrelevant. hearsay & not responsive to any issue in the case.

Because the witness Benedict Frankel shows in his answer to the 3rd Cross Interrogatory, that he has no personal knowledge of the matters heretofore stated by him, or the material points in controversy, — all he knows is by hearsay.

Objection to answer to 4th Cross Interrogatory statement "I do not believe they were"

Answer to 6th Cross Interrogatory. objected, as Irresponsive.
Answer to 7 Cross Interrogatory. Latter part of said answer objected to as being irresponsive.
Answer to 8 Cross Int. objection — latter part as irresponsive.

Answer to 9th Cross Int. objection. latter part as irresponsive.

Answer to 11th Cross Int. Latter part irresponsive & hearsay. Answer further shows witness has no information, save, what is hearsay.

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Answer to 13 Crop Int. The three last lines of said answer irresponsive. Does not answer interrogatory fully.

Answer to 14 Crop Int. The three last lines irresponsive & hearsay. Does not answer fully.

Answer to 15th Crop Inter. Objected to as irresponsive — not answered fully, such as is given.

Answer to 16 Crop Inter. Question not fully answered & 3 last lines irresponsive.

Answer to 17 Crop Inter. The last 9 lines of said answer. is irresponsive. Answers about matters not asked.

Answer 19 Crop. Inter. Objected, as being irrevelant irresponsive hearsay improper. Shows the answer to 3d Direct Inter. to be hearsay & improper.

To Max Hellmans deposition. the following objections are urged.
2d Direct Question objected to as improper irrevelant & immaterial.
Answer to 2d Direct Inter. objected to as improper irrelevant & hearsay.

Answer to 4 Crop Inter. The 5 last lines objected

to. as being irresponsive irrelevant & hearsay.

Answer to 5 Crosf Inter. The 5 last lines irresponsive irrelevant hearsays

Answer to 6 Crosf Inter. The first two line and three last lines of this answer objected as irresponsive immaterial & hearsay.

Answer to 8 Crosf Inter. The 3 last lines of the answer objected to as irresponsive irrelevant & the guess or opinion of the witnes

Answer to 9 Crosf Inter. The last 2 lines objected to as irresponsive & the "May have" & opinion of witnes.

Answer to 10 Crosf Inter. improper & hearsay & the understanding of witnes.

Answer to 11 Crosf Inter. The last three lines. improper irresponsive & hearsay.

Answer to Crosf Inter 13. The first two lines of answer is the opinion of witnes. Is irresponsive. and states belief of Witnes.

Answer to Crosf Inter. 15. Object to 3 last lines as irresponsive immaterial & hearsay.

Answer to Crosf Inter. 16. The first 16 lines and last 4 lines, irresponsive immaterial and opinion of witnes.

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Answer to Crop Int 17th The four lines commencing "My information objected as hearsay & unresponsive.

Objections
Benedict Mayberry testimony.

Quest 2d & answer, objected to as unresponsive to any issue in the case also improper & hearsay.

Question 4 improper & immaterial Answer is improper irrelevant & hearsay.

Answer 3d Crop Int. Strike out "except the goods attached — & the three last lines commencing with. "I saw &c as improper & irrelevant.

Answer to 4 Crop Inter. Strike out the two last lines. as hearsay & not responsive.

Answer to 5 Crop Inter. Object to last line as unresponsive impertinent & hearsay.

Answer to 6 Crop Inter. Objected to last line as irresponsive & immaterial.

Answer to 8 Crop Inter. Last line objected to as supposition of witness.

Answer to 9th Crop Inter. Witness. answers "unless what is stated is untrue" being suppo-

sition of witness.

Answer to 10th Crosp Int. Last line "if prosecuted &c. is the guess of the Witness.

Answer to 11th Crosp Int. Two last lines "I understood &c. as being unresponsive & hearsay.

Answer to 13th Crosp Int. Witness does not answer the question fairly & fully The 3 last lines are hearsay.

Crosp Inter. 15th Answer is objected to, as not responsive to the question & the 3 last lines are hearsay.

*

Crosp Inter 17. Answer not responsive & hearsay. The last five lines objected to.

Upon the foregoing reasons, causes & exceptions & objections! the said plaintiffs moves the Court to suppress said depositions questions & answers &c

Johnson & Shissler
for Pltff.

Endorsed

Filed March 13th 1883
W R Conley Clk
By J R Bird Deputy.

* Crosp Inter 16. Answer unresponsive and answer given unresponsive and hearsay

And afterwards towit, on the 16th day of March A.D. 1863. as yet of the March Term A.D. 1863. of said Circuit Court, in the Record of the proceedings thereof in the above entitled cause appears the following entry towit:

Ludwig Phillips
vs
Simeon K. Mlinn } Replevin

The Court having fully considered the exceptions to the depositions heretofore entered in this cause, sustain the same in part and in part overrules the same, to which overruling of exceptions the plaintiff by his attorneys then and there except. And the plaintiff by his attorneys files affidavit and motion for a continuance of this cause, which motion after argument by counsel is sustained by the Court, and it is ordered that this cause be continued, and that the plaintiff pay the costs of this term and that execution issue against him therefor.

The affidavit and motion referred to in the last above recited entry is in the words and figures following towit:

Ludwig Philipps
vs
Simeon K. Mlinn } In Davies Circuit Court March Term A.D. 1863
Replevin

A B Ives being first duly sworn doth depose and say that he is the attorney for the plaintiff in the above entitled cause and that he cannot safety proceed to Trial at the present term of this Court on account of the absence of Wm Perry who is a material witness for the plaintiff in said Cause that said Witness resides at Bloomington in this State and is temporally absent from this State at Memphis Tennessee on some private business of his own and was expected home prior to the sitting of this Court that said Witness had been in attendance at this Court at a former term and agreed with this affiant to attend as a witness in this Cause at the present Term and that said witness is only detained on account of being sick and unable to attend at the present term of this Court and believing he would attend personally is the reason why his deposition was not taken. Deponent further says that he believes & expects to prove by said Perry that said plaintiff purchased the goods in Controversy of John Hornitz and that said Witness is well acquainted with said John Hornitz and the goods in Controversy and that said John Hornitz was the owner thereof before the sale of the same to the plaintiff herein and that Joseph Hornitz never owned or had anything to do with said Goods in Controversy that said

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Witness is well acquainted with all the facts and circumstances and affiant knows of no other witness by whom he can prove the facts so fully. And if said cause is continued he can procure the attendance of said witness at the next term of this Court, and that this application is not made for delay but that Justice may be done in the premises

A B Ives

Subscribed & sworn to
before me this 14th day
March 1863.
W R Rowley Clk
By T R Bird deputy.

Endorsed
Filed March 15th 1863
W R Rowley Clk
By T R Bird Depty

And afterwards towit, on the 20th day of May A.D. 1863. as yet of the May Term A.D. 1863. in said Circuit Court in the Record of the proceedings thereof in the above entitled cause appears the following entry towit:

Ludwig Phillips ⋮
vs ⋮ Replevin
Simon K Mines ⋮

Now at this day came the parties by their attorneys, and upon issue joined thereupon came a jury of good and law-

ful men to wit: Hugh Cunningham. L. S. Hunt. Michael McGuire. M. M. Mitchell Ruel Blanchfield. Joseph Forbes. Richard Kerwin. George Dilman. John Lynch. S. Lacelles. Thomas Simpson. & Joseph Gordon. who were duly elected tried and sworn. and after hearing the evidence in the cause and the arguments of Counsel retire to consider of their verdict. and by agreement of the parties It is ordered that when they shall have agreed upon a verdict they may seal the same and return it into Court.

And afterwards to wit on the 21st day of May AD 1843. as yet of the May Term AD. 1843. of said Circuit Court in the record of the proceedings thereof in the above entitled cause. appears the following entry to wit:

Ludwig Phillips vs Simeon K Wiener } Replevin.

Now at this day came again the jury heretofore impanneled in this cause and return into Court the following sealed verdict to wit: We the jury find the issues for the defendant. and the plaintiff by his attorneys moves the Court for a new trial & files his motion & reasons therefor.

The motion for a new trial referred to in the last above recited entry is in the words and figures

following to wit:

Ludwig Phillips
vs
Simon K Milner

In the Circuit Court of Jo Daviess County Illinois. May Term A.D. 1863

(And now comes the said plaintiff by his attorneys Johnson and Shifsler and moves the Court for a new trial in the above case. And sets out the following reasons.
I Because the jury have returned a verdict not only against the law & the evidence in the case. but found two of the issues against the plaintiff on the admissions of the defendant.
II Because the jury acted with partiality & prejudice in returning said verdict.
III Because said verdict is against the law and evidence
IV Because the Court allowed improper evidence to go to the jury on retiring to form the verdict.
V Because the Court admitted improper evidence on the trial of said case.

Wherefore he prays a new trial without costs.

Johnson & Shifsler
for Plaintiff

Endorsed
Filed May 2d 1863.
W R Rowley Clk
By T. R. Bird Deputy.

And afterwards to wit, on the 5th day of June A.D. 1843. as yet of the May Term A.D. 1843. of said Circuit Court, in the Record of the proceedings thereof in the above entitled cause, appears the following entry to wit:

Ludwig Phillips
vs
Simeon K Miner } Replevin.

Now at this day came on to be heard the motion for a new trial in this cause, which motion after argument by counsel is taken under advisement by the Court.

And afterwards to wit, on the 6th day of June A.D. 1843. as yet of the May Term A.D. 1843. of said Circuit Court, in the Record of the proceedings thereof in the above entitled cause, appears the following entry to wit:

Ludwig Phillips
vs
Simeon K Miner } Replevin.

The Court having fully considered of the motion heretofore filed by the plaintiff for a new trial in this cause sustains the same, and a new trial is granted conditioned that the defendants pay the costs accruing in this cause to the present term of Court, within thirty days from this date.

And afterwards to wit, on the 18th day of August A.D. 1843. as yet of the August Term A.D. 1843.

of said Circuit Court in the Record of the proceedings thereof in the above entitled cause, appears the following entry to wit:

Ludwig Phillips
vs
Simon K Milner } Replevin

The Plaintiff by his attorneys this day comes and files exceptions to the depositions of Jacob W Brisbin & Daniel Evers which exceptions are in part overruled by the Court, to which ruling of the Court the plaintiff by his attorneys then and there excepts, And now come the parties by their attorneys and upon issue joined thereupon came a jury of good and lawful men to wit: Josiah Kistle, W D Goodgins, George Dow, John O Neil, J W Webb, Wm H Pugh, M Wadleigh, George Huey, C. E. Sanders, George Bustles, Miles White & Charles Woodham, who were duly elected tried and sworn and after hearing the evidence in the cause the further hearing is postponed until tomorrow morning.

The exceptions referred to in the last above recited entry are in the words and figures following to wit:

State of Illinois } In the Circuit Court
Do Daviess County } of said Do Daviess County
at the August Term 1863.

Luding Phillips
vs
Simeon K Miner

And now at this day comes the said plaintiff by Johnson & Shissler his attorneys and moves the Court to suppress the following portions of the depositions of Jacob M Brisbin and Daniel Cover filed in said cause. And sets forth the following exceptions to said deposition. and to the questions & answers therein contained.

Exceptions to the deposition of Jacob M Brisbin.:
The 4th question & answer objected to.
Irrelevant and opinion of witness.
The 5th answer excepted, to as understanding of witness & testimony irrelevant and improper
The 6th question objected to. & answer also. as, Irrelevant, improper, and Buncombe,
The 7th question & answer excepted to, as irrelevant & improper. not showing who shipped the goods, or that it embraced any of the goods in controversy.
The 8th question and answer objected to. for reasons stated in Exceptions to preceding question & answer.

Answer to 3d Cross Interrogatory. Excepted to as being Statement of Hornitz hearsay testimony.

Exceptions to Daniel Covers Deposition.
The 3d answer objected to. as not being responsive

-sive. improper. & irrevelants and thoughts of witness. not evidence.

The 8th Interrogatory & answer objected to. as Irrelevant impertinent. & not responsive to the issues.

The 9th Interrogatory & answer objected to. as Irrevelant ~~&c~~ improper

The 10th Interrogatory & answer excepted to. as Irrelevant & improper.
The 11th Interrogatory & answer objected to. as Irrelevant, improper and secondary evidence.
The 12th Interrogatory & answer objected to. as Improper & irrelevant
The 14th Answer objected to as being the presumption of witness. & testimony irrelevant & improper.
The 15th Question objected to. as leading in its nature. and the answer thereto, as the opinion & inference or thoughts of the witness.

The answer to 17th ~~Cross~~ Interrogatory excepted to. as being the supposition of the witness.

The answer to 1st Cross Interrogatory objected to. as hearsay testimony.

The answer to 5th Cross Inter objected to. the first three lines being supposition of witness.

The answer to 6th Crop Interr. objected to. as not responsive to question.

Johnson & Shepler
Attys for plaintiff.

Endorsed
Filed August 18th 1863
W R Ridley Clk
By T R Bird Dept.

And afterwards towit on the 19th day of August A.D. 1863. as yet of the August Term A.D. 1863 of said Circuit Court, in the Record of the proceedings thereof in the above entitled cause, appears the following entry towit:

Ludwig Phillips
vs
Simeon K Milner
Replevin

Now at this day came again the jury heretofore impanneled in this cause and after hearing the arguments of Counsel they retire to consider of their verdict. And by agreement of the parties it is ordered by the Court that when they shall have agreed upon a verdict they may seal the same and return it into Court.

And afterwards towit on the 20th day of August A.D. 1863. as yet of the August Term A.D. 1863 of said Circuit Court, in the Record of the proceedings thereof in the above entitled cause appears the following entry towit:

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Ludwig Phillips
vs
Simeon K Miner } Replevin

Now at this day came again the jury heretofore impanneled in this cause and return into Court with the following sealed verdict to wit: We the jury find the issues for the Plaintiff. and the defendant by his attorneys moves the Court for a new trial and files his motion and reasons therefor.

The motion for a new trial referred to in the last above recited entry. is in the words and figures following to wit:

State of Illinois } In the Circuit Court of Ds.
Co. Davies County } Davies County Illinois of the August Term AD. 1863.

Ludwig Phillips
vs
Simeon K Miner } Motion for new trial

Now comes the said defendant by Weigley & Small his Attorneys and moves the Court to grant a new trial in said cause and for reasons therefor shews.

1st That the verdict of the Jury was contrary to the Evidence.

2d That the verdict of the Jury was contrary to Law

3rd Because the Court gave improper instruct

-ions to the Jury:-

4th Because the verdict was for other and sufficient reasons inequitable and unjust & should not be permitted to stand

Weigley & Small
Attys for Dft.

Endorsed
Filed August 25th 1863
W R Ashley Clerk
By T R Bird Deputy.

And afterwards towit on the 1st day of Septem-ber AD. 1863. as yet of the August Term AD. 1863. of said Circuit Court, in the Record of the proceedings thereof in the above entitled cause appears the following entry towit:

Ludwig Phillips
vs
Simeon K Miner
Replevin

Now at this day came on to be heard the mo-tion heretofore filed by the defendant for a new trial in this cause which motion after argument by counsel is taken under advisement by the Court.

And afterwards towit on the 2d day of September AD. 1863. as yet of the August Term AD. 1863 of said Circuit Court, in the Record of the proceedings thereof in the above entitled cause

appears the following entry to wit:

Ludwig Phillips
vs
Simeon K Miner } Replevin

The Court having fully considered upon the motion heretofore filed for a new trial in this cause, sustains the same and a new trial is granted conditioned that the defendant pay the costs in this cause to the present term of Court within Ten days before the first day of the next term of this Court.

And afterwards to wit. on the 22d. day of October A.D. 1863. as yet of the October Term A.D. 1863. of said Circuit Court. in the Record of the proceedings thereof in the above entitled cause appears the following entry to wit:

Ludwig Phillips
vs
Simeon K Miner } Replevin.

The Plaintiff at this day comes and files exceptions to the depositions of John Toler. C H Wehlford, Abraham Horner. and P Bohannon. part of which exceptions are overruled by the Court to which overruling of exceptions, the plaintiff by his attorneys then and there excepts. And the defendant files exceptions to the depositions of John Hornitz. Harry Hornitz &

J. P. Bohannon. part of which exceptions are overruled by the Court. to which ruling of the Court the defendant by his attorneys then and there excepts. And now at this day comes the parties by their attorneys, and upon issue joined thereupon came a jury of good and lawful men to wit: Abner Rogers. David May. N. W. Calhoun. Robert Dawson William Livingston. William L. Gayetty. John Moore. Peter Duffy. Andrew Simmons. L. H. Chambers. W. H. Chambers. and William Guyso. who were duly elected tried and sworn. and after hearing the evidence in the cause, and a part of the arguments of Counsel, the further hearing of this cause is postponed until tomorrow morning.

The Exceptions to depositions filed by the Plaintiff and referred to in the last above recited entry are in the words and figures following to wit:

State of Illinois } In the Circuit Court
Lo Davies County } of said Lo Davies County
October Term 1863.

Ludwig Phillips
vs
Lucien K. Miner

And now at this day comes the said plaintiff by Johnson & Shipley his attorney and moves the Court to suppress the following portions of the depositions of Joseph P. Bohannon and files the follow-

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ing exceptions.

Cross Inter. 10th and the answer to the same. objected to. as improper. irrelevant & immaterial. The understanding of the witness & not the best evidence.

The latter part of answer to 4th Cross Inter objected to. as being the supposition of the witness.

11th Cross Inter & answer. excepted to. as immaterial & irrelevant.

Johnson & Shipler
attorneys for L Phillips.

Endorsed
Filed Oct 22d 1863
W R Rowley Clk
By T R Bird Deputy

State of Illinois } ss
Jo Daviess County }

In the Circuit Court of said Jo Daviess County October Term A.D. 1863.

Ludwig Phillips
vs
Simeon K Miner

And now at this day comes the plaintiff by Johnson & Shipler his attorneys. and moves the Court to suppress the following portions of the depositions of John Toler. Claiborn H Williford and Abraham Homer taken by the defen

-dant and files the following exceptions to the same.

Exceptions to answers of John Soles.

Answer to 3rd Interrogatory. excepted to. as supposition of witness, uncertain and irrelevant.

Answer to 5th Interrogatory. Excepted to. as improper. and irrelevant testimony.

Answer to 8th Inter. excepted to. as the supposition or guess of the witness.

Exceptions to answers of Claybourn H Wellford.

Answer to 4th Inter. objected to. as the understanding of witness & irrelevant.

Question 5th & answer 5th objected to. as irrelevant & improper.

Question 6th & answer. objected to. as irrelevant & improper.

Answer to 7th Interrogatory excepted to. as. ~~im~~ indefinite. vague and the opinion of the witness.

Answer to 9th Interrogatory objected to. as the opinion of witness. stating appearance or his impression.

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Answer to 10th Inter. objected to, as improper and irrelevant. What became of other goods is not Material.

Answer to 11th Inter excepted to, as improper and irrelevant.

Question 12 & answer excepted to, as immaterial & improper.

Inter 14th & answer objected to, as improper & immaterial.

Inter 15th & answer objected to, as improper and irrelevant.

On Re-examination, the answer to 2nd Inter objected to, as irrelevant and improper.

Exceptions to answers & questions in deposition of Abraham Horner.

Interrogatory 4th and answer excepted to, as immaterial improper & irrelevant.

Inter 5 & answer excepted to, as immaterial improper & irrelevant.

Inter 6th & answer excepted to, as immaterial improper & irrelevant.

Inter 7th & answer, excepted to, as immaterial improper & irrelevant.

Inter 8th & answer, excepted to, as immaterial improper & irrelevant.

Inter 9th & answer, excepted to, as immaterial improper & irrelevant.

Inter. 10th & answer, excepted to, as immaterial improper & irrelevant.

Inter 11th & answer, excepted to, as immaterial improper & irrelevant.

Answer to Crop Inter 2d. objected to, as immaterial irrelevant & unresponsive.

Answer to Crop Inter 3d objected to as immaterial, irrelevant & not showing Phillips was present.

Answer to Crop Inter 5th objected to, as immaterial improper & irrelevant.

Question first & answer of Re-examination by Defendants Counsel objected to, as improper and irrelevant & immaterial

The last question & answer of Abraham Homes's deposition. objected to. as improper irrelevant & immaterial.

41.

The entire portion of Abraham Homes deposition on the principal examination being devoted to questions about boxes of Guns. and nothing material elicited. the entire testimony of said Homes is objected to. and prayed to be suppressed.

Johnson & Shipsler
Attorneys for L Phillips.

Endorsed
Filed Oct. 22d 1863.
W R Rowley Clk
By T R Baird deputy.

The exceptions to depositions filed by defendant & referred to in the last above recited entry are in the words and figures following to wit:

Ludwig Phillips vs Simeon K Miner } In Circuit Court of DeKalb County Illinois of the Oct. Term AD 1863

Exceptions to depositions
John Homitz & Henry Homitz:

The Defendant excepts to the 10th 11th 12th 13th & 14th questions & the answers thereto of Harry Homitz testimony because the witness testifies to hearsay matters exclusively except as to the snuff box—

The Defendant also excepts to the 9th & 10th ques-

-tions & answers of John Hornitz because it is secondary evidence & improper.

Also to the 19th question & answer it being a matter of opinion.

Also to the 39th question & answer because it evidently refers to other attachment suit than the one upon which this is brought & because of uncertainty

E A Small
Atty for Deft.

Endorsed

Filed October 22d 1863.
W R Rowley Clk
By T R Bird Deptg.

State of Illinois } In the Circuit Court of DeKalb
DeKalb County } Ss. County Illinois of the October Term
A.D. 1863.

Ludwig Phillips
vs
Simeon K Miner } Exceptions to depositions of Joseph P Bohannon

Now comes the said Defendant by Weigley & Small his Attorneys & excepts to the deposition of Joseph P Bohannon taken in the above cause and shows that the answer to the 3d interrogatory of Plaintiffs Atty is improper in that it purports to be hearsay statements and refers to a certain advertisement in a Newspaper which witness says he saw and read:- said answer being an attempt to introduce secon-

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dary evidence without proper foundation.

Also that the answer to the 4th interrogatory is improper & an attempt to introduce declarations of Plaintiff & secondary evidence —

Also that both the 5th interrogatory & answer thereto are improper & irrelevant.

Also that both the 7th interrogatory & answer thereto are improper. irrelevant — an attempt to make testimony of Plaintiffs declaration & are inadmissible.

Also that both the 9th interrogatory & answer thereto are improper for reasons above given —

Also that interrogatory 11th & answer thereto is an attempt to lay foundation for previously given testimony and is inadmissable — inasmuch as it does not appear that witness made proper effort to procure a certified copy of the publication notice or a copy of the paper

Also that the 12th Question & answer is liable to same objection.

Also that the 13th Question & answer is liable to the same objection.

Also that the latter part of the answer to

interrogatory 14th is unresponsive & improper.

Also that question 15th & answer thereto are both irrelevant & improper.

Also that cross interrogatory 3rd & answer thereto are improper & irrelevant.

Also that cross interrogatory 4th & answer thereto are improper & irrelevant

Also that cross interrogatories 5th 6th & 7th and the answers thereto are improper.

Also that cross interrogatory 9th refers to irrelevant matter and is improper.

Also that cross interrogatory 12th & answer thereto are improper for reasons before given.

And that said depositions are for other & sufficient reasons defective & improper & the Defendant asks that the same or all improper parts thereof be quashed

Weigley & Small
Attys for Dft.

Endorsed
Filed Oct 22nd 1843
W R Rowley Clk
By T R Bird Deputy.

45.

And afterwards to wit on the 23rd day of October A.D. 1843 as yet of the October Term A.D. 1843. of said Circuit Court in the Record of the proceedings thereof in the above entitled cause, appears the following entry to wit:

Ludwig Phillips
vs } Replevin.
Simeon K Miner

Now at this day came again the jury heretofore impanneled in this cause. And after hearing the remainder of the arguments of Counsel, they retire to consider of their verdict. And by agreement of the parties it is ordered, that when they shall have agreed upon a verdict they may seal the same and return it into Court.

And afterwards to wit on the 24th day of October A.D. 1843. as yet of the October Term A.D. 1843. of said Circuit Court in the Record of the proceedings thereof, in the above entitled cause, appears the following entry to wit:

Ludwig Phillips
vs } Replevin.
Simeon K Miner

Now at this day came again the jury heretofore impanneled in this cause and return into Court with the following sealed verdict to wit: We the jury find the issues for the Plaintiff, and the

Defendant, by his attorneys moves the Court for a new trial.

And afterwards towit, on the 28th day of October A.D. 1863. as yet of the October Term A.D. 1863. of said Circuit Court, in the Record & the proceedings thereof, in the above entitled cause appears the following entry to wit:

Ludwig Phillips
vs
Simeon K Miner } Replevin.

The Defendant by his attorneys at this day files his motion and reasons for a new trial in this cause.

The motion referred to in the last above recited entry is in the words and figures following towit:

State of Illinois
Co Davies County } ss } In the Circuit Court of Da-Davies County Illinois of the October Term A.D. 1863

Ludwig Phillips
vs
Simeon K Miner } Motion for new trial —

Now comes the said Defendant by Wrigley & Small his Attorneys and moves the Court for a new trial in said cause and for reasons therefor shows.

1st That the verdict of the jury was against the evidence

2nd That the verdict of the jury was contrary to law

3rd That the Court gave improper instructions for the plaintiff.
4th That there was no evidence upon which to base a verdict for the plaintiff, and said verdict should have been for the Defendant. And for other good & sufficient reasons

Weigley & Small
Attys for Dft.

Endorsed
Filed October 28th 1863
W R Rowley Clk
By T R Bird Deputy

And afterwards towit on the 29th day of October A.D. 1863. as yet of the October Term A.D. 1863. of said Circuit Court. in the Record of the proceedings thereof. in the above entitled cause, appears the following entry towit:

Ludwig Phillips
vs
Simeon M Oliver } Replevin.

Now at this day came on to be heard the motion heretofore filed by the defendant for a new trial in this cause. which motion after argument by Counsel is overruled by the Court, to which overruling of motion the Defendant by his attorneys then and there excepts. It is thereupon considered by the Court that, the plaintiff have and recover of the defendant the

possession of the goods in controversy, and that he also have and recover of the defendant his costs by him in this behalf expended and that execution issue therefor. And the defendant by his attorneys prays an appeal to the Supreme Court of this State. which is granted conditioned that he enter into and file with the Clerk of this Court within thirty days after the rising of the Court, a good and sufficient appeal bond properly conditioned, in the penal sum of Two Hundred Dollars, with Ralph S. Morris or Wellington Weigley as surety.

And afterwards towit, on the 30th day of October A.D. 1863. as yet of the October Term A.D. 1863. of said Circuit Court, in the Record of the proceedings thereof in the above entitled cause. appears the following entry towit:

Lerching Phillips
vs
Simeon K Miner } Replevin.

The defendant at this day files his bill of exceptions in this cause which is certified by the Court.

The Bill of Exceptions referred to in the last above recited entry is in the words and figures following towit:

State of Illinois } In the Circuit Court of DeWitt
DeWitt County } County Illinois of the October Term
A.D. 1843

Ludwig Phillips
vs
Simeon K Miner } Bill of Exceptions

Be it remembered that on this day of October A.D. 1843 while yet of the October Term of said Court on the trial of the above cause the following proceedings were held to wit:

The plaintiff in support of the issues in his own behalf first introduced upon the witness stand:

T R Bird who being first duly sworn testified that he knew the Goods in controversy in this suit saw them in the Sheriffs Office. That Defendant admitted to him that demands had been made for the surrender of the Goods by the plaintiff and Mr Shipler representing him and that he the Defendant had refused to give them up because he the Defendant held them under a writ of attachment. That Miner did not tell him whether the demands were made before or after the commencement of this suit.

Plaintiff then introduced O P Hopkins upon the witness stand who being duly sworn according to law, stated that he

knew these goods in controversy that he saw 2 Boxes of Goods marked "L. Phillips Galena Ills" in the Sheriffs Office, could not say where the Goods came from - They were in Defendant Miners possession when the demand was made: cannot say that the demand was made before or after the commencement of this suit. I know Miner refused to give them up when the demand was made. The defendant Miner was Sheriff at that time.

Plaintiff then read the depositions of Harry Hornitz. John Hornitz. Herman Worch and J. P. Bohannon.

State of Illinois } ss
County of McLean } In the Circuit Court.

Ludwig Phillips
vs
Simeon K Miner

The depositions of Harry Hornitz. John Hornitz. and Herman Worch.
taken on the part of the plaintiff in the above entitled suit now pending in said Court produced examined and sworn before Michael Swann a Justice of the Peace in and for the County of McLean and State of Illinois on the 30th day of April A.D. 1865 at office of said Justice

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in the City of Bloomington in said County of McLean and in the presence of the Atto-
-rneys of said parties.

State of Illinois }
McLean County }ss

Harry Hornitz

being duly sworn deposes and says as follows:

Question 1st What is your name age residence & occupation

Ans. Harry Hornitz age thirty five residence St Louis Missouri occupation rectifyer & wholesale Liquor dealer

Ques 2 Do you know the Pltffs Ludwig Phillips in this suit and if so how long have you known him.

Ans I do. I have known him from 1850.

Ques. 3 Did said Phillips ever live at Anna Illinois if so when and how long

Ans He did live at Anna I think in eighteen hundred & sixty one. but how long I dont know

Ques. 4 Do you know anything about said Phil-
-lips having a Store of goods at Anna Illinois if so how long did he have the

goods there and describe the store as well as you can

Ans. I dont know any thing about his having goods there.

Ques 5 Do you know anything about the pecuniary circumstances of the Pltff & if so state all you know about his pecuniary circumstances about the time he lived at Anna Illinois

Ans. I do. I dont know anything about his circumstances at Anna but in 1860 I know he was worth about 2000 dollars.

Ques 6. Did you ever know a man named Hornitz who kept a store at one time in Anna Ills. if so what was said Hornitz christian name.

Ans. I did. John Hornitz was his name.

Ques 7 Had he any other name

Ans. Not to my knowledge

Ques. 8 How long have you known him

Ans. All my life he is my Brother

Ques 9 Was he ever called by any other name than John Hornitz.

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Ans Not to my knowledge

Ques 10 Do you know anything about the Pltffs getting any money from Europe if so state when it was and how much he got and all you know about it.

Ans. I do know in 1860 he got from Europe (800 dollars in money) a Gold snuff Box a Diamond Ring and a Diamond Breast Pin. he showed me a letter and showed me the things when they came. I was then living in St Louis.

Ques 11 Give the value of the snuff Box the Ring and Breast Pin

Ans. I do not know the value of them

Cross Examined

Ques 12. (Did you see the 800 dollars referred to above

Ans. I did not see the eight hundred dollars but I saw the letter from his Brother from Europe)

Ques 13 Is not all you know about this Legacy derived from said letter & the Declarations of the Pltff. and the snuff Box Ring and Breast Pin.

Ans. (That is all I know about it)

Ques 14 Except from the letter and what Pettiff said do you know where the Snuff Box Ring & Breast Pin came from

Ans. I know the Snuff Box I have taken many punchs of Snuff out of it in Europe when his father owned it I did not know the Breast Pin or the Ring.

Ques. 15 Was you ever at Anna Ills if so when and how often

Ans. I have been at Anna I was there in fifty nine I lived there in 58 to 1859 the last time I was there was with Mayberg when he attached the goods of Ludwig Phillips

Ques 16 Was you there in 1860

Ans. Yes I was there. I Passed there often when I was buying furs and often Stoped off there.

Ques. 17 Of what did the Pettiffs Property consist in 1860.

Ans. Money and Bonds some Minnesota Bonds but I did not know the value I saw the bonds

Ques 18 Was he not clerking for your Brother at Anna in 1860.

55

Ans. Not to my knowledge I cant tell.

Ques 18 How much money do you know of your own knowledge of his having in 1860.

Ans. About 2000 dollars

Ques 19 Did you see this money

Ans I did

Ques 20 Did you count it

Ans I did not count it he did give me nce 1000. dollars when I was short I mean loaned it to me. I saw more money in his posepion at that time.

Ques 21 Where was this money loaned to you

Ans. In St Louis

Ques 22 Was not that your Brothers money

Ans Not to my knowledge

Ques. 23 When did your Bro come to this Country

Ans. I cannot tell when he came I first saw him here in 1850 in Louisville. I left Europe in 1842 and was in Mex-

—ico & South America until 1850. when I left Germany I left my Bro. there

Reexamination

Ques 24 Was your Bro. John Homitz selling goods in Anna when you speak in your cross examination of stopping of them when buying furs

Ans He was

Ques 25 Did you or not afterwards see any body else in possession of that Stock of goods at Anna

Ans I did not

Harry Homitz

John Homitz being duly sworn says and swears as follows Tovit:

Ques 1 What is your name age residence and occupation.

Ans John Homitz age 40 years residence St Louis occupation Dealing in hides

Ques 2 Did you ever sell goods at Anna Illinois if so when and how long

Ans Yes six from 58 up to 61

57.

Ques 3 Did you sell out your Stock of goods at Auna to any one if so when and to whom

Ans. Yes in 1861 on the 31 of January to Ludwig Phillips Pltff in this suit

Ques 4 Of what did your Stock consist at the time you sold out to Pltff.

Ans Groceries hardware Dry goods Clothing Hats and Caps Boots & Shoes.

Ques 5 About what was the Stock worth when you sold to Pltff

Ans About $4000 dollars

Ques 6 Did the Pltff Pay you for the Stock if so how

Ans He Paid $400 in Cash the Balance he gave me in Notes: The notes are payable every three months up to two years and were for $300 each except one which was for something over six hundred dollars.

Ques 7 Did Pltff take possession of the Stock of Goods and if so when
(Objected to by Deft)

Ans He took possession of the Stock the 31st of January 1861

Ques 8 What did Pltff do with the goods after he took possession of them

Ans He commenced selling them he continued to sell for about two months and until they attached them. I left Anna about 2 weeks after the sale and was not back for about two Months.

Ques 9 (After you sold out to Pltff did he advertise in his own name and if so how and where)

Ans. (He advertised in the Jonesboro Gazette he advertised that he had bought me out and was keeping on his own account)

(Objected to by Deft)

Ques 10 (Was that the nearest Newspaper to Anna)

Ans (Yes. about a mile from his store)

Ques 11 Did you ever have or exercise any control over these Goods after you sold them to the Pltff as above stated

Ans I have not

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Ques 12 Did you ever see the goods at Galena

in controversy in this suit

Ans I did not

Ques 13 Do you or not know whether the goods at Galena in controversy in this suit are a part of the Goods that you sold to Pltff

Ans I cant tell I never saw the goods in Galena

Ques 14 Did you ever see some goods attached in Bloomington Illinois on their way to Galena by Amberg & Lindauer and Replevied by Phillips the Pltff

Ans I did not see the goods, I saw the Boxes marked L Phillips Galena with goods in them but they were not opened and I did not see the goods, There was some Tobacco Boxes I saw a Box containing hard ware a part of the top was Broken off there were some Coffee Mills Log Chains and Knives in the Box

X

Ques 15 Was there any marks on any of these Boxes or goods you have above described by which you could identify them

Ans X The Tobacco Boxes were marked like the others L Phillips Galena that is all

the marks I remember: I recognized the hardware and Tobacco as part of the goods I sold to Phillips

Ques. 16 After you sold out to Phillips what Business did you go into

Ans I went into Dealing in hides and have been in the business ever since I was buying for John Howe of St Louis

Ques 17 Have you any other name than John Comitz

Ans I have not

Ques 18 Have you ever had or been called by any other name

Ans Not that I know of

Ques 19 Was your sale to Phillips made in good faith or not. (objected to by Deft)

Ans It was made in good faith

Cross Examined

Ques 20 How much were you in debt January 31st 1861

Ans About Six thousand Dollars I owed Aub Frenker & Co from 15 to 18 hundred dollars.

61. Meyberg Hellman about $230. Louis Stix

& Co about 15 or 16 hundred dollars Cohen Guilerman & Co between 3 & 4 hundred dol-
Y -lars and Amberg & Lindauer 16 or 17 hun-
-dred dollars. The American Co $200 I owed in Cairo 3 or 4 hundred dollars. Shaw Barber & Co about $500.

Ques 21 Was not the most of that indebtedness then due or about becoming due

Ans It was not then due a small amount was due: It had about 2 months to run or most of it had

Ques 22 Had not Louis Stix & Co's Claim only about a month to run

Ans I might be I dont know exactly

Ques 23 Who was clerking for you at that time

Ans X A man by the name of Miller I had no other Clerk at that time

Ques 24 Did the Pltff ever clerk for you

Ans No sir

Ques 25 What was Pltffs Business at Anna

Ans He had no business in Anna at that time he was out of Business

Ques 26 What were you doing from the 31st of January 1861 until you left Anna

Ans I was selling dried Fruit Peaches & Apples

Ques 27 Was you in your ~~old~~ store any during that time

Ans Part of the time I was in the store and part of the time about 8 days I was in Springfield Ills

Ques 28 Were you not in the 31 of January 1861 in failing circumstances

Ans I was not in failing circumstances I lost a good deal of money

Ques 29 What Property did you own at that time.

Ans I didnt own any real estate property

Ques 30 Did you have any property except the stock of goods sold to Phillips if so what

Ans I owned a lot of dried fruit ~~fruit~~ worth about $1200. and the store

Ques 31 Were you intimate with the Petty

Ans I knew him very well I have known him a good many years

Ques 32 Was he acquainted with your business

Ans I do not know

Ques 33 Did you ever tell him about how much you owed

Ans. I did not

Ques 34 Did you notify your Cincinatti Creditors that you had sold out to Phillips

Ans X No sir

Ques 35 Were you at Galena at the time goods in controversy in this suit were attached

Ans I cant tell. I saw Meyberg in Dubuque

Ques 36 Did you not tell M. Hellman that you sold out to avoid being troubled by your Creditors

Ans I never saw Hellman since I sold out

Ques 37 Did you not tell members of that firm to that effect.

Ans I did not

Re-Examined

Ques 38 Have you paid any of your indebtedness since your sale to Pettf if so about how much & to whom

Ans I Paid Meyberg & Hellman from 1 to one hundred & fifty dollars. I paid Lyons & Co $480. I paid the Cairo Bills. I paid some others I dont recollect the amount.

Ques 39 Have not these Attachment suits prevented you from paying more by preventing Phillips from paying you
(Objected to by Deft)

Ans Certainly they have

Ques 40 At the time you sold out to Phillips did you have any moneys due you and if so about how much

Ans Yes about 6 or $800. my Books were attached and my creditors collected it

Ques 41 During the 2 weeks after you sold out to Phillips before you moved away from Anna how much of the time were you in the old store and what were you doing when there

65.

Ans It might be 5 or 6 days I was there

when I was there I was helping him sell goods

John Hornitz

Herman Worch being next duly sworn deposes and swears as follows to wit

Ques 1 What is your name age occupation and residence

Ans My name is Herman Worch age 46 years occupation wholesale dealer in Cigars residence St Louis Missouri

Ques 2 Do you know one John Hornitz who sold goods in Anna Illinois in 1859 and 1860

Ans I know him well

Ques 3 What name have you always known him by and how long have you known him

Ans I have known him by the name of John Hornitz and have known him since 1851 I first knew him in Louisville Kentucky

Ques 4 Did you ever know or hear of his being called by any other name

ans- Not that I know of or remember

Hermann Worch

State of Illinois }
McLean County } I the subscriber a Justice of the Peace of the said County do hereby certify that the above depositions were taken by me at the time and place mentioned in the caption thereof that the said witnesses were first duly sworn and that the said Depositions were first carefully read to the witnesses and signed by them

Dated this 30th day of April A.D. 1843

Michael Swann J.P. (Seal)

Endorsed

Opened and filed May 19th 1843
W R Rowley Clk
By T. R. Bird deputy

The Deposition of Joseph P Bohannon of the County of Union and State of Illinois a witness produced and sworn and examined before Thomas Hileman County Judge in and for the County and State aforesaid on the 16th day of October A.D. 1843 at the Clerks office of the Circuit Court Court in and for said County at the Court House in Danesboro. in pursuance of the notice hereto attached to be read as evidence on the trial of a certain suit at common law now

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pending and undetermined in the Circuit Court in and for the County of Jo Daviess State of Illinois. wherein Ludwig Phillips is plaintiff and Simeon McMiner defendant. on the part and behalf of the said plaintiff.

The said Joseph P Bohannon being first duly sworn doth depose and say in answer to the several interrogatories as follows to wit:

Interrogatory 1st Do you know the parties plaintiff and defendant in the title of the suit above mentioned or either or which of them. and how long have you known them respectively?

Answer

I know Ludwig Phillips he was here in the spring of 1861 I saw him before that and got acquainted with him but I cannot state how long before that time it was I have no acquaintance with the defendant.

Interrogatory 2nd

State what business he was engaged in when you knew him and where he was doing business?

Answer

He did not seem to be engaged in business when I first knew him he came to Anna Union County Illinois apparently on a visit he seemed to be a man of leisure. saw him standing about the streets. spend a good deal of his time about the streets in conversation with others

Interrogatory 3rd

State if you know of his being engaged in business at Anna Union County Illinois. If so what kind of business and how long was he engaged there?

Answer

Well he was selling goods there as I understood it as to the length of time I could not say for certain. it seems to me from my best recollection from the time I saw the notice in the Union County Record it was some two or three weeks. I saw a notice of the change of ownership in the Union County Record a paper published in this County

Admitted because not objected to when taken.

Interrogatory 4th

State if you know who Ludwig Phillips purchased said goods of. or who was in possession of the same stock of goods prior to the time referred to in your last answer?

Answer

Prior to that time John Horwitz was in possession of the stock of goods. As to the purchase I did not see the contract between the parties. know nothing only from what the parties told me and what I seen in the Paper

Interrogatory 5.

State if you know where John Horwitz was after you saw the notice in the paper and what business he was engaged in during the two or three weeks referred to in your former answer?

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Answer John Hornitz was there a part of the time. he went off somewhere I dont know where. as to his business I dont know what he was doing. It seems to me that during that time there was some hides lying there wether he shipped them or not I dont recollect.

Interrogatory 6th

How far do you reside from the store occupied by Phillips and what business were you engaged in at that time?

Answer I resided at that time that is my business place about one hundred and twenty five yards from the store that Phillips was in. I was an acting Justice of the Peace and selling goods at that time.

Interrogatory 7th

State if you done any business in the way of Collecting as a Justice of the Peace for Phillips if so state what accounts all you recollect about it?

Answer My recollection is that John Hornitz commenced a suit against Peter Simmerman and Hornitz directed me when the money was collected to pay it over to Mr Phillips. I think they finally compromised and Hornitz or Phillips got the money I dont recollect which. I was owing Hornitz a letter and he directed me to pay it over to old man Phillips that was after I had understood that Hornitz had sold out

to Phillips

Interrogatory 8th

Do you know of Phillips acting as Clerk for Horwitz at any time before he had sold out to him?

Answer I have seen Phillips there I dont know that he was clerking I saw him behind the Counter he seemed to be somewhat related or an acquaintance of Horwitz

Interrogatory 9th

How long prior to the time you saw the notice in the paper was it that you saw Phillips behind the Counter. State as near as you can?

Answer I could not say wether it was before or after I saw the notice in the paper. I could not say on reflection whether it was before or after.

Interrogatory 10th

State whether you was frequently in the the store while John Horwitz was doing business and if he had any Clerks state who they were if you know?

Answer I was in there a few times not very many times. Mr Brisben was a Clerk there awhile I dont know wether for John or Harry the style of the firm I dont know how it was when Harry was in it. there was a Dutchman there who was some kind of an outside Clerk I have seen him in and around the store there.

Interrogatory 11th

71. State if you know what has become

of the Union County Record?

Answer The Editor of the Union County Record, the last I knew of him he went to Minnesota to a place called Chester that is what I was informed.

Interrogatory 12th

Have you made search and enquiry of a Copy of a Paper containing a notice referred to in your former answer

Answer I examined I went to the old file the old office and examined what was there but did not find it.

Interrogatory 13th

Will you State the substance of that notice as near as you can.

Answer The notice was in the usual form where parties give notice that they have sold out and also authorized Phillips to settle the accounts, to receive and receipt for them.

Interrogatory 14th

State what became of the Stock of goods. after Phillips had been in possession two or three weeks if you know?

Answer The goods were attached by some one I dont remember the plaintiffs name the Sheriff sold the goods for I bought some of them myself.

I think during the time that Phillips was there, there were some boxes there that it was said contained goods I saw some Boxes either in the Store Door or about the Door with some Skins.

Interrogatory 15th

How long was it before the goods were attached that you saw the Boxes about the Door of the Store?

Answer — I could not say exactly to the best of my recollection it was about few days before.

Crop examined by James H Smith Attorney for the Defendant Simon K Miner.

Crop Interrogatory 1st

At the time you saw Boxes in the Door spoken of by you in answer to plaintiffs 14th Interrogatory was John Hornitz there helping or assisting in Boxing or shipping the goods. or did you see John Hornitz at any other time with Phillips boxing or shipping goods?

Answer — As I merely passed by there I never saw them boxing goods together at any time.

Crop Interrogatory 2d

In saying that Phillips was in possession of the goods two or three weeks do you mean to convey any other idea except that Phillips was in the Store selling goods

Answer — From the time I saw the advertisement in the Union County Record I suppose some two or three weeks. I mean to say that I suppose Phillips was there selling goods.

Crop Interrogatory 3rd

After you saw the notice in the Union County Record. did you see John

Hornitz in and about the Store selling goods or doing anything about the Store?

Answer I saw John Hornitz there after I saw the notice, but cant say how long. I dont think I seen him selling goods.

Cross Interrogatory 4th

Where did John Hornitz stay during the time you saw him there after you saw the notice in the paper?

Answer I dont know where he boarded I think he boarded at the Union House I am not certain about it. (I suppose he kept at the store of a night)

Cross Interrogatory 5th

Was you at the Store much after you saw the notice in the Paper?

Answer Not often

Cross. Interrogatory 6th

Did you see John Hornitz in Anna frequently after you saw the notice spoken of by you?

Answer I did not see him often. He left there as I understood it some time after I dont recollect now when.

Cross Interrogatory 7th

Was it before or after you saw the notice that you saw the Boxes about the Door spoken of in answer to the plaintiffs 14th Interrogatory

Answer It was after I saw the notice.

Cross Interrogatory 8th

Was John Hornitz in Anna

at the time you saw the Boxes about the Door

Answer I dont know.

Cross Interrogatory 9

Can you tell with any degree of certainty what time what time you saw this notice in the Paper or how long you saw Phillips there afterwards

Answer I cant say how long only I think it was in the Spring of 1861. Phillips remained there until after the goods were attached. I seen him around he was here at the trial of the Right of Property.

Cross Interrogatory 10th

How long after you saw the notice was it that the goods were attached and by whom were they attached and against whom was the attachment and were the goods on Shelves or boxed up at the time of the attachment.

Answer Some two or three weeks. they were attached by Hornitz Creditor I dont know the name of the plaintiff in the attachment I understood that the attachment was against John Hornitz I cant tell wether the goods were on Shelves or in boxes at the time of the attachment.

Cross Interrogatory 11th

At the time you saw Phillips behind the counter Spoken of by you in answer to one of Plaintiffs Interrogatories what was he doing? And about how long was it before this store was closed up by Att-

75.

achment?

Answer I would not say that I seen him selling goods or not. I cant say how long it was before the goods were attached

Cross Interrogatory 12th

Are you certain whether this notice in the Paper was given by Hornitz or Phillips or by whom was it signed?

Answer I am not certain whether it was signed by Hornitz, or Phillips or which gave it.

Cross Interrogatory 13th

What kind of business was John Hornitz engaged in when in Alma, and what particular name if any had this store in which he done business

Answer He was engaged in selling goods buying Furs and Skins and shipping them. I think it was called the Egyptian Store

Cross Interrogatory 14th

State whose store this was called from the time Hornitz first commenced business there up to the time the goods were attached and closed up?

Answer It was called Hornitz Store, better known as the New Store

Joseph P Bohannon

State of Illinois }
County of Union } ss I Thomas Hileman County Judge within and for said County do hereby certify that the said witness Joseph P Bohannon prior to the taking of said deposition and on the said 16th day of October A.D. 1863 was by me duly sworn to testify the truth in relation to the matter in controversy in the suit mentioned in the caption of these depositions so far as he might be interrogated in relation thereto and that the said deposition was on the 15th day of October A.D. 1863 at the Court House in Jonesboro in said County and State taken and reduced to writing and signed and sworn to by the said witness in my presence

Given under my hand and seal this 16th day of October A.D. 1863

Government Stamp

Thomas Hileman Co Judge (Seal)

State of Illinois }
Union County } I, Alexander A Nimmo Clerk of the County Court for said County, do hereby certify that Thomas Hileman Esq. whose name is subscribed to the above certificate, was, on the day, the same bears date County Judge and an acting Justice of the Peace for said County, duly commissioned and qualified. Was that is such, full faith and credit are due to all his official acts, and that his sig-

-mature thereto is genuine.

Given under my hand and Seal of Office, at Jonesboro this 17th day of October A.D. 1863

Seal

Alex D. Nimmo Clerk

Government Claims

Endorsed

Filed Oct. 21st 1863
N R Kerley Clk
By T R Bird Depty.

Plaintiff then introduced John C Hawkins as a witness who being duly sworn testified as follows: I have seen the goods in controversy in this suit - saw them first at McCloskey's Store, and took them from there to the Sheriffs office by order of the defendant - there were two Boxes marked "L Phillips Galena Ills" - I learned from Defendant that he took the Goods as Sheriff and I replevied them from him under the writ in this suit as Coroner and gave them to Mr Phillips and Mr Ives - I know nothing of a demand -

Cross Examination. I do know the goods were turned over to Mr Phillips and Mr Ives. I think I saw Phillips, but I am not sure. I know two men came, Mr Ives and another man. The goods were delivered to Phillips on a dray in front

of the Court House, to the best of my recollection. the two men were Mr Phillips and Mr Ives.

Plaintiff then introduced upon the stand as a witness William Perry who being duly sworn testified as follows. viz:

I live at Bloomington Illinois I know these goods in controversy. I sold them and paid the proceeds to Mr Ives. the proceeds were paid to him because he was surety on the Bond in this case. The Goods sold for a little over 600$ including expenses - They were dress goods clothing &c. I saw the same goods at Anna in possession of John Hornitz in September 1860. I was at Anna from August 17th 1860 to October 1st 1860. and knew John Hornitz was frequently at his store there during the time. I became acquainted with the goods to some extent - I bought a pair of pants and an overcoat there and when these Goods came from Galena I saw some of a similar kind among them - I cannot say positively that the Goods were the same - I have no doubt. but they were the same. goods I sold another lot of goods at Bloomington. Mr Phillips was with Mr Ives when the goods were turned over to me another lot of goods marked L Phillips Galena Ill was attached at Bloomington on their way up.

Cross Examination.

I think the goods sold for 615$ including expenses. we figured up about

ten percent of the whole amount of sales for expenses. Every dollar has been accounted for by me & turned over to Mr Ives. I think these were the same goods. I think so from the complexion of the goods. I bought an overcoat from them. it had a Cincinnati mark on it There was a resemblance in the stock of goods. I was there six weeks and enquired the prices of many things. I got these goods from Mr Ives. I know them from a number of circumstances. the general complexion of the goods. the private mark and the lots.
Hornitz dealt in clothing. Dry Goods. Sheeting Boots & shoes & Hardware: there was 15 to 20 dozen of Hosiery in the Boxes rec'd from Galena. Hosiery is about the same everywhere. Hornitz had a private mark which was "hamburg" in part terminating with other letters. Hamburg or Hamburger — I learned this mark from Hornitz to whom I had loaned 100$ the year before on his going to Cincinnati. The next year while there he told me his private mark and sold me an overcoat at cost on account of my kindness — When the Goods came from Galena I assisted in ascertaining the cost of the Goods — Ten letters are necessary to a private mark — and with only seven I do not think any one could tell a private mark — three more letters would be needed —
If these Goods had come into my hands without any conversation with Ives or Phillips I think it a matter of very much doubt if

I should know anything about the matter. I am a judge of goods have handled a great many. I think my knowledge of these goods does not depend altogether on the fact that they were brought from Galena by Mr Ives.

Re-Examined. I have no doubt whatever of these being the goods. I never saw Phillips there while I was there at Anna in August and Sept. 1860. I was at Anna in January 1861. but did not see Phillips I was not at the Store. only there for a few hours John Heinitz was doing business alone in the fall of 1860. Matters stood that way the year before.

The plaintiff here rested his case and the Defendant in order to support the issues on his part read in evidence the deposition of Frenkel. Hellman Meyberg. Brisbane. Coon. Toler Williford and Horner.

The depositions of Benedict Frenkel. Mary Hellman. and Benedict Meyberg. of the City of Cincinnati in the county of Hamilton. and State of Ohio. witnesses of lawful age. produced. sworn. and examined upon their respective oath on the Fourteenth day of August. Eighteen hundred and sixty two at the office of John G. Douglas on the North East corner of Fourth and Walnut Streets in the City of Cincinnati

87.

in the County of Hamilton and State of Ohio. aforesaid before me John G Douglas. a Commissioner of Deeds for the State of Illinois. resident in the City of Cincinnati aforesaid. and also a Special Commissioner duly appointed by a Dedimus Protestatum or Commissioner issued out of the Clerks office of the Circuit Court in and for the County of De Witt. in the State of Illinois bearing teste in the name of William R Rouley Esq. Clerk of the said Circuit Court with the seal of the said Court affixed thereto and to me directed as such Commissioner for the examination of the said Benedict Frenkel Max Heilman and Benedict Meyberg.

Witnesses in a certain suit and matter in controversy now pending and undetermined in the said Circuit Court wherein Ludwig Phillips is Plaintiff and Simeon M Milner is defendant in behalf of the said defendant as well upon the Cross-interrogatories of the plaintiff as on the interrogatories of the defendant which were attached to or inclosed with the said commissioner and upon none others.

The said Benedict Frenkel being first duly sworn by me as a witness in the said cause previous to the commencement of his examination to testify the truth as well on the part of the plaintiff as the defendant in relation to the matters in controversy between the said plaintiff and defendant. so far as he should be interrogated

testified and deposed as follows.

Interrogatory. First.

Do you know the parties plaintiff and defendant in the title of interrogatories mentioned or either and which of them and how long have you known them respectively and do you know one Joseph Hornitz and when and where and how long have you known him

Answer to First Interrogatory.

I am not acquainted with the plaintiff or defendant in this suit. I only know Ludwig Phillips by reputation. I am acquainted with one Joseph Hornitz. I have known him since March 1860. at Cincinnati. Hamilton County. Ohio. I have known him since that time as he came to Cincinnati to buy goods. He is in Anna Illinois and keps store there.

Interrogatory Second.

State if you know the circumstances attending a pretended sale of merchandise by said Hornitz to said Phillips. when and where did it occur. was any consideration paid. what became of the merchandise sold. and also state if you know whether the said Phillips is or is not personally responsible or was he at the time of said pretended sale responsible for any sum?

Answer to Interrogatory Second.

I know that Ludwig Phillips was clerk for Joseph Hornitz at Anna Illinois, and pretended to buy him out. this was about a year ago at Anna Illinois. [there was no consideration paid to my knowledge. what was left at Anna

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Illinois in the hands of Phillips was attached by our firm (and Frenkel & Co for a debt of Hornitz, and the goods sold by sheriff and proceeds paid us on our debt.) Other parts of the stock Hornitz shipped away to different places (& was in those places attached by other creditors) He had no reputation for responsibility had been a clerk (& never pretended to have any money.)

Interrogatory Third.

State if Hornitz was indebted to you at the time of said pretended sale and whether in following up your claim against Hornitz you learned anything of the transactions or sale between Hornitz and said Phillips tending to show fraud. State fully and particularly all such circumstances & facts?

Answer to Interrogatory Third.

At the time of said pretended sale Hornitz was indebted to our firm and Frenkel & Co in either seventeen or eighteen hundred Dollars. (We attached Phillips stock which was at Anna Illinois) He was indebted to And. Frenkel & Co at the time of the pretended sale in the sum of $1739 20/100 (We learned that he had made a pretended sale of Phillips and attached the stock in the hands of Phillips at Anna Illinois, and some Eighty Dollars of cash in drawer and sustained the attachment and made thereon clear $1000 00 Phillips litigated the claim in two courts. We could not believe, we could not

Y.

believe that were all the Stock of Hornitz and discovered that he had shipped goods to other places which were attached by other creditors.)

Interrogatory Fourth.

State any other matter or thing of advantage to the defendant in this cause?

Answer to Interrogatory Fourth

I know nothing else of advantage that I am aware of.

In answer to Cross Interrogatories by plaintiffs witness says.

Cross Interrogatory First.

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

Answer to Cross Interrogatory First.

My name is Benedict Frenkel. My age is forty seven years. My business is that of selling at Wholesale, dry goods and clothing. I am one of the firm of Ben. Frenkel & Co. I reside in Cincinnati, Hamilton County, Ohio.

Cross Interrogatory Second.

Do you know Ludwig Phillips, Joseph Hornitz John Hornitz or either of them and how long have you known them respectively and when and where did you become acquainted with them or either of them? Were you intimate with them or either of them?

Answer to Cross Interrogatory Second.

I do not know Ludwig Phillips personally only by reputation. I know Joseph Hornitz.

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I do not know John Hornitz. I have known Joseph Hornitz since March 1860. I became acquainted with him in Cincinnati. He came with a letter of recommendation from his brother Henry I was not intimate with him I only knew him by commercial dealings. I was not intimate with him.

Cross Interrogatory Third.

Are you acquainted with a stock of goods of which the goods in controversy in this cause are a part which were in possession of Ludwig Phillips in the town of Anna, County of Union & State of Illinois. If so State if you know of your own knowledge from whom the said Phillips purchased said goods, and for how much and how long was said Phillips in possession of said goods at the place aforesaid? Were you present at the sale to Phillips?

Answer to Cross Interrogatory Third.

I have no personal knowledge of the stock of goods of which the stock in controversy in this cause is a part. I have no personal of their being in possession of Ludwig Phillips - I have no personal knowledge from whom Phillips purchased or for how much or how long he was in possession. I was not present at the sale to Phillips.

Cross Interrogatory Fourth.

State if you know at the time of the sale wether part of the purchase money was

or was not paid by Phillips and that several promissory notes were or were not given by said Phillips to John Hornitz for the balance of said purchase money amounting in all to about thirty five hundred Dollars. And whether or not the said goods were taken possession of by the said Phillips in the town of Avoca. County and State aforesaid? Give your means of knowledge?

Answer to Cross Interrogatory Fourth

I know nothing of the transaction between Phillips and Hornitz as to the payment of any money or the giving of notes, on the sale if any sale was made. I do not know that the goods were delivered to Phillips at Avoca: or any other place (and do not believe they were.)

Cross Interrogatory Fifth.

State how long said Phillips remained in possession of said goods after his said purchase of John Hornitz: in the town of Avoca aforesaid? *

Answer to Cross Interrogatory Fifth.

State if you know anything about an attachment being issued from the Circuit Court of the County of Avoca aforesaid. and levied upon a portion of the stock of goods in controversy. and who made the affidavit to procure said attachment writ. and state who the parties plaintiff and defendant were.

87. Answer to Cross Interrogatory Sixth.

Excluded (The firm of Ant. Franks & Co attached some

* Answer to Cross Interrogatory Fifth. — I know not how long they remained in his possession or that they ever were in his possession.

goods in the Circuit Court in Union County and some moneys. but it was no part of the goods in controversy in this case. Phillips claimed the goods and litigated. and Phillips lost the case. the case was tried in two courts and both times decided in our favor. The affidavit was made by Frederick Lewis our agent but not a member of the firm and I have no interest whatever in the present suit or goods in controversy. The plaintiff was Aut. Frenzel & Co. and the defendant was Phillips I believe. Komitz had run away with the goods in controversy in this suit.)

Cross Interrogatory Seventh.

Are you or were you at any time interested either directly or indirectly. in the stock of goods sold to Ludwig Phillips plaintiff in this cause at Alna. Union County Illinois. a part of which are in controversy in this suit? And are you or have you been at any time party or witness in a suit against John Komitz in Jonesboro in said County & Union?

Answer to Cross Interrogatory Seventh

I am no ways interested directly or indirectly in the stock of goods in controversy in this suit. (I know of no goods being sold to Ludwig Phillips the plaintiff. we attached certain goods. in the possession of Phillips which belonged to Komitz. and received our money. this is the only thing I know about the matter of

Sworn to

interest. I was a party to a suit in Union County, but whether the suit was against Hornitz or Phillips I cannot say. Phillips contested it. I was not a witness.

Crop Interrogatory Eighth.

Are you acquainted with John Hornitz and do you know anything about the suit referred to in the sixth crop interrogatory herein? If so state whether John Hornitz is not the man referred to by you in the second direct interrogatory to Benedict Meyberg?

Answer to Crop Interrogatory Eighth.

"A" I am acquainted with Joseph Hornitz. I do not know John Hornitz. Joseph Hornitz is the one that kept store at Anna. He may be called by mistake or otherwise John. He said his name was Joseph when we sold him goods and this is the man referred to by me. I cannot tell who Benedict Meyberg referred to.

Admitted

Crop Interrogatory Ninth.

Are you acquainted with the person referred to in the third direct interrogatory as Hornitz? If so state what is his name whether Jonathan Hornitz, John Hornitz or Joseph Hornitz?

Answer to Crop Interrogatory Ninth.

"A" I am acquainted with him. His name is Joseph Hornitz. He said that was his name, and we charged it to Joseph on our books. I never knew of another Hornitz except his brother Harry.

Admitted

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Cross Interrogatory Tenth.
State if the person referred to in the second direct interrogatory to Meyberg is or is not John Hornitz. and as such has been or is now prosecuted for a part of the said Stock of goods sold to Phillips?
Answer to Cross Interrogatory Tenth.
I know not to whom Meyberg refers. I never knew John Hornitz unless Joseph has gone by the name of John. and I knew of no prosecution against John Hornitz. for Stock sold Phillips.
Cross Interrogatory Eleventh.
Do you know of your own knowledge, or is the information hearsay, anything and what in relation to the sale of the goods in controversy as (heretofore mentioned) from John Hornitz to Ludwig Phillips?
Answer to Cross Interrogatory Eleventh.
I neither know by knowledge or information of a sale of the goods in controversy from John Hornitz to Ludwig Phillips. And know not that a sale was made. (I understood that Phillips claimed a pretended purchase of the goods of Joseph Hornitz)

Excluded

Cross Interrogatory Twelfth.
Do you now or have you at any time held a claim or demand against John Hornitz, or Joseph Hornitz, or either of them. and which of them for a stock of goods

sold to them or either of them. a part of which are in controversy in this suit or have you any interest whatever. directly, or indirectly contingent or otherwise in the result of this suit?

Answer to Crop Interrogatory Twelfth.

I had a claim against Joseph Bonnitz for goods I sold him. they are no goods in this suit in controversy with me. and I have no interest directly or indirectly. contingent or otherwise in the result of this suit.

Crop Interrogatory Thirteenth.

If in answer to the direct interrogatories you state anything relating to the sale of the goods in controversy to Ludwig Phillips. from whom do you swear the said Phillips purchased the said goods. was it from Joseph Bonnitz or was it from John Bonnitz. Were you present at the time of said sale. Do you swear to the said sale. from your own personal knowledge. or from hearsay. How much of your answers. and other facts concerning said sale. are sworn to, on your own knowledge. and what portion of your answers. and what facts stated by you concerning said sale. are stated on hearsay?

Answer to Crop Interrogatory Thirteenth.

I cannot swear of whom Phillips purchased the goods in controversy and do not know that he purchased them at all. I was not present at the time of the sale and have no personal knowledge in relation to it. I know he had no means to purchase

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(Exclusive)

but knew nothing of the transaction of purchase and sale between Phillips and Hornitz. I only knew that Hornitz had the store before the goods in part were run off by him)

Cross Interrogatory Fourteenth.

Do you know of your own knowledge the time of the purchase of said goods by Phillips? Do you know of your own knowledge what was done with said goods immediately after said sale. or do you answer these facts from hearsay?

Answer to Cross Interrogatory Fourteenth.

(Exclusive)

R

I have no knowledge of any purchase or it time if any was made [I know that Phillips had possession of the part of the goods we attached and that Hornitz carried off part. and this by the suit I learned. I did not see him do it.]

Cross Interrogatory Fifteenth.

How long have you known Liding Phillips. when did you first see him. How many times have you see him? Do you state what his character for responsibility is from your own personal knowledge. or from hearsay. if from hearsay. state the names of the persons from whom you obtained your information & in what business they are engaged?

Answer to Cross Interrogatory Fifteenth.

I only knew Phillips by reputation. I have not seen him. I acquired my knowledge

of Phillips as I would in relation to any other party. I heard of him at St Paul. Minnesota. when I was there, as a clerk without means (and as expending more money than he earned) I cannot recollect the names of the parties or their business. The conversations were casual conversations and which I did not pay much attention to it

>C

Cross Interrogatory Sixteenth.

What facts or circumstances do you know tending to show fraud in the purchase of said goods by said Phillips – Do you swear to your own knowledge or from hearsay. What facts or circumstances are stated on hearsay. and which of them are sworn to on your personal knowledge. Who was present at the purchase of said goods by Phillips?

Answer to Cross Interrogatory Sixteenth.

I have no knowledge of the purchase by Phillips if he made any. I know not who was present or anything about the purchase if any was made. I know that Hornitz was in debt in Cincinnati in a large amount. paid nothing for six months before his pretended sale Phillips had no means (and thus I judge there was fraud)

Y
C

Cross Interrogatory Seventeenth.

What is your name. age. and where do you reside. How long have you resided there? What is your business? Are you connected in business or in any way, or related to Frederick Lewis? If so in what manner? When and how long have you known Phillips? Were you

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intimate with him. Were you present at the sale of the goods spoken of? If so what was sold? When. where. What amount. and in what terms were the goods sold. What was done with the goods after the sale. how long did they remain there. When and Where were they removed? How do you get your information. in regard to all these facts? If from any person what is his name. If you speak of the responsibility of Phillips. how do you get your information from whom. detail all the facts and circumstances you know from your own knowledge. and the names of the persons you obtained the information from. not on your personal knowledge?

Answer to Cross Interrogatory Seventeenth.

My name is Benedict Frenkel. My age is forty seven years. I reside in the City of Cincinnati. Hamilton County. Ohio. I have resided in Cincinnati twenty two years. I am one of the firm of Aub. Frenkel and Company. Wholesale Clothing and Dry goods dealers. I am connected in business or in any way or related to Frederick Lewis. I am not acquainted with Phillips personally. and was not present at the sale of any goods spoken of and know not that any were sold. I therefore know not when. where. or what amount or on what terms they were sold. or what was done with them or how long they remained there or when or where they were removed. I only know that goods of Hornitz & Auna. we attached

Excludes

and got our money out of him)

C. > I got my information in relation to the responsibility of Phillips as I have stated from parties at St Paul (and his reputation from parties in Cincinnati. that he was a clerk of expensive habits. in a small salary. and living beyond his means) the name of parties from whom I derived the knowledge I cannot state. as I felt no particular interest in it and paid but little attention to it.

Cross Interrogatory Eighteenth?

Who was present at the taking of this deposition. Do you answer with or without Consultation with the other witnesses. or any other person. Have you any religious belief. If so of what persuasion?

Answer to Cross Interrogatory Eighteenth.

Myself. the Commissioner and the usual employes of the Commissioner. I answer without consultation of other witnesses. or any other party. I have a religious belief. I believe in a God. and a future state of rewards and punishments and that all rascality transacted in this world. not repented of ~~shall~~ will be hereafter punished in Hell. this is my persuasion. and the longer I live the more I am persuaded that it is the true persuasion.

Cross Interrogatory Nineteenth.

If in answer to question 3rd of direct interrogatories addressed to Benedict Fiswell. you state that you learned anything tending to show fraud. State from whom you learned it?

Answer to Cross Interrogatory Nineteenth
(What we learned we learned from our proceeding in attachment from the small amount of goods at Anna. and from the statements of various parties and the decision of the Court in our case. the opinions of Attorneys. From whom specifically I learned particular facts I am unable to say)

Benedict Frenkel

The said Max Hellman being first duly sworn by me as a witness in the said cause previous to the commencement of his examination to testify the truth as well on the part of the plaintiff as the defendant in relation to the matters in controversy between the said plaintiff and defendant so far as he should be interrogated testified and deposed as follows.

Interrogatory First.

Do you know the parties plaintiff and defendant to the title of interrogatories mentioned and either or which of them and how long have you known them respectively. also state if you know one Joseph Hornitz and how long have you known him and where did he reside?

Answer to Interrogatory First.

I know the Plaintiff Leeding Phillips. I do not know the defendant Simon K Mein. I have known the plaintiff for six or eight years in this country. I also knew him

in Europe Eighteen or twenty years ago. I know one Joseph Hornitz. I have known him for the last four years. He resided at Anna Illinois.

Interrogatory Second.

If you say that you know Ludwig Phillips state fully all you know respecting his past and present responsibility for his debts, or contracts and state further and particularly any and all facts tending to show fraud in the sale of the Merchandise at issue in this case by the said Hornitz to the said Phillips?

Answer to Interrogatory Second.

In Europe he was a clerk at a small salary and spent more than he received and had debts that he could not pay as tailors bills &c After that I saw him at St Paul about six years ago. He was clerking there and saw him again there in 1858. and then he was entirely out of employment, and he then complained that his employers had failed and had not paid him his wages. That they owed him some three or four hundred dollars. and it was entirely lost. His reputation at Saint Louis was that he had no means or responsibility and there he had no credit (The following year Joseph Hornitz told me that Phillips was his uncle. that Phillips was doing nothing. was a spendthrift and always spent more than he made.) I knew in Europe that Phillips

97.

was in some way related to Bonnitz. I know nothing about the sale of Bonnitz to Phillips personally. but know that Bonnitz was largely in debt when he pretended to sell to Phillips (and Bonnitz has run away and is understood to have gone to Europe having run away from here several years ago (Bonnitz told me that he left Europe on account of his wife))

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Interrogatory Third.

State any other matter or thing of advantage to the defendant in this case.

Answer to Interrogatory Third.

I know nothing else that I am aware of.

Crop Interrogatories and answers thereto by the witness on the Part of the plaintiff:

Crop Interrogatory First.

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

Answer to Crop Interrogatory First.

My name is Max Hellman, my age is forty three years. my occupation is that of a wholesale hat and cap dealer. one of the firm of Meyberg and Hellman. My residence is Cincinnati, Hamilton County, Ohio.

Crop Interrogatory Second.

Do you know Ludwig Phillips. Joseph Bonnitz John Bonnitz or either of them and how long have you known them respectively and when and where did you become acquainted with them or either of them? Were you

intimate with them or either of them?
Answer to Crsp Interrogatory Second.
I know Ludwig Phillips. I know Joseph Hornitz. I do not know John Hornitz unless Joseph Hornitz went by that name. His real name was Joseph and the only ones doing business at Anna. Illinois. and trading here at the time Joseph was in business. I have known Ludwig Phillips for six or eight years in this country and in Europe some eighteen or twenty years ago. I have known Joseph Hornitz as he called himself here for the last four years. I became acquainted with Ludwig Phillips in Europe some eighteen or twenty years ago. and at Saint Paul. Minnesota some six years ago. I became acquainted with Joseph Hornitz Four years ago at Cincinnati. He came to buy goods introduced by his brother Harry. My acquaintance with Joseph Hornitz was in a business
"b" P way was not intimate with him. I cannot say I was intimate with Ludwig Phillips yet he talked to me his matters as to an old acquaintance.
Crsp Interrogatory Third.
Are you acquainted with a stock of goods of which the goods in controversy in this cause are a part which were in possession of Ludwig Phillips in the town of Anna County of Union State of Illinois. If so state if you know of your own knowledge from
99. whom the said Phillips purchased said

goods and for how much and how long was said Phillips in possession of said goods at the place aforesaid? Were you present at the sale to Phillips?
Answer to Cross-Interrogatory Third.
I am not acquainted of my own knowledge with the stock of goods referred to. I know not that Phillips had any part thereof in possession in Anna. I was not present at any sale if any was made and have no personal knowledge on the subject.
Cross-Interrogatory Fourth.
State if you know at the time of the sale whether part of the purchase money was or was not paid by Phillips. and that several promissory were or were not given by said Phillips to John Kornitz for the balance of said purchase money amounting in all to about thirty five hundred Dollars. and whether or not the said goods were taken possession of by the said Phillips in the Town of Anna. County & State aforesaid. Give your means of knowledge.
Answer to Cross Interrogatory Fourth.
I have no personal knowledge on the subject. I know a man named Joseph Kornitz had a store and stock of goods at Anna
a [and understood from others. that he pretended to sell out to Kornitz but know nothing personally about the details of the sale. But do know from the statements of Ludwig Phillips and his general reputation that

he had no money to pay for them and his notes were worthless)

Cross Interrogatory Fifth*

Answer to Cross Interrogatory Fifth

I know nothing about it personally. [No] John Hornitz owned goods there to my knowledge, or sold to Phillips or how long Phillips was in possession (I understood from others that the goods at Anna were attached and sold for a debt of Joseph Hornitz by the name of John Hornitz soon after the pretended sale))

* State how long said Phillips remained in possession of said goods after his said purchase of John Hornitz in the town of Anna aforesaid?

Cross Interrogatory Sixth.

State if you know anything about an attachment being issued from the Circuit Court of the County of Union aforesaid and levied upon a portion of the stock of goods in controversy and who made the affidavit to procure said attachment writ. and state who the parties plaintiff and defendant were.

Answer to Cross. Interrogatory Sixth.

(I understood an attachment was issued against the goods at Anna that had not been sworn off.) I have no personal knowledge who made the attachment or who made the affidavit or who the parties were. (I have understood that the plaintiffs were Aub Frenkel & Co and the defendant was the man known to me as Joseph Hornitz for I know he bought of Aub Frenkel & Co and owed them)

Cross Interrogatory Seventh.

Are you or were you at any time interested either directly or indirectly in the stock of goods sold To Ludwig Phillips plaintiff in

this cause at Anna Union County Illinois a part of which are in controversy in this suit. Are you or have you been at any time party or witness in a suit against John Hornitz in Jonesboro in said County of Union?
Answer to Crop. Interrogatory Seventh.
I do not know of my own knowledge that Ludwig Phillips bought a stock of goods at Anna. Joseph Hornitz said he that is Meyberg & Hellman. but I have no interest in any stock of goods sold to Ludwig Phillips. I have never been party or witness in a suit against John Hornitz in Jonesboro. in said County of Union.
Crop Interrogatory Eighth.
Are you acquainted with John Hornitz. and do you know anything about the suit referred to in the sixth crop. interrogatory herein. If so state whether John Hornitz is not the man referred to by you in the second direct interrogatory to Benedict Meyberg?
Answer to Crop Interrogatory Eighth.
I do not know John Hornitz. no such man ever did business at Anna. No such man owed Aub. Frenkel & Co. but the man and his goods attached by them was the same Joseph Hornitz [and if he was called John it was a mistake in the writ or Joseph must have called himself John] Joseph Hornitz is the man referred to in my second answer to direct interrogatory.

Cross Interrogatory Ninth.
Are you acquainted with the person referred to in the third direct interrogatory as Hornitz. If so State what is his name whether Johnathan Hornitz John Hornitz or Joseph Hornitz?
Answer to Cross Interrogatory Ninth.
I am acquainted with the person referred to in the third direct interrogatory as Hornitz.
a> His name was Joseph as he and his brother Harry told me. (He may have passed himself off as Jonathan or John. or by any other name for aught I know)
Cross Interrogatory Tenth.
State if the person referred to in the second direct interrogatory to Meyberg is or is not John Hornitz. and as such has been or is now prosecuted for a part of the said Stock of goods sold to Phillips?
Answer to Cross Interrogatory Tenth.
b Joseph Hornitz is John Hornitz as I understand (if he claims to be John I know that Joseph Hornitz has been prosecuted for a part of the Stock sold to Phillips by report by the name of John but have no personal knowledge.)
Cross Interrogatory Eleventh.
Do you know of your own knowledge. or is the information hearsay. anything and what in relation to the sale of the goods in controversy (as heretofore mentioned) from John Hornitz to Luding Phillips?
103 Answer to Cross Interrogatory Eleventh.

I know nothing of my own knowledge of the sale from Hornitz to Phillips call him John or Joseph. (By reputation I understood that Joseph Hornitz made a sham sale to Phillips left part of the goods at Anna and run the residue off in the night.)

Cross Interrogatory Twelfth.

Do you know or have you at any time held a claim or demand against John Hornitz or Joseph Hornitz or either of them. and which of them for a stock of goods sold to them or either of them. a part of which are in controversy in this suit. or have you now any interest whatever directly, indirectly contingent or otherwise in the result of this suit.

Answer to Cross Interrogatory Twelfth.

Joseph Hornitz owed us about two hundred dollars and owes us yet. We never had any suit against him and know not that the goods in controversy in this suit are the goods we sold him. I have no interest whatever directly indirectly contingent or otherwise in the result of this suit.

Cross Interrogatory Thirteenth

If in answer to the direct interrogatories. you state anything relating to the sale of the goods in controversy to Ludwig Phillips from whom do you swear the said Phillips purchased the said goods was it from Joseph Hornitz or was it from John Hornitz. Were you present at the time of said sale. Do you swear to the said sale, from your own per-

-sonal knowledge, or from hearsay. How much of your answers and what facts stated concerning said sale, are sworn to, on your own knowledge and what portion of your answers, and what facts stated by you concerning said sale are stated on hearsay?

Answer to Cross Interrogatory Thirteenth.

If Phillips purchased goods in controversy it must have been from Joseph Horwitz there was no John except that was his nickname. I was not present at the sale and know not of any sale being made. (I do not believe any sale was made) but know no facts in relation thereto.

Cross Interrogatory Fourteenth.

Do you know of your own knowledge the time of the purchase of said goods by Phillips do you know of your own knowledge what was done with said goods immediately after said sale. Or do you answer these facts from hearsay?

Answer to Cross Interrogatory Fourteenth.

I have no knowledge of the purchase by Phillips of the goods. I have no personal knowledge of what was done with the goods immediately after the sale.

Cross Interrogatory Fifteenth.

How long have you known Luding Phillips. where did you first see him. How many times have you seen him. Do you state what

his character for responsibility is from your own personal knowledge, or from hearsay. If from hearsay, state the names of the persons from whom you obtained your information & in what business are they engaged?

Answer to Cross Interrogatory Fifteenth.

I have known him twenty years ago in Europe and for six or seven years in this Country. & in these six or seven years I may have seen him three or four times. I know from my own knowledge that Luding Phillips is no man of responsibility (and I have no confidence in his character) I know this from my own knowledge and experience and without information from other parties.

Cross Interrogatory Sixteenth.

What facts & circumstances do you know tending to shew fraud in the purchase of said goods by said Phillips. Do you swear to such facts or circumstances from your own knowledge, or from hearsay. What facts or circumstances are stated on hearsay, and which of them are sworn to on your personal knowledge. Who was present at the purchase of said goods by said Phillips?

Answer to Cross Interrogatory Sixteenth.

(My own firm belief is that the sale from Hornitz & Co. to Phillips is a fraudulent one however) I was not present when the sale was consumated & I know it from information. I do know that Hornitz

was largely in debt. long past due. & promised soon to pay. I know that Phillips has no means to buy and three years ago ~~[illegible]~~ from this date he told me he had nothing. and was cheated out of his salary at St Paul.

D. /

Cross Interrogatory Seventeenth.

What is your name. age. and where do you reside. How long have you resided there. What is your business. are you connected in business or in any way related to Frederick Lewis. If so in what manner. When and how long have you known Phillips. Were you intimate with him. Were you present at the sale of the goods spoken of. If so what was sold. When. Where. what amount. and on what terms were the goods sold. What was done with the goods after the sale. How long did they remain there. When and where were they removed. How do you get your information in regard to all these facts. If from any person what is his name. If you speak of the responsibility of Phillips. how do you get your information from whom. detail all the facts an circumstances you know from your own knowledge and the names of the persons you obtained the information from. Not on your personal knowledge?

Answer to Cross Interrogatory Seventeenth.

My name is Max Hellman. My age forty two years. I reside in Cincinnati Hamilton County Ohio. I have resided in Cincinnati fourteen years. I was one of the firm of Meyberg and Hellman. I am in no way con-

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-nected in business or in any other way or related to Frederick Lewis. I have known Phillips for twenty years ago in Europe and six or seven years in this Country. I was well acquainted with him. I was not present at the sale of the goods spoken of and cannot State what amount or what was sold when where or on what terms these goods were sold. (My information is as soon as the goods were sold a great portion of them were sent away by railroad to Illinois I Do not know the exact time they were removed. I Got this information from Frederick Lewis. and Benedict Meyberg.) My information about the responsibility of Phillips is from my own knowledge. at the time when I used to know him in Europe he was clerk and had no means. and as long as I knew him in this Country he was either Pedling some trifling goods. or last he was a clerk at Saint Paul. in a clothing house.

D

Cross Interrogatory Eighteenth.
Who is present at the taking of this deposition. Do you answer with or without consultation with the other witness. or any other person. Have you any religious belief. If so of what persuasion?
Answer to Cross Interrogatory Eighteenth.
Myself. the Commissioner. and the parties belonging to his office. I answer without con

sultation with any other witness or any-
-other person. I have a religious belief. I
believe in one God. I am born a Jew

Cross. Interrogatory Nineteenth.
If in answer to question 3rd of direct
interrogatories addressed to Benedict Frenkel
you state that you learned anything to shew
fraud state from whom you learned it?
Answer to Cross Interrogatory Nineteenth.
I have answered no question addressed
to Benedict Frenkel. I make my state-
-ments as to fraud in answer to questions
as to matters only as above asked.

Marx Hellman.

The said Benedict Meyberg being first
duly sworn by me as a witness in the
said cause previous to the commencement of
his examination to testify the truth as well
on the part of the plaintiff as the defen-
-dant in relation to the matters in contro-
-versy between the said plaintiff and
defendant. so far as he should be inter-
-rogated testified and deposed as follows.

Interrogatory First.
Do you know the parties. plaintiff and
defendant in the title of interrogatories men-
-tioned. or either. and which of them. and
how long have you known them respect-
-ively?

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Answer to Interrogatory First.

I do not know Ludwig Phillips personally. I do not know the defendant.

Interrogatory Second.

Do you know one Joseph Hornitz and how long have you known him. What was his business and where did he live during the time you knew him. Do you know of his making a pretended sale of his stock of Merchandise at any time to the plaintiff Ludwig Phillips? and if you state all the circumstances respectively such sale of which you are cognizant?

Answer to Interrogatory Second.

"a" I know one Joseph Hornitz. I have known him for the last past four or five years. He was keeping a store and doing a general merchandise business when I knew him at Anna Illinois. I know that he had made a pretended sale to the plaintiff Ludwig Phillips of his stock of goods at Anna Illinois. I talked to him about it. (Asked him how he came to transfer his stock to Phillips (a man without means and of not good reputation) He said that he was afraid his creditors would come on and he sold out. (That Phillips had paid him nothing but expected some money from Europe.)) Phillips was his clerk.

X

Interrogatory Third.

State where said merchandise was kept at the time. and previous to such sale and

what was done with it immediately after said sale? State all facts fully so far as you know them:-

Answer to Interrogatory Third.

The Merchandise was kept at Hornitz store at Anna. Illinois, prior to the said sale to Phillips. Part of goods were kept after the sale at Anna. Illinois. and part of the goods were sent away. Part were sent to Galena. Illinois. Part to the other places. I saw Hornitz three or four weeks after the pretended sale at Dubuque Iowa.

Interrogatory Fourth.

If you know Ludwig Phillips. (the plaintiff.) State if you know his character for responsibility. and all and any circumstances tending to show fraud between him and the said Hornitz respecting said pretended sale of Merchandise. State also. if the Goods at issue in this case were a part of those which were sold at said pretended sale?

Answer to Interrogatory Fourth.

I only know Ludwig Phillips by reputation. He was considered as worth nothing entirely without means. He was a countryman of Hornitz. Had been a clerk (and his reputation was bad. even with the brother of Hornitz. he said he did not see how his brother could sell to a man without means or reputation + that Phillips would swindle his brother out of the stock.) The goods in this suit are a part of the stock of Hornitz at Anna Illinois sent away from there.

Interrogatory Fifth.
State any and all other facts of which you are cognizant respecting the matters in dispute in this suit. or any fact which will be of advantage to the Defendant?
Answer to Interrogatory Fifth.
I do not know that I know anything more.

Cross Interrogatories and answers thereto by the witness on the Part of the plaintiffs.
Cross Interrogatory First.
What is your name. age. occupation and place of residence.
Answer to Cross Interrogatory First.
My name is Benedict Meyberg. my age is forty two years. My business is that of a Merchant. I reside in Cincinnati. Hamilton. County. Ohio.
Cross Interrogatory Second
Do you know Ludwig Phillips Joseph Hornitz John Hornitz or either of them. and how long have you known them respectively and when and where did you become acquainted with them or either of them. Were you intimate with them or either of them?
Answer to Cross Interrogatory Second.
I do not know Ludwig Phillips personally. I know Joseph Hornitz. I dont know John. I have known Joseph about the last five years. at Anna Illinois during the time he lived there. My acquaintance with him was a business acquaintance.

Crop Interrogatory Third.

Are you acquainted with a stock of goods of which the goods in controversy in this cause are a part which were in possession of Ludwig Phillips in the town of Anna County of Union & State of Illinois. If so state if you know of your own knowledge from whom the said Phillips purchased said goods at the place aforesaid. Were you present at the sale to Phillips?

Answer to Crop Interrogatory Third

I have no knowledge of the goods referred to, except the goods attached. I do not know from whom Phillips purchased them if he purchased at all. (I saw Aub Frenkel & Co attached certain goods in the possession of Phillips) I dont know how long they had been in his possession how many they were and was not present at the sale.

Crop Interrogatory Fourth.

State if you know at the time of the sale, whether part of the purchase money was or was not paid by Phillips. and that several promissory notes were or were not given by said Phillips to John Hornig for the balance of said purchase money. amounting in all to about thirty five hundred Dollars. and whether or not the said goods were taken possession of by the said Phillips in the town of Anna County & State aforesaid Give your means of knowledge?

Answer to Corp Interrogatory Fourth.
I knew nothing about the sale or whether any purchase money was paid or any notes given by Phillips to John Hornitz. I never knew John Hornitz. I knew Joseph and Harry. (I know that Phillips was clerk for Joseph Hornitz as Joseph Hornitz told me but know nothing about the possession of the goods.)

(Clerk)

Corp Interrogatory Fifth.
State how long said Phillips remained in possession of said goods after his said purchase of John Hornitz in the town of Anna aforesaid?
Answer to Corp Interrogatory Fifth.
I cannot say how long Phillips remained in possession of said goods. (They were attached soon after Hornitz run away)

Corp Interrogatory Sixth.
State if you know anything about an attachment being issued from the Circuit Court of the County of Union aforesaid. and levied upon a portion of the stock of goods in controversy. and who made the affidavit to procure said attachment writ. and state who the parties plaintiff and defendant were.
Answer to Corp Interrogatory Sixth.
I know that an attachment was issued by Aub. Frenkel & Co. and some goods

were attached. the affidavit was made by Frederick Lewis. the plaintiffs were Aub. Frenkel & Co. I think the defendant was Joseph Hornitz (and that Phillips defended the suit)

Cross Interrogatory Seventh.

Are you or were you at any time interested either directly or indirectly in the Stock of goods sold to Ludwig Phillips plaintiff in this cause at Anna. Union County. Illinois. a part of which are in controversy in this suit. And are you or have you been at any time party or witness in a suit against John Hornitz in Jonesboro. in said County of. Union.

Answer to Cross Interrogatory Seventh.

I am not interested and was not at any time. interested either directly or indirectly in the Stock of goods sold to Phillips plaintiff in this case at Anna. and not and have not been a party or witness in a suit against John Hornitz in Jonesboro.

Cross Interrogatory Eighth.

Are you acquainted with John Hornitz and do you know any thing about the suit referred to in the eighth Cross Interrogatory herein. If so state whether John Hornitz is not the man referred to by you in the second direct interrogatory to Benedict Meyberg

Answer to Crop Interrogatory Eighth.
I am not acquainted with John Hornitz. I know about the suit. John Hornitz is not the man referred to by me unless John Hornitz is Joseph Hornitz.
Crop Interrogatory Ninth.
Are you acquainted with the person referred to in the third direct interrogatory as Hornitz. If so state what is his name whether Jonathan Hornitz John Hornitz or Joseph Hornitz?
Answer to Crop Interrogatory Ninth.
a I am acquainted with the person named Hornitz. his name is not Jonathan or John it was Joseph unless he stated what was untrue. I knew Joseph and Harry.
Crop Interrogatory Tenth.
State if the person referred to in the second direct interrogatory to Meyberg is or is not John Hornitz and as such has been or is now prosecuted for a part of the said stock of goods sold to Phillips?

Answer to Crop Interrogatory Tenth.
a γ The person I refer to is Joseph Hornitz and not John who ever was prosecuted. (if prosecuted by the name of John it was a mistake for Joseph.)
Crop Interrogatory Eleventh.
Do you know of your own knowledge or is the information hearsay anything and what in relation to the sale of the goods

in controversy (as heretofore mentioned) from John Hornitz to Ludwig Phillips?

Answer to Cross Interrogatory Eleventh.
I have no knowledge that any sale was made by John Hornitz to Ludwig Phillips I understood Joseph left part of his goods with Phillips his clerk and went off with the rest.

Cross Interrogatory Twelfth.
Do you now or have you at any time held a claim or demand against John Hornitz or Joseph Hornitz or either of them for a stock of goods sold to them or either of them. a part of which are in controversy in this suit or have you now any interest whatever directly or indirectly, contingent or otherwise in the result of this suit?

Answer to Cross Interrogatory Twelfth.
I have now a claim of about two hundred Dollars sold Joseph Hornitz and which he owes I cant tell whether any of the goods are in controversy in this case. I have no interest whatever directly or indirectly contingent or otherwise in the result of this suit.

Cross Interrogatory Thirteenth.
If in answer to the direct interrogatories you state anything relating to the sale of the goods in controversy to Ludwig Phillips from whom do you swear the said

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Phillips purchased the said goods was it from Joseph Henitz. or was it from John Henitz. Were you present at the time of said sale. Do you swear to the said sale from your own personal knowledge. or from hearsay. How much of your answers and what facts stated concerning said sale are sworn to. on your own knowledge. and what portions of your answers and what facts stated by you concerning said sale are stated on hearsay.

Answer to Cross Interrogatory Thirteenth
I know nothing of the sale to Ludwig Phillips or that one was made. I know not if he purchased and know nothing of John Henitz. I was not present at any dealing between them. (Joseph Henitz told me that he had sold out to Phillips. I asked him how. He said Phillips was to pay him from money he was to receive from Europe. This is all I know about it.)

Cross Interrogatory Fourteenth.
Do you know of your own knowledge the time of the purchase of said goods by Phillips. do you know of your own knowledge what was done with the said goods immeadiately after said sale or do you answer these facts from hearsay.

Answer to Cross Interrogatory Fourteenth

I do not know personally the time of the purchase. I do not know personally what was done with the goods.

Corp Interrogatory Fifteenth.

How long have you known Ludwig Phillips. when did you first see him. How many times have you seen him. Do you state. what his character for responsibility is. from your own personal knowledge. or from hearsay. If from hearsay. state the names of the persons from whom you obtained your information & in what business are they engaged.

Answer to Corp Interrogatory Fifteenth.

I do not know Phillips personally only by reputation. I never saw him. I state his reputation for responsibility as I would any other man by what people say of him. [Harry Hewitt said Phillips was irresponsible. (and would swindle his brother out of the property) I heard from others but do not recollect their names.)

E*

Corp Interrogatory Sixteenth.

What facts or circumstances do you know tending to show fraud in the purchase of said goods by said Phillips. Do you swear to such facts or circumstances from your own knowledge. or from hearsay. What facts or circumstances are stated on hearsay. and which of them are sworn to on your personal knowledge. Who was present at the purchase of said goods by

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Phillips.

Answer to Corp Interrogatory. Sixteenth.
(Joseph Hornitz told me that he had lost money in Peaches and things. but would in this way try to make it all right.) Hornitz was in debt and Phillips was his client (Hornitz never claimed that Phillips had any money but that Phillips expected some from Europe)

Corp Interrogatory Seventeenth.
What is your name, age and where do you reside. How long have you resided there. What is your business. Are you connected in business or in any way, or related to Frederick Lewis. If so in what manner. When and how long have you known Phillips. Were you intimate with him. Were you present at the sale of the goods spoken of. If so what was sold. When Where what amount and on what terms were the goods sold. What was done with the goods after the sale. How long did they remain there. When and where were they removed. How do you get your information in regard to all these facts. If from any person what is his name. If you speak of the responsibility of Phillips. how do you get your information. from whom. detail all the facts and circumstances you know from your own knowledge. and the

names of the persons you obtained the information from, not on your personal knowledge?
Answer to Cross Interrogatory Seventeenth.
My name is Benedict Weyberg. My age is Forty two years. I reside in Cincinnati Hamilton County Ohio. I have lived here thirteen or fourteen years. I am a merchant. I am not connected in any way or related to Frederick Lewis. I do not know Phillips personally I was not present at the sale of goods. I do not know what was sold. when. where. what amount or on what terms. I do not know what was done with the goods. (that remained at Aurora. part been moved away. and Hornitz wanted to take charge of them at Galena. I have no personal knowledge on the subject. I cant recollect where I got my information from except from Hornitz and as to the responsibility of Phillips. I heard that from Harry Hornitz also his character.)
Cross Interrogatory Eighteenth.
Who is present at the taking of this deposition. Do you answer with or without consultation with the other witnesses. or any other person. Have you any religious belief. If so of what persuasion.

Answer to Cross Interrogatory Eighteenth.
Myself. the commissioner and the parties belonging to the office of the commissioner. I answer without consultation with the witnesses. or any other persons. I have a religious

Exclusive

belief. I believe in God. the authority of an oath. I am an Israelite.

Cross Interrogatory Nineteenth

If in answer to question 3rd of direct interrogatories addressed to Benedict Frenkel. you state that you learned anything tending to shew fraud. State from whom you learned it.

Answer to Cross Interrogatory Nineteenth.

I did not answer question three to Benedict Frenkel. Know not what his answer was. or what any witness answered beside myself. and know not on what they based their statements of fraud. was not present at any of their examinations and have answered for myself. as to my opinion and facts shewing fraud

B. Meyberg.

I. John G Douglas. of the City of Cincinnati in the County of Hamilton and State of Ohio. a Commissioner of Deeds for the State of Illinois. resident in the County of Hamilton and State of Ohio. and also a special commissioner duly appointed to take the depositions of the said Benedict Frenkel. Max Kellman and Benedict Meyberg witnesses whose names are respectively subscribed to the foregoing depositions do hereby certify that

previous to the commencement of the examination of the said Benedict Frenkel, Max Hellman and Benedict Meyberg, in the said suit between the said Ludwig Phillips plaintiff and the said Simeon K Miner defendant, they were severally duly sworn by me, to testify the truth in relation to the matters in controversy between the said Ludwig Phillips plaintiff and the said Simeon K Miner defendant, so far as they respectively should be interrogated concerning the same; that the said depositions were taken in my office, on the North East corner of fourth and Walnut Streets in the City of Cincinnati, in the County of Hamilton and State of Ohio, on the Fourteenth day of August Eighteen hundred and sixty-two; and that after said depositions as aforesaid were taken by me, the interrogatories and answer thereto as written down, were read over to the respective witnesses, and that thereupon the same was signed and sworn to by the said deponents, Benedict Frenkel, Max Hellman, and Benedict Meyberg, before me, the oath being administered by me as commissioner at the place and on the day and year last aforesaid.

Seal

John G Douglas
Commissioner &
Special Commissioner.

Endorsed

Opened & Filed March 12th 1843
W R Rowley Clk
By T R Bird deputy

Depositions of Jacob M Brisbane and Daniel D Cover.
of the County of Union and State of Illinois witnesses produced sworn and examined before Thomas Hileman County Judge & Ex officio a Justice of the Peace in and for the said County and State on the 5th day of August A.D. 1843 at the Court House in Jonesboro in said County in pursuance of the notice hereto attached bearing date Galena Illinois July 15th 1843. to be read as evidence on the trial of a certain suit at common law now pending and undetermined in the Circuit Court of McDonough County and State of Illinois wherein Ludwig Phillips is plaintiff and Simeon H Wiener defendant on the part and behalf of the said defendant.

Deposition of Jacob M Brisbane

The said Jacob M Brisbane being first duly sworn, doth depose and say in answer to the several Interrogatories as follows to wit:

Interrogatory 1st

Do you know the parties plaintiff and defendant above named or either

or which of them and how long have you known them respectively?

Answer

I know Mr Phillips. I have known him four years, am not acquainted with Milner.

Interrogatory 2nd

Was you ever in the employ of one A Hornitz if so when at what place, and in what capacity? and what business was Hornitz engaged in?

Answer.

I was imployed by him as book keeper and sales man in the year 1860 & 1861 in the Town of Auna. Hornitz was engaged in a general trade of Merchandize Dry Goods Clothing particular Clothing.

Interrogatory 3rd.

When did you first enter into the employ of Hornitz as book keeper and sales man, and at what time did you leave his imploy?

Answer.

I cant be sure but I think it was sometime in September 1860 that I entered into his service and left in February 1861.

Interrogatory 4th

State if you know where Hornitz bought his goods. how were the Packages and Boxes containing the goods purchased by him marked when received at the store? if marked at all?

Answer

(Well it is my opinion he bought his goods) at Cincinnati I understood from him he bought them there, The Packages that I noticed coming there were marked S. Hornitz.

Interrogatory 5th

State what you may know about S. Hornitz imploying a Clerk to take your place when you left the store, if any Clerk was employed who was it. and how long did he act as Clerk for Hornitz?

Answer

When I left* I know him Ludwig Phillips to be employed as a Clerk for a week. could not exactly say how long.

Interrogatory 6th

(Had the store kept by S. Hornitz any particular name if so what was it?

Answer

Egyptian Store)

Interrogatory 7th

Do you know what became of the Stock of goods owned by Hornitz and kept in this store, were they shipped off anywhere. if so where were they shipped to?

Answer

I know some of the goods to be shipped away I cant say where they

* Understood Ludwig Phillips was employed in my place

Excluded

were taken to
Interrogatory 8th
How long after you left the employ of Hornitz was it that the goods above spoken of by you were shipped away?
Answer.
I think inside of three weeks after I left as well as I can remember
Interrogatory 9th
At the time you left the services of Hornitz, who was then the owner of the goods in the Store or who claimed them?
Answer.
So Hornitz was the owner I knew at the time I left him.

Cross examined by A B Ives. plaintiffs Attorney. as follows—viz
Cross Interrogatory 1st
How long did Hornitz remain in possession of said Stock of goods after you left?
Answer
Well I cant say how long only from hearsay—
Cross Interrogatory 2nd
Do you know of Ludwig Phillips being in possession of said Stock of goods after you left. If so State how long as near as you can?

Answer

He was in possession. how long I cant tell perhaps three weeks after I left.

Interrogatory 3rd

Do you know of your own knowledge that Phillips was imployed in said Store as Clerk at any time? if so State at what salery, or wages and how long was he so employed?

Answer.

I know that he took my place for that Kornitz told me. I dont know how long or at what salery.

Excluded

Cross Interrogatory 4th

Do you know that Phillips took your place except what Kornitz told you?

Answer

Phillips also told me.

Jacob M Brisbin.

Deposition of Daniel Cover.

The said Daniel Cover being first duly sworn doth depose and says in answer to the several Interrogatories as follows to wit?

Interrogatory 1st

Do you know the parties plaintiff and defendant named in the Caption of these Depositions. or either of them or

which of them and how long have you known them respectively?

Answer

I know Phillips I have known him something near about one year, I dont know the plaintiff Miner.

Interrogatory 2nd

Are you acquainted with O. Hornitz if so when and where did you first know him and what business if any was he engaged in, and where was he doing business?

Answer I am. I first known him in Anna Union County State of Illinois he was engaged in Clothing and Dry goods business and buying up furs. he first brought on a stock of Clothing and then dry goods I think it was in the fall of 1860, to the best of my recollection I would not be positive of that.

Interrogatory 3rd

How long was Hornitz engaged in merchandising in Anna and when if at all did he close up business there?

Answer I think he was something about a year or over it I cant tell when he closed up (I think the sheriff closed up for him)

Interrogatory 4th

When did Hornitz stop selling goods in Anna?

Answer It was in the fall season, but I could not be positive whether it was in the fall or winter

Interrogatory 5th

Do you know what year it was he stoped selling goods in Anna?

Answer

I am not positive whether it was in 1841 or 1842.

Interrogatory 6th

State whether the store in which Hornitz Acne business had any particular name and if so what was it?

Answer

It went by the name of the Egyptian Store and the Dutch Dew Store some called it.

Interrogatory 7th State what you may know of anything about Hornitz shipping off his goods when and where were they shipped to, and were the goods all shipped at one time or at different times and was Hornitz present when any of the goods were shipped and did he assist in shipping them?

Answer

I seen some goods boated there taken to the freight house but where they were shipped to I dont know I dont recollect of seeing goods going off but once I could not be positive if he was present. Phillips was round there.

Interrogatory 8th States what your best recollection is about Hornitz being present when the goods were shipped?

Answer I cant be positive whether he was present when the goods were shipped

Interrogatory 9th

Did you see anyone packing or Boxing the goods spoken of by you if so where were they being boxed or packed and who was packing them and how long before they were shipped?

Answer. They were packed in the Egyptian Store in Aima. Phillips and Konitz ~~were~~ I think were packing of the goods I think they were the men that packed them, I think it was a few days when I seen them a packing of them before I seen the goods shipped.

Interrogatory 10th

State what you may know if anything about the goods of Konitz being Attached and who Attached them?

Answer (They were attached by the deputy Sheriff)

Interrogatory 11

Was the goods attached before or after you saw the goods packed or boxed

Answer (They were attached after I seen them boxed)

Interrogatory 12

How long after the shippement

131 of the goods spoken of by you. was it that the Attachment was made?

Answer (Well it was a day or two)

Interrogatory 13th

Was Phillips and Hornitz both selling goods in this Store at the same time?

Answer I have seen them sell goods there both at the same time?

Interrogatory 14c

State if you know about how long Hornitz remained in the Store after Phillips came there?

Answer From the first time he Phillips come there I presume he must have been in there probably about five or six months Phillips never remained there long at a time.

Interrogatory 15r

State whether during these times you saw Phillips about the Store he was acting as clerk for Hornitz?

Answer He was acting as a clerk as I thought. I never made no inquiry but he was acting as such.

Interrogatory 16r

How long a period of time did Phillips stay in said Store embrace alltogether.

Answer I dont suppose it would embrace more than a couple of months alltogether I would set no definite time in it.

Interrogatory 17r

At the time you saw Phillips and Hornitz packing goods in the Store

above stated by you. who was the owner of the Goods?

Answer (I do dont know who was the owner of the goods I supposed Hornitz was)

Interrogatory 18th

Was the store at the time last spoken of by you. (when the goods were boxed) carried on in the name of S. Hornitz?

Answer I never know it carried on in any other name. if it was I didnot know it

Interrogatory 19th

Did you do business in Anna at the same time Hornitz did. if so how far was your place of business from his? and was you in his store frequently or not.

Answer Yes I was doing business there. my place of business was in an adjoining building to his a space of 12 or 18 inches between the buildings, was in his store frequently.

Cross Examined by the plaintiff by A B Aves Attorney for Plaintiff

Cross Interr 1st

You state that an Attachment was issued and levied upon the stock of goods by the Deputy Sheriff will you state who that attachment was against if you know?

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Answer (True I did not see the attachment it was said that it was against John Hornitz)

Cross Interrogatory 2nd

Do you know of more than one man by the name of Hornitz having done business in Anna if so State their names in full?

Answer There was another man went by the name of Harry Hornitz he in the first opening of the Store assisted in the Store that is the only Hornitz and I Hornitz the one went by the name of Harry and the other by the name of John.

Cross Interrogatory 3rd

When you use the name of I. Hornitz in your direct examinations do you or not refer to John Hornitz?

Answer Yes.

Cross Interrogatory 4th

Do you know anything about the sale of the Goods in Question from John Hornitz to Ludwig Phillips if so State when said sale was made if you know?

Answer I dont know of any.

Cross Interrogatory 5

Do you know of Ludwig Phillips being in possession of said Stock of Goods at any time if so when and how long?

Answer. Well I suppose he was in possession of them when Hornitz was not there when he was acting as Clerk. One winter when Hornitz was at Springfield Court he was absent then perhaps a week I

think Phillips was there then as well as my memory serves me now.

Cross Interg 6th

Do you know of Phillips exercising acts of ownership over said Stock of Goods?

Answer Well I did not only in the absence of Hornitz.

Cross Interg 7th Did you during the winter and Spring of 1861 take or read the Jonesboro Gazette and if so did you see an advertisement in said paper in the Months of February and March 1861 that L Phillips purchase said goods of John Hornitz together with his notes books and accounts? or anything to that effect?

Answer I took the Jonesboro paper at that time but I did not see that in it.

Re-examined by Defendant

Interrogatory 1st Did you ever see Hornitz write his name or do he write it?

Answer I dont think I ever did.

Interrogatory 2nd Did you ever hear J Hornitz say what the letter J stood for in his name?

Answer I did not.

Interrogatory 3

State if you know how the Boxes containing the goods received by Hornitz were marked as regards his name?

Answer They were marked J Hornitz.

D D Cover

State of Illinois }
County of Union } ss. I, Thomas Hileman County Judge and ex officio a Justice of the Peace within and for said County do hereby certify that the above and foregoing deposition of Jacob M Brisbin was sworn to, and signed by the deponent Jacob M Brisbin before me and in my presence. and that the above and foregoing deposition of Daniel Cover (who signs by the abbreviation of D D Cover) was sworn to, and signed by the deponent Daniel Cover before me and in my presence And that the said depositions were taken by me on the 5 day of August A.D. 1843. at the Court House in Jonesboro in the County of Union and State of Illinois between the hours of ten Oclock in the morning and four Oclock in the evening of said day.

Given under my hand and seal this 5 day of August A.D. 1843.

Thomas Hileman Co Judge (seal)

State of Illinois }
Union County } ss.

I, Alexander D. Nimmo Clerk of the County Court, for said County, do hereby certify that Thomas Hileman Esq. whose name is subscribed to the above certificate, was, on the day the same bears date, acting County Judge and ex officio a Justice of the Peace for said County, duly

duly commissioned and qualified and that as such full faith and credit are due to all his official acts, and that his signature thereto is genuine.

Given under my Hand and Seal of office. Seal at Jonesboro this seventh day of August A.D. 1813.

A. S. Simmons Clerk
By D Hileman Deputy

Ex stamps

Endorsed
Filed August 17th 1813.
W R Rholey Clk
By T R Bird deputy

The depositions of John Toler, Abraham Comer and Claiborne C Williford of the County of Union and State of Illinois. Witnesses produced sworn and examined before me Thomas Hileman County Judge in and for the County and State aforesaid on the 15th day of October A.D. 1813 at Clerks office of the Circuit Court of the County and State aforesaid in Jonesboro in pursuance of the notice hereto attached to be read as evidence in the trial of suit at common law now pending and undetermined in the Circuit Court in and for the County of Johnson State of Illinois, wherein Ludwig Phillips is plaintiff and Simeon K Wheir defendant on the part and behalf of the said defendant.

The Deposition of John Toler.

The said John Toler being

first duly sworn doth depose and say in answer to the several Interrogatories as follows. to wit,

Interrogatory 1st

Do you know the parties plaintiff and defendant in the title of the suit above named or either or which of them. and how long have you known them respectively?

Answer I was some acquainted with Mr Phillips he stayed at Anna about twelve months I am not acquainted with the defendant

Interrogatory 2nd

When and where did you first get acquainted with Ludwig Phillips and what business was he engaged in or what was he doing?

Answer The first I ever saw of him was at Anna my opinion is now that he come there in the year 1860. when he first come there he was not doing anything finially he was Clerking for John Hornitz and Harry Hornitz.

Interrogatory 3rd

State as near as you can recollect how long Phillips was Clerking for the Hornitzs and what was the name of the Store he was in?

Answer I dont know that I could come any ways near that. He might have been in the neighborhood of something something like five or six months I could not be positive about it. All the name I

we heard for it was the Hornitz's Store, the Blue Store and sometimes the Egyptian Store?

Interogatory 4th

How far did you live or do business from the Hornitz Store and were you in the store frequently during the time Hornitz was doing business there?

Answer When they first came there to do business they set up business in an adjoining room to where I was doing business, they then left that house and went down some twenty or thirty steps in Mr Williams House.

Interogatory 5th

State if you know what became of the Stock of goods kept in said Store?

Answer The Sheriff Attached them and sold them

Interogatory 5th

State whether you saw John Hornitz boxing or shipping any goods from the Store before the attachment and if so how long before?

Answer I dont recollect now that I did.

Interogatory 6th

Was John Hornitz about the store at the time of the attachment or just before.

Answer I dont think he was there at the time the attachment was served.

Interogatory 7th

How long before the attachment was it that you saw John Hornitz about

the Store?

Answer He was round there sometime after it was said Phillips had charge of the Store.

Interrogatory 8th

During the time that Hornitz was about there last spoken of by you did you see him in the Store selling goods or doing anything in the Store?

Answer I dont recollect now that I seen him selling goods (but I guess he did) he was around there to the best of my recollection he was helping.

Cross examined by A B Ives Attorney for pllaintiff.

Cross Interrogatory 1st

You say in your direct examination that Phillips was Clerking for John & Harry Hornitz will you now state from your own knowledge whether Phillips ever was Clerking or ever received any salery as Clerk or charged any against John Hornitz alone?

Answer No I dont say that he ever charged any salery or got any but he was there doing business and selling goods

Cross Interrogatory 2nd

Do you know of his Clerking for John Hornitz?

Answer No not for John alone

Re-examined by the Defendant

Interrogatory 1st

State from the best of your recollection whether you saw Phillips acting as Clerk in this Store after Harry Horwitz left Anna?

Answer All I know about it he was there all the time. He was there after Harry Horwitz left Anna.

John Toler

By agreement of the parties by their attorneys the taking of the Depositions is continued until tomorrow morning at 8 o'clock.

Pursuant to adjournment the parties on this 17th day of October A.D. 1843 appeared, as on yesterday and the taking of Depositions resumed

Deposition of Claiborne H Williford

The said Claiborne H Williford being first duly sworn doth depose and say in answer to the several interrogatories as follows, to wit:

Interrogatory 1st

Do you know the parties plaintiff and defendant in the title of the suit above named, or either or which of them and how long have you known them respectively?

Answer I am acquainted with Ludwig Phillips. became acquainted with him about the latter part of the year 1840 or the early part of 1841 am not acquainted with the defendant.

Interrogatory 2nd

What is your age and place of residence?

Answer My age is near 42 years. and reside in Jonesboro Illinois

Interrogatory 3rd

Are you the owner of a Store building in the Town of Anna Union County Illinois.

Answer Yes sir I own a store House there.

Interrogatory 4th

State whether you ever rented your Store building to one J. Hornitz and if so at what time did you rent it and how long did he occupy it?

Answer I rented the building to John Hornitz and his brother Henry as I understood it they went into it I think in the 19th day of January, 1840 (Agreeably as I understood it John occupied it longer than Henry) I think John was there about fifteen months. when I settled it was my understanding that Henry was out. I mean when I settled for rent the last time in the year 1841

Interrogatory 5

State as near as you can recollect

how long John Hornitz done business in the House after Harry Hornitz left?

Answer (I dont know from the fact that I dont know when Harry did leave)

Interrogatory 6th

When did you settle with John and Harry Hornitz and how long after the settlement did John Hornitz remain there doing business alone?

Answer I settled with the firm it was dated on the 19th or 20th day of January 1841 Ludwig Phillips written the draft and John Hornitz signed it J Hornitz and I got the money on it. that was for the rent up to date. I cant say how long he remained there doing business after the settlement when we settled John wanted me to take in another mans account that was working for me, I refused to do so at first. but told him if he wanted the house again or longer I dont know which. that I would take the account in. his answer was that he did, and at the rate that he had been paying for the house that account been paying for the house. that account paid for the rent for about three months in advance. which would been to about the middle of April 1841.

Interrogatory 7th

During the time you was acquainted with Ludwig Phillips what business was he engaged in?

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Answer (He pretended to be officiating about the Store then, the Store in question.)

Interrogatory 8th

(objected to by Defts atty)

State whether you ever saw Ludwig Phillips acting as the Clerk of A. Bonnitz if so about how long was he acting in that capacity?

Answer Waived by Defendants. atty

Interrogatory 9th

When you saw Ludwig Phillips about the Store what was he doing then?

Answer He appeared to be acting as a Clerk and Salesman.

Interrogatory 10th

State if you know what became of the Stock of Goods kept in said Store

Answer The Sheriff attached them about the 1st day of March 1861 and the Store was shut up.

Interrogatory 11th

Against whom was the attachment?

Answer (It was my understanding it was against John Bonnitz or the firm of John Bonnitz & Brother.)

Interrogatory 12th

State whether the goods when attached were boxed or on shelves or in what condition were they in?

Answer (I dont know what condition they were in)

Interrogatory 13th

State whether you ever saw John Bonitz boxing or shipping goods from the Store. If so about what time was it as regards the time of the attachment?

Answer I never did.

Interrogatory 14th

Did Ludwig Phillips ever pay you any rent for said building and how long have you been the owner of said building. and controlled the rent.

Answer He never did pay me any rent. I commenced building the house in 1859 and got it finished so that they could get in it on the 19th day of January 1860 and owned it ever since and controlled the rent.

Interrogatory 15

Did you ever see Ludwig Phillips doing business in any capacity Clerking or otherwise in any other Store House except your own in the County of Union?

Answer I never did.

Upon Cross Examination by the Plaintiff by his attorney A. R. Does the said witness deposeth in answer to the several interrogatories as follows, to wit.

Cross Interrogatory 1st

You state in answer to the

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6th Interrogatory. that Phillips appears to be acting as salesman or Clerk will you now state at what time you refer in that answer

Answer It was from the latter part of the winter 1861 up to the time the Store was closed that was about the 1st day of March 1861

Cross Interrogatory 2nd

(Objects to by Mr Smith. Mr Foster acq)

At the time you refer to in your last answer had you any knowledge or information that Ludwig Phillips had purchased the Stock of goods in question of John Hornitz? If so State.

Answer I was informed sometime between the middle or latter part of February 1861. that John Hornitz had sold out. and I think by another party was also informed that he had sold out to Phillips.

Cross Interrogatory 3rd

State if you know of any boxes of goods being shipped from said Stock. If so state who shipped the same and how the boxes were marked if you know? After the purchase referred to in your last answer?

Answer I dont know of any boxes of Goods from this stock being shipped. I saw boxes shipped by Phillips and the warehouse man but dont know from my own

knowledge what they contained

Upon Reexamination by Defendant the said witness States in answer to the several interrogatories as follows, to wit.

Interrogatory 1st

Do you know of your own personal knowledge anything about any sale of the goods from John Horwitz to Phillips?

Answer I do not.

Interrogatory 2nd

You say in answer to plaintiffs 3rd Interrogatory, that you saw Phillips and the warehouseman Shipping Boxes, now State if they were marked, if so how, or what was claimed they contained by the parties shipping them?

Answer They were handling the boxes when I stepped into the Store Door, if there was any mark on them I have no recollection of it, the parties handling them said they contained furs.

C. N. Willford

The Deposition of Abraham Horner.

The said Abraham Horner being first duly sworn doth depose and say in answer to the several Interrogatories as follows, to wit,

Interrogatory 1st

Do you know the parties plaintiff and defendant in the title of the suit above named or either or which of them, and how long have you known them respectively?

Answer I am acquainted with Luding Phillips have known him from the Summer 1860 up to the time left I am not acquainted with the defendant.

Interrogatory 2

Please state you age occupation and place of residence?

Answer My age is thirty three years and by occupation a Carpenter and in the winter teaming

Interrogatory 3rd

Are you acquainted with one D. Hewitt If so when and where did you first know him and how long did you know him and what business if any was he engaged and where was his place of business?

Answer I am acquainted with D Hewitt I think it was in the year 1859 he was keeping a store in and adjoining room to Moses Goodman in the Town of Anna and then he moved about a hundred and fifty feet below in to the Egyptian Store owned C. H. Milliford I knew him from the last part of *1861 he was selling goods there

*1859 until he left there that was the last of 1860 or the first of

and buying and selling Furs.

Interrogatory 4th

Did you ever assist in boxing handling or shipping boxes from the Egyptian Store in Aetna the Store referred to in your former answer. If so about what time was it. who if any one assisted you. and what if you know was contained in the Boxes how marked and how many boxes were there?

Answer I helped to pack fur. at the time Harry Hornitz was there and hauled them to the Depot I dont know how many loads I hauled but I hauled pretty near all their fur. the last load I hauled for them was on the 14th day of June 1860 and then Ludwig Phillips hired me to haul two loads from there to the Depot one load was Beef Hides and then there was one box of mink skins. then I hauled another box that was about 3 feet and six inches long and about two feet and six inches in width about two feet and four inches high. it was packed carefull there was paper in between the box and the goods. that was on the 4th day of February 1861 Mr O Miller assisted me. The Boxes were marked H. Hornitz St Louis one of the boxes the smallest one contained Mink skins The other box I

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think had goods in it the finest goods that was in the Store there. I was in the Store and seen that the goods were torn away.

Interrogatory 5.

Do you know whether the box you think contained fine goods was shipped as Furs or goods or how it was shipped or under what name it was shipped?

(Objected to by Defts atty)

Answer It was shipped as Furs to Harry Hornitz from the Depot.

Interrogatory 6th

(Objected to by Defts atty as Irrel)

In what capacity was W O Miller acting in this Store at the time he helped you ship the boxes?

Answer. He was sort kind of an outside Clerk there rolling barrels and sold goods sometimes.

Interrogatory 7th

Was Phillips present when you and Miller were shipping the boxes?

Answer Yes he was in the Store.

Interrogatory 8th

Have you any knowledge who packed the box containing fine goods.

Answer I think Phillips packed the goods himself for he had no one in there at the time, the goods were packed the evening before I hauled them

Interrogatory 9th

(Objected to by Deft.)

Was you informed by Phillips or his clerk or his agent what the large box spoken of by you as containing fine goods contained.

Answer (I was informed by his Clerk that it was the finest kind of goods that they could not sell it here the Clerk said he did not see it packed.)

Interrogatory 10th

State if you had any knowledge of the amount of Furs in the store at the time you and Miller shipped these boxes. If so how much Fur was there and how large a box or how many boxes would it take to hold them?

Answer There was but very little Furs bought there the box was a shoe box about two feet and six inches long and about twelve inches in the inside and about fourteen inches high the box was about three quarters full and not packed tight as that I think that was all the Furs that was in at that time.

Interrogatory 11th

Did the box of Minx Skins you spoke of as having shipped contain all the Furs there was on hand in the store at that time?

Answer Yes I think that was all that was on hand.

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witness answered to the several Interrogatories as follows, to wit.

Corp Interrogatory 1st

Do you know of your own knowledge who packed the box of goods referred to by you as being sent to C Hornitz St Louis

Answer I do not.

Corp Interrogatory 2d

Do you know of your own knowledge what kind of goods was in said box?

Answer All I know about it is that the goods was carefully packed with Newspapers between the goods and box in the inside the tops was not jointed up very tight I could see in. and I seen that the goods were missing from the shelves. I did not see the goods put in.

Corp Interrogatory 3d

Do you know of your own knowledge what kind of goods were contained in said box?

Answer (No I don't.)

Corp Interrogatory 4th

Do you know of your own knowledge that said box was shipped to C Hornitz St Louis as Fruit?

Answer Yes it was.

Corp Interrogatory 5

Will you state how you know it?

Answer Lampoon was the Freight agent then Miller give it in as Furs.

Cross Interrogatory 5th

Was there any Furs given in at the same time?

Answer Two Boxes were shipped as Furs.

Cross Interrogatory 7th

Is that all you know about the said box being shipped as Furs. what you heard Miller say at the time and what you see from the Rail Road books?

Answer Yes.

Upon Re-examination by the Defendant the said Witness deposes in answer to the several Interrogatories as follows, to wit.

Interrogatory 1st

In answer to the plaintiffs 6th Interrogatory you say there were two boxes shipped as Furs do you mean by this that there was two boxes of Furs shipped or one box of goods shipped as Furs and the other as Furs or what do you mean?

Answer I think the big box that contained goods was shipped as Furs and the other one was shipped as Furs and was Furs.

Re-examined by the Plaintiff.

Interrogatory 1st

Will you state if you know anything about some boxes of goods being shipped to Galena if so state by whom said boxes were shipped and how said boxes were marked if you know? and how many boxes there were? and when the same were shipped.

Answer

Yes there were a lot of boxes shipped I think there were six or eight there might have been more of them the Boxes were marked L. P. Galena Illinois. they were shipped by Phillips. that was sometime in March towards the last of March 1861.

Re-examined by Defendant.

Interrogatory 1

Were these boxes of goods or any other boxes shipped by Phillips Boyd or hauled to the Depot in the night or in the day time? State fully all you know about it?

Answer

I dont know when they were hauled I was not there when they were hauled. the goods were marked about eight O'clock in the evening. They asked me whether I had any team to haul them that they wanted

me to haul them. I told them that my team was out about two miles and could not haul them.

Abraham Horner

State of Illinois }
County of Union } I Thomas Hileman County Judge within and for said County do hereby certify that the above and foregoing depositions of John Toler, Claiborne H Milliford and Abraham Horner were sworn to and signed by the deponents before me and in my presence and that the deposition of the said John Toler was taken by me on the 16th day of October 1863. and the depositions of the said Claiborne H Milliford and Abraham Horner, were taken by me on the 17th day of October 1863. at the Court House in Jonesboro in the County and State aforesaid.

Given under my hand and seal this 17th day of October A.D. 1863.

Thomas Hileman (Seal)
County Judge

State of Illinois }
Union County }

I Alexander A Nimmo Clerk of the County Court for said County, do hereby certify that Thomas

Gilleman Esq. whose name is subscribed to the above certificate, was, on the day the same bears date, County Judge and a acting Justice of the Peace for said County, duly commissioned and qualified, and that in such, full faith and credit are due to all his official acts, and that his signature hereto is genuine.

Given under my Hand and Seal of office at Jonesboro this 17th day of October A.D. 1863.

Gov Stamp Seal Alex. A. Simms Clerk

Endorsed

Filed Oct 21st 1863
W R Rowley Clk
By T R Bird Deptg.

The Defendant then offered in Evidence the papers and the Judgment in the suit of Frederick Lewis vs Joseph Hornitz to which the plaintiff objected on account of the said papers and judgment in said suit being given at trial and against another person than Abra Hornitz, which objection was overruled & Plaintiff excepted. And the same were read, in words and figures following to wit:

The affidavit, Praecipe, Attachment & Bond, and Bond for costs in words & figures following.

State of Illinois }
Jo Daviess County } ss

Frederick Lewis being first duly sworn according to law. deposes and says that Joseph Hornitz is indebted to him the said affiant upon a certain promissory note dated August 23rd 1860 and payable six months thereafter to the order of Louis Stix & Co for the sum of Fourteen hundred Seventy one Dollars & seven cents. (1471 07/100) with ten percent interest after maturity. which said Note the said payee Louis Stix & Co endorsed and made the same payable to this affiant. who then & there became the owner of said Note. said Note being signed "J. Hornitz" That said Note is due and wholly unpaid.— And said Affiant further deposes and says. that the said Joseph Hornitz conceals himself so that process cannot be served upon him.

Subscribed & sworn to } Fred^k Lewis
before me this 15th day }
of March AD 1861. }

Seal } Edward A. Small
Notary Public

State of Illinois } In the Jo Daviess Court Circuit
County of Jo Daviess } ss Court. May Term AD 1861.
Frederick Lewis Plaintiff }
vs } In Attachment
Joseph Hornitz Defendant }

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I do Hereby Enter Myself Security For Costs in this cause and acknowledge myself bound to pay, or cause to be paid, all costs which may accrue in this action, either to the opposite party or to any of the Officers of this Court, in pursuance of the laws of this State.

Dated at Galena this 15th day of March A.D. 1861.

John Brendel (Seal)

Approved
Wm R Rowley
Clerk of Jo Daviess County Circuit Court
by F B Meshall deputy.

State of Illinois } In the Circuit Court of
Jo Daviess County } Jo Daviess County Illinois of the
May Term Term A.D. 1861

Frederick Lewis }
vs } Attachment
Joseph Homitz }

The Clerk will please issue an attachment in the above entitled cause, returnable as above upon the filing of the Affidavit Cost bond & Attachment bond herein — Damages Sixteen hundred Dollars ($1600)

Weigley & Small
Attys for Plff.

Know all Men by these Presents, That we, Frederick Lewis (as principal) and John Brendel (as surety) of the County of Jo Daviess and State of Illinois, are held and firmly bound unto Joseph Hornitz in the penal sum of Three Thousand (3000) Dollars, lawful money of the United States, to be paid to the said Joseph Hornitz for which payment well and truly to be made, we bind ourselves our heirs, executors and administrators, jointly and severally, firmly by these presents. Sealed with our seals. Dated this 15th day of March A.D. 1861.

The Condition of this Obligation is such, That whereas the above bounden Frederick Lewis has on the day of the date hereof, prayed an attachment at the suit of Frederick Lewis against the estate of the above named Joseph Hornitz for the sum of Fourteen hundred Seventy one Dollars and seven Cents and the same being about to be sued out of the Circuit Court for the County of Jo Daviess in the State of Illinois, returnable on the third Monday of May next, to the term of the said Court then to be holden. Now if the said Frederick Lewis shall prosecute his said suit with effect, or in case of failure therein, shall well and truly pay and satisfy unto the said Joseph Hornitz all such costs in said suit, and such damages as shall be

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awarded against the said Frederick Lewis heirs, executors or administrators in any suit or suits which may hereafter be brought for wrongfully suing out the said Attachment. then the above obligation to be void, otherwise to remain in full force and effect.

Frederick Lewis [L.S.]
John Brendel [L.S.]

Taken and acknowledged before me, this 15th day of March 1861
W R Rowley Clerk,
by F B Newhall Deputy.

Endorsed
Filed March 15th 1861
Wm R Rowley Clerk
By F. B. Newhall Deputy.

The writ of Attachment in the words and figures following, to wit:

State of Illinois }
Davies County } ss
The People of the State of Illinois to the Sheriff of said County - Greeting:
Whereas Frederick Lewis Plaintiff has complained on oath to the Clerk of our Circuit Court for the County aforesaid that Joseph Hornitz defendant is

justly indebted unto the said Plaintiff to the amount of Fourteen Hundred & Seventy one Dollars and Seven Cents with ten per cent interest after maturity, and also that said Joseph Bornitz conceals himself so that process cannot be served upon him.
And the said Frederick Lewis Plaintiff having given bond 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 defendant to be found in your County, as shall be of the value sufficient to satisfy the said debt and costs, according to the said complaint; and such estate so attached, in your hands to secure or so to provide, that the same may be liable to further proceedings thereupon, according to law, at the term of the Circuit Court of Jo Daviess County, to be holden in and for the County, aforesaid, at Galena, in said County, on the Third Monday in May next. And that you summon the said Joseph Bornitz to appear and answer the complaint of the said Frederick Lewis on the third Monday in the month of May next. Plaintiff then and there to answer what may be objected

against him when and where you shall make known to said Court how you have executed this writ. And have you then and there this writ.

Witness, William R Rowley, Clerk of the Circuit Court of Jo Daviess County Ill. and the seal thereof, at Galena, this 15th day of March A.D. 1861.

Seal

Wm R Rowley Clerk.
By F B Newhall Deputy.

This said Writ was duly returned unto Court with the following return endorsed thereon to wit:

Executed this Writ of Attachment by Attaching the following Goods to wit: Two Boxes of Goods Marked L Phillips Galena Illinois supposed to contain Dry Goods this 15th day of March 1861

S K Miner Sheriff.

The within Named Joseph Hornitz is not found in my County this 15th day of May A.D. 1861.

S K Miner Sheriff.

Alias writ in the words and figures following to wit:

State of Illinois }
Jo Daviess County } ss

The People of the State of Illinois to the Sheriff of said County - Greeting: Whereas Frederick Lewis Plaintiff has complained on oath to the Clerk of our Circuit Court for the County aforesaid that Joseph Horwitz defendant is justly indebted unto the said Plaintiff to the amount of Fourteen Hundred and Seventy one Dollars and seven Cents with ten per cent interest after maturity; And also that said Joseph Horwitz conceals himself so that process cannot be served upon him. And the said Frederick Lewis Plaintiff having given bond and security according to the directions of the act in such case made and provided: We therefore command you again, That you attach so much of the estate, real or personal, of the said defendant to be be found in your county, as shall be of the value sufficient to satisfy the said debt and costs, according to the said complaint; and such estate so attached, in your hands to secure, or so to provide, that the same may be liable to further proceedings thereupon, according to law, at the term of the Circuit Court of Jo Daviess County, to be holden in and for the County aforesaid, at Galena, in said County, on the Third Monday of August next; and that you sum-

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mon the said Joseph Hornitz to appear and answer the complaint of the said Frederick Lewis Plaintiff. And that you also summon as Garnishee to be and appear before the said Court on the said next. then and there to answer what may be objected against him when and where you shall make known to said Court how you have executed this writ. And have you then and there this writ.

Witness, William R Rowley, Clerk of the Circuit Court of Jo Daviess County, Ill. and the seal thereof. at Galena. this 10th day of July A.D. 1861

Seal

W R Rowley Clerk.

The Declaration in the words and figures following to wit:

State of Illinois } In Circuit Court
Jo Daviess County } August Term A.D. 1861

Frederick Lewis the Plaintiff in this suit. by Weigley & Small his Attorneys complains of the Defendant who was attached &c. in a plea of trespass on the case on promises: For that whereas the said Defendant

nevertheless. Sait: on the 23rd day of August in the year of our Lord One Thousand Eight Hundred and Sixty (1860) at Cincinnati to wit: at the County of Co Davis Illinois made his certain promissory Note in writing. bearing date the day and year aforesaid. and then and there delivered the same to Louis Stix & Co. in and by which said note said Defendant. by the name. style and description of O Hornitz promised to pay to the order of the said Louis Stix & Co in six months after said date the sum of Fourteen hundred & Seventy one 17/100 Dollars with 10 per cent interest after maturity for value received. And the said Louis Stix & Co. to whom or to whose order said note was payable. then and there indorsed. and under the hand assigned the said note to the said Plaintiff. and then and there delivered the same, so indorsed. to the said Plaintiff. By means whereof. and by force of the Statute in such case made and provided. the said Defendant became liable to pay said Plaintiff said sum of money mentioned in said note. and being so liable. in consideration thereof. then and there undertook and promised

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

Second Count. And whereas, also, the said Defendant afterwards to wit: on the first day day of August in the year of our Lord One Thousand Eight Hundred and Sixty one at Galena in the County of Jo Daviess aforesaid, was indebted to the said Plaintiff in the further sum of Sixteen hundred dollars, lawful money of the United States, for the work and labor, care and diligence of the said Plaintiff, by the said Plaintiff before that time done, performed and bestowed, in and about the business of the said Defendant and at his special instance and request; and also, for divers materials and other necessary things, by the said Plaintiff before that time found and provided, and used and applied in and about that work and labor, for the said Defendant, and at his like special instance and request; and also, in the further sum of Sixteen hundred dollars, of like lawful money, for divers goods wares and merchandise, by the said Plaintiff before that time sold

and delivered to the said Defendant and at his like special instance and request; and also, in the further sum of Sixteen hundred dollars, of like lawful money, for money, by the said Plaintiff before that time lent and advanced to, and paid, laid out and expended, for the said defendant and at his like special instance and request; and also, in the further sum of Sixteen hundred dollars, of like lawful money, for other money, by the said Defendant before that time had and received, to and for the use of the said Plaintiff; and also, for that the said Defendant accounted with the said Plaintiff of and concerning divers other sums of money from the said Defendant to the said Plaintiff, before that time due and owing, and then in arrear and unpaid, and upon such accounting, the said Defendant was then and there found to be in arrear and indebted to the said Plaintiff in the further sum of Sixteen hundred dollars, of like lawful money, and being so indebted, the said defendant, in consideration thereof, afterwards to wit: on the day and year last aforesaid, at the County of De-Davis Illinois undertook, and then and there promised the said Pla-

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-intiff to pay him the said several sums of money in this count mentioned. when he the said Defendant should be thereunto afterwards requested.

Breach. And yet the said Defendant not regarding his said several promises and undertakings has not as yet paid the said several sums of money, or any, or either of them, or any part thereof to the said Plaintiff though often requested so to do, but the said Defendant to pay the same has hitherto wholly neglected and refused. and still does neglect and refuse. to the damage of said Plaintiff of Sixteen hundred (1600) dollars. and therefore he sues &c.

Weigley & Small
Attys for Plff

Copy of Instrument and Account Sued on.

$1471.07 Cincinnati Aug 23rd 1860

Six months after date I the subscriber of Anna County of Union State of Illinois promise to pay to the order of Louis Stix & Co. Fourteen hundred & seventy one 07/100 Dollars without any relief whatever from valuation or appraisement laws

J Horniz

Value received payable at —
with 10 per cent interest after
maturity.
(Endorsed)
Pay the order of
Frederick Lewis
Louis Stix & Co.

Endorsed
Filed August 9th 1861
W R Rowley Clerk.

The Defendant next offered & read in evidence the record of the Judgment in said suit of Frederick Lewis vs Joseph Hornitz: in words and figures following to wit:

Frederick Lewis
vs } Attachment.
Joseph Hornitz

The Plaintiff by his Attorneys comes and files proof of publication of notice to Defendant which is adjudged sufficient by the Court and the defendant being three times solemnly called came not but made Default. It is thereupon considered by the Court that that the plaintiff have and recover of the Defendant his damages but as these damages are not certainly known and it

appearing to the Court that this action is founded upon a promissory note for the payment of money only, it is ordered that the Clerk assess the same. And the Clerk having reported the same as the sum of One Thousand five hundred and Sixty Nine Dollars and thirteen Cents which report is approved by the Court It is thereupon considered by the Court that the plaintiff have and recover of the Defendant the said sum of One Thousand five hundred and sixty nine Dollars and thirteen cents so as aforesaid assessed by the Clerk together with his costs by him about his suit herein expended and that he have a special execution therefor against the property attached herein To wit. "Two Boxes of Goods Marked" L. Phillips Galena Ills"

Special writ of execution in the words and figures following to wit:

State of Illinois }
Jo Daviess County } Sct.

The People of the State of Illinois to the Sheriff of Jo Daviess County. — Greeting:
We command you that the goods chattels of Joseph Horwitz hereinafter described To wit.

Two Boxes of goods marked "J. Phillips Galena Ills" you cause to be made the sum of Fifteen hundred & sixty nine Dollars and thirteen Cents Damages and Fifteen Dollars and twenty five Cents costs, which Frederick Lewis lately recovered against him in the Jo Daviess County Circuit Court, as appears of record; and this you are not to omit under the penalty of what the law prescribes. And have you these moneys at the Clerks Office of said Court, at Galena, within ninety days from the date hereof, and also this writ.—

Witness, William R Rowley, Clerk of the Circuit Court of Jo Daviess County, Illinois, and the seal thereof, at Galena, this 18 day of Nov AD. 1861.

Seal

Attest W R Rowley Clerk.

The Sheriff will collect interest on the above from 21st Oct. 1861.

W R Rowley Clerk.

Endorsed.

Received this Execution for collection this 20th day of November in the year of our Lord one thousand eight hundred and sixty one at the hour of 4 O'clock P.

J. K. Miner, Sheriff J. D. Co. Ills.

I return this Execution not satisfied the within Described Property being Replevied out of my hands this 14th day

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of Feb A.D. 1862

S K Miner Sheriff.

The Plaintiff then recalled William Perry who testified I was introduced to John Hornitz in the winter of 1859. I never heard him called Joseph until this suit. Everybody at Anna called him John. Mr Phillips never was clerk there for John Hornitz.

Re-Cross Examination.

After the first of October 1860 I do not know personally whether Phillips was Clerk or not.

The Plaintiffs Counsel then asked the Court to instruct the Jury as follows.

Plaintiffs Instructions.

Given 1 The jury are hereby instructed that the fact alone of the sale from Hornitz to the plaintiff Phillips. having been made on credit. by the giving of Phillips notes. is not evidence of fraud.

Given 2 The jury are instructed that fraud cannot be inferred from the fact alone that Hornitz was indebted. at the time he made the sale to Phillips.

Plaintiffs Instructions

3 If the jury believe from the evidence that Hornitz sold out his Stock of

goods to Phillips and that Phillips took possession of the same. yet the fact alone that Hornitz may have sold some goods for Phillips will not destroy the apparent good faith of the transaction.

Given

Plaintiffs Instruction.

4. The Court instructs the jury that to impeach a sale of property as fraudulent it is necessary to show that both the vender and purchaser intended to hinder and delay creditors or that the purchaser had notice of such design on the part of the seller and if the jury should even believe from the evidence that Hornitz sold the goods in controversy to the Plaintiff with the intent to delay and hinder creditors. Still if it is not proven by the evidence that Phillips participated in or had notice of such design at the time of the sale, the jury must find the issues of property in favor of the plaintiff.

Given

Plaintiff asks this Instruction If the jury believe from the evidence that the witnesses. Benedict Frenzel. Max Hellman. Benedict Meyberg. swore intentionally & willfully falsely. to any one material fact in their depositions read in the trial of this case then

Given

the jury are at liberty to disregard their entire testimony.

Plaintiff's Instruction

If the jury believe from the evidence that Phillips bought the goods in controversy from John Homitz, and paid a valuable consideration for the same and had taken the possession of the said goods, then in order to impeach said sale, the defendant must not only prove by the evidence that the sale was made by John Homitz with the design to hinder and defraud creditors, Still the defendant must go further and prove by the evidence that Phillips participated in such design to hinder and defraud creditors or had notice of it and in case it is not proven by the evidence that Phillips participated in such design to hinder and defraud creditors or had notice of it the jury must find the issues of property for the plaintiff.

Given

The Plaintiff asks this Instruction

The jury are instructed that when fraud is set up as a defence to avoid a sale the proof of such fraud is on the party asserting it, and fraud is a fact that must be proved by the evidence and cannot be inferred by the jury, without circumstances

Given

to infer it from.

to the giving of which instructions the Defendant then and then excepted.

The Defendants counsel then asked the Court to instruct the Jury as follows.

The Defendants Counsel ask the following instructions:—

1st If the Jury believe from the evidence that the circumstances attending the pretended or actual sale from Hornitz to Phillips shew an intention in the part of Hornitz to defraud his Creditors and that Phillips had a knowledge of such intention then they should find for the Defendant if he attached the goods in favor of a creditor of said Hornitz. And it is not necessary for the Defendant to prove the fact of fraud directly sufficient circumstances shewing fraud are all the law requires.

Given

2d If the Jury believe from the evidence that Phillips was a relation of Hornitz, that he was not a man of responsibility, & that he was a Clerk for Hornitz at or about the time the Goods in controversy were shipped away. these are circumstances which the Jury may consider into whether or not they tend to shew fraud and if in connection

Given

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with these circumstances it appears from the evidence that Hornitz was in debt at the time of the real or pretended sale and that he made said sale to Phillips with a design to defraud his Creditors, and if the circumstances of the case as found by the evidence shew Phillips knowledge of such intentain or design, then they should find for the defendant, if he attached the goods in favor of a creditor of J Hornitz

3rd It is within the province of the Jury to decide upon the weight or the confidence which may be reposed in the statements of witnesses and to take into consideration the circumstances under which they testify, the inducements to testify falsely, their interests in the suit, and connection with the matters in controversy, and if the Jury believe from the evidence that the witness John Hornitz did testify wilfully falsely to any one material fact in the case then they may reject his whole testimony.

4th The Jury are instructed that the burden of proof is upon the plaintiff to prove his title to the Goods in question and not upon the Defen-

Green

dant to disprove it — and if they believe from the evidence that the Plaintiff has failed to prove his title to the goods in controversy then they should find for the Defendant.

Given

5th If the Jury believe from the evidence that J. Hornitz swore wilfully falsely to any material fact in his testimony. then they may desregard his whole testimony.

Given

Defendants instructions

6th If the Jury believe from the evidence that the plaintiff has failed to prove that a demand was made for the Goods in controversy before this suit was commenced then they should find the issue ~~more probable~~ of non-suit for the Defendant and if they also believe that the plaintiff has failed to prove his title to the Goods in controversy then they should find all the issues for the Defendant.

Given

7th Defendants instruction

If the Jury believe from the evidence that the plaintiff has failed to establish his title to the Goods in controversy then it is not necessary for the Defendant to prove circumstances shewing fraud

Given

and they should find for the Defendant.

to the giving of which the plaintiffs counsel excepted.

The Jury then retired to their Jury Room and returned with the following verdict. (Verdict heretofore copied)

Whereupon the Defendants counsel made and filed their motion for a new trial as follows.
(Motion for a new trial heretofore copied)

After argument of which said motion was overruled and the Defendants Counsel then & there excepted to the decision of the Court & prayed an appeal to the Supreme Court

Benj R Sheldon (Seal)

Endorsed
Filed October 30th 1863
M R Rowley Clk
By T R Bird Deptg.

And afterwards terit. on the 24th day of November A.D. 1863 the Plaintiff filed in the Clerks office of our said Circuit Court his appeal Bond in the words & figures following towit:

Know all Men by these Presents. That we. Simeon K Miner as principal and Louis Stix & Co and Ralph S Norris as sureties are held and firmly bound unto Ludwig Phillips in the penal sum of Two hundred Dollars ($200) for the payment of which well and truly to be made. we bind ourselves and each of our heirs. executors and administrators. jointly and severally. firmly by these presents. *

The Condition of the above Obligation is such. That whereas the above named Ludwig Phillips did. on the 23rd day of October A.D. 1863 before the Hon Benjamin R Sheldon Circuit Judge of the 14th Judicial Circuit of Illinois and sitting in Jo Daviess County ~~Illinois~~, recover a judgment against the above named Simeon K Miner for costs. from which judgment the said Simeon K Miner wishes to appeal to the Supreme Court of the State of Illinois. Now if the said Simeon K Miner shall prosecute his appeal with effect. and shall pay Ludwig Phillips whatever judgment shall be rendered upon the dismissal or trial of said appeal. then the above obligation to be void. otherwise to remain in full force and effect.

Simeon K Miner (Seal)
Louis Stix & Co (Seal)
R S Norris (Seal)

* sealed with our seals and dated this 24th day of November A.D. 1863

Taken and entered into at my office in Galena. this 24th day of November AD. 1863.

Wm R Rowley Clk
By T. R Bird deptg.

Endorsed

Filed November 24th 1863
Wm R Rowley Clerk
By T R Bird deptg.

Mary Transcript	39.60	
Cert. seal & stamp	40	$ 40.00

State of Illinois } I William R Rowley, Clerk
Jo Daviess County } ss. of the Circuit Court in and for said County. do hereby certify the foregoing to be a full true and correct transcript of the Records and proceedings in the above entitled Cause of Ludwig Phillips vs Simeon K Brinn. as the same appears of Record in my Office.

In testimony whereof I have hereunto set my name and affixed the seal of said Court at my office in Galena. this 5th day of January AD 1864.

Attest. Wm R Rowley Clerk
By T. R. Bird deputy

State of Illinois Supreme Court April Term 1864

Simeon R Minor } Assignments of Errors
vs
Ludwig Phillips }

And now comes the plaintiff in error by Leland & Blanchard & Small his Attorneys & says that in the record & proceedings in said cause there is manifest error in this to wit

1st The court erred in giving the ~~plaintiffs~~ instructions for plff below & refusing those of the defendants below, and each of them

2d The court erred in excluding evidence offered by the defendants below, & in admitting evidence, which should have been excluded, offered by the plaintiff below

3 The evidence in the cause is not sufficient to sustain the finding ~~below~~ of the jury, & the judgment thereon by the court.

4th The court erred in overruling the motion for a new trial, & in rendering a judgment

And thereon the plaintiff in error prays a reversal

Leland & Blanchard & Small
for plff in error

State of Illinois } In the Supreme
Third Grand Division } Court April Term
A.D. 1864

Ludwig Phillips }
Simon R. Miner } Joinder in Error

And the said Ludwig Phillips defendant in Error now Comes & says that there is no error either in the record and proceedings aforesaid or in giving judgment aforesaid in manner and form as above assigned; and therefore he prays that the said judgment may be affirmed and that his costs may be adjudged to him &c

By W. E. Doe Atty for Defendant in Error

Filed April 19. 1864
L. Lemuel Clerk

Miner
vs.
Phillips

Error

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Simeon K Miner
119 vs
Ludwig Phillips

Record

Filed April 6, 1864
L Leland Clk.