

No. 13213

Supreme Court of Illinois

Fuller

vs.

Page

71641  7

STATE OF ILLINOIS,

SUPREME COURT.

Third Grand Division.

No. 39.

1881

Fuller

vs

Rand

Fuller

132 13

STATE OF ILLINOIS, }
SUPREME COURT, } ss.

The People of the State of Illinois,

To the Sheriff of the County of

Cook

Greeting:

Because, In the record and proceedings, and also in the rendition of the judgments of a plea which was in the Circuit Court of Law County, before the Judge thereof, between Alvah Fuller

plaintiff, and Nathaniel Paige

defendant....., it is said that manifest error hath intervened, to the injury of the said plaintiff

as we are informed by he complaint..... the record and proceedings of which said judgments we have caused to be brought into our Supreme Court of the State of Illinois, at Ottawa, before the Justices thereof, to correct the errors in the same, in due form and manner, according to law: Therefore, We Command You, That by good and lawful men of your County, you give notice to the said Nathaniel Paige

that he be and appear before the Justices of our said Supreme Court, at the next term of said Court, to be holden at Ottawa, in said State, on the first Tuesday after the third Monday in April 1860 to hear the record and proceedings aforesaid, and the errors assigned, if he shall see fit; and further to do and receive what said Court shall order in this behalf; and have you then there the names of those by whom you shall give the said Nathaniel Paige

notice, together with this writ.

Witness, The Hon. John D. Eaton, Chief Justice of our said Court, and the Seal thereof, at Ottawa, this 6th day of April in the Year of Our Lord One Thousand Eight Hundred and Sixty.

L. Leland

Clerk of the Supreme Court.

E. J. DeRue Deputy

483 } ~~14th~~ 39th week

Alvah Fuller

No. 141

Nathaniel Paige

SCIRE FACIAS.

FILED April 16, A. D. 1860

L. Leland

Plckr.

Served by reaching to the within
named Nathaniel Paige
the 17th day of April 1860
John Cloudy Sheriff of Cook
By A. H. H. Dyer

Salmon P. Bell

Plaintiff

Ret. W. 75

Gay & Cook
Attys



STATE OF ILLINOIS, SUPREME COURT,
THIRD GRAND DIVISION,
APRIL TERM, 1860.

ALVAH FULLER
vs.
NATHANIEL PAGE. }

POINTS FOR PLAINTIFF IN ERROR.

1. The chattel mortgage upon which the defendant relied did not provide that the possession of the goods should remain with the mortgagor, and the possession remaining with him was fraudulent and void *per se*, and could not be explained.

Rev. Stat. 1845, chap. 20, § 1.
Scates' Stat., title "Personal Property," § 1, page 813.
Reed vs. Evans, 19 Ill. 594, and cases there cited.

22 Dec 45.
" " 377.
" " 376.

2. The mortgage upon which the defendant relied not having been acknowledged before a Justice of the Peace and entered upon his docket and recorded, was void.

The Statute so expressly provides.

Scates' Statute, page 813-14, § 1, 2. and 3.

3. A portion of these goods never belonged to the defendants, or to the mortgagor.

See Record, page 37.

4. The fact that defendants, when they took the goods, told plaintiff he might select his own, might be a fact in mitigation of damages, but could not make plaintiff forfeit the goods and invest the defendants with title.

B. C. COOK,
For Plaintiff in Error,

39 ~~14~~ ~~13~~
Fuller

vs
Paye
Peiff Points

Filed May 25, 1860
L. Leland
Clerk

STATE OF ILLINOIS, SUPREME COURT,

THIRD GRAND DIVISION.

APRIL TERM, 1860,

ALVAH FULLER
vs.
NATHANIEL PAIGE. } Error to Kane.

DEFENDANT'S POINTS.

As between the parties, the mortgage is valid without a change of possession. 2 Hilliard on Mortgages, 212.

The mortgage was valid as against the plaintiff, for he was not a bona fide purchaser of the mortgagor, but he purchased with full notice of the existing mortgage. Hathorn vs. Lewis, 22 Mo. 398. *Munro*

The condition in the mortgage was, that it should be void upon payment of the promissory notes as they severally became due.

Possession was not taken by the defendant, one of the mortgagees, until after the first two notes became due.

When the mortgage contains no agreement that the mortgagor may remain in possession, the mortgagee may take possession before the debt matures. 2 Hilliard on Mortgages, 228, 229.

If the plaintiff, after his purchase from the mortgagor, purchased other goods and mixed them with the goods embraced in the mortgage, the defendant was not bound to further regard his rights to the goods thus subsequently purchased, after having given plaintiff notice to select them out. Helfrich vs. Stern, 17 Penn. 153.

Lewis vs. Whittemore, 5 New Ham. 369.

HOYNE, MILLER & LEWIS,
Defendant's Attorneys.

The motion for a new trial in the court below was overruled and judgment entered at the May term (June 8th) A.D. 1859 and no order was entered or agreement or stipulation made allowing time for filing a bill of exceptions. It does not appear when the paper called the bill attached to the record called the bill of exceptions was signed. It was not filed until the 24th of March A.D. 1860. It is therefore not part of the record and cannot be considered. The joinder in error does not cure the difficulty for that merely relates to matters which appear in the record

*Hoyne Miller Lewis
atty to atty*

39

Huller

et.

N. Purvis

Sept 10 1860

Filed Apr 30. 1860

L. Leland

Recd

Abstract of the
court.

Supreme Court of the State of Illinois.
In Third Grand Division.

ABSTRACT OF RECORD.

State of Illinois, }
 KANE COUNTY, } *April Term, A. D. 1861.*

ALVAH FULLER *vs.* NATHANIEL PAGE.

Error from Kane County Circuit Court.

<i>Page of Rec'd</i> 2 3 4 5 & 6 7 to 20 21 22 23	THIS was an action of TRESPASS, commenced in the Court of Common Pleas of the City of Aurora, County aforesaid, and taken, by change of venue, to the Kane County Circuit Court. Record and proceedings before the Court of Common Pleas, of the City of Aurora. Record of demurrer of Plaintiff to Defendant's Pleas. Demurrer overruled, and leave given Plaintiff to reply, and judgment <i>vs.</i> plaintiff for costs. Plaintiff makes motion for change of venue, which is granted, and venue changed to the Kane County Circuit Court. Certificate of Clerk of Common Pleas of Aurora, and issuing of Summons from Kane County Circuit Court. Summons in Trespass, <i>ad. dam.</i> \$5000. Declaration in Trespass, in usual form, for taking and carrying away the goods and chattels of Plaintiff, consisting of a lot of drugs, medicines, paints, oils, liquors, brushes, stationery, toilet articles, &c., &c., therein mentioned and enumerated. Record of plea of general issue. Plea of 'property in defendant, and Nathaniel Sawyer and Isaac Ezmay, and denying property in plaintiff. Plea that on the 23d day of December, A. D. 1857, at Aurora, one George J. Myers was indebted to Nathaniel Sawyer, Isaac Ezmay and defendant, doing business under the name and style of Sawyer, Page & Co., in the sum of \$507,67; and said Myers being so indebted, and the owner of the goods and chattels in the declaration mentioned, to secure the payment of said indebtedness, then and there sold said goods and chattels to said Sawyer, Paige & Co., conditioned that said sale should be void upon the pay-
--	---

22 ment of said sum of money, and that the plaintiff well knew of said indebtedness and said bill of sale, and after the making of said bill of sale, and before the Trespass complained of, the plaintiff intending to cheat, &c., the said Sawyer, Page & Co., procured said Myers to sell said goods and chattels to him, and that default being made in the payment of the monies mentioned in said bill of sale, the said defendant, one of said firm of Sawyer, Page & Co., by virtue of said bill of sale, took said goods and chattels, which are the supposed trespasses, &c.

24 Plea, that George W. Myers was honestly indebted to Sawyer, Page & Co., in \$507,67, and Plaintiff well knew of such indebtedness; and being so indebted, said Myers gave a bill of sale in substance following, to-wit: Dec. 28th, 1857:

"*Know all Men by these Presents*: That I, George W. Miers, of the city of Aurora, Kane county, and State of Illinois, in consideration of the sum of \$507,67, to me paid by Nathaniel Sawyer, Nathaniel Page and Isaac Ezonay, of the firm of Sawyer, Page & Co., of Chicago, Cook county, and State of Illinois, the receipt whereof is hereby acknowledged, have bargained and sold, and by these presents do grant bargain and sell unto the said Nathaniel Sawyer, Nathaniel Page and Isaac Ezonay, and their assigns, the following goods and chattels, to-wit: All Furniture, Drugs, Dye-Stuffs, Liquors, Paints, Oils and Merchandize generally, now in the Drug Store of said George W. Miers, situated in the West Division of said city of Aurora, Illinois, in building formerly occupied by Hall & Brothers, as Druggists, To have and to hold all and singular, the said goods and chattels, unto the said Sawyer, Page and Ezmay, and their assigns, forever.

to *Provided, Nevertheless*, That if the said George W. Miers shall well or truly pay, or cause to be paid unto the said Sawyer, Page and Ezmay, or their assigns, five promissory notes, bearing date Dec. 23, 1857, four of said notes being for one hundred dollars each, payable respectively, one on the first day of February next, one on the first day of March next, one on the first day of April next, one on the first day of May next, one of one hundred and seven 67-100 dollars, on the first day of June next. Each of said notes bearing ten per cent., payable to Sawyer, Page & Co., of Illinois, as they severally become due, then this Mortgage to be void, otherwise to remain in full force and effect.

In Presence of

A. B. FULLER." }

GEORGE W. MIERS. { L. S. }

That at the time of making said instrument of writing said Myers was the owner and possessor of the property therein mentioned, and the plaintiff, knowing the facts, fraudulently purchased said property of said Myers for a mere nominal sum, with the intent of defrauding said Sawyer, Page & Co., out of their security, which they had by said bill of sale; and the defendant, as one of said firm of Sawyer, Page & Co., on the default of the payment of the monies

27 in said instrument mentioned, took possession of said goods and
27 chattels, which are the said supposed trespasses, &c.

27 Plea of property in defendant and Nathaniel Sawyer and Isaac
Ezmay, trading and doing business under the name and style of
Sawyer, Page & Co., and denying property in plaintiff.

28 Replication to second special plea, denying property in the defen-
dants. Also, replication to the fifth special plea, denying property
in the defendants, as in said plea alleged.

29 Replication to third and fourth special pleas, averring that if any
bill of sale or instrument of writing was made by George W. My-
ers to Sawyer, Page & Co., as in said pleas alleged, the same was
not entered upon the Justices' Docket in the district in which the
said George W. Myers resided or otherwise; nor were the names
of either the mortgagor or mortgagee upon said Justices' Docket;
nor was a description of the property entered upon his Docket;
nor was the possession of the property ever in Sawyer, Page &
Co., but in George W. Myers.

30 Stipulation that all matters of difference may be offered in evi-
dence under the general issue, the same as though special pleas had
been filed.

31 Empanelling of Jury, &c.

32 Verdict of Jury, defendant not guilty.

33 Plaintiff moves for new trial; motion overruled, and judgment
on the verdict, and order of execution.

34 Bill of exceptions.

34 George W. Miers, 2d, testified on direct examination for the
plaintiff, that George W. Miers sold to plaintiff on or about Februa-
ry 12th, 1858, his stock of drugs and other goods, in the store oc-
cupied formerly by Hall & Brothers as a Drug Store, in West Au-
rora, in the city of Aurora; the parties took an invoice of said goods,
& assisted by witness; were some two or three days in taking in-
voice. Plaintiff took possession of said goods immediately after
the sale, and continued in the possession of the same until on or
about the 3d day of March following, when the defendant and oth-
ers took them away. The key was delivered by George W. Miers
to plaintiff, after the sale, and I was hired by plaintiff as clerk, to
sell the goods, and plaintiff was to pay me the same wages that
35 George W. Miers had done. I continued as clerk for plaintiff, af-
ter the purchase, until the goods were taken by defendant, and
plaintiff paid me therefor. The amount of goods taken by defen-
dant on or about March 3d, 1858, amounted to \$1506.47, as near
as could be ascertained. Plaintiff purchased goods of George W.
Myers, February 12th, 1858, amounting in all to \$1873.17. Plain-
tiff purchased goods after he bought of said Miers amounting to
36] \$42.35. Amount of goods left by defendant in the Store on March
3d, 1858 aforesaid, was \$344.47, and amount sold by plaintiff after
his purchase of Miers, was about \$64.61. I did part of the wri-
ting in making out the invoice. The goods were estimated at cost
prices from the bills of purchase. I think we had all or nearly all

27 in said instrument mentioned, took possession of said goods and
27 chattels, which are the said supposed trespasses, &c.

27 Plea of property in defendant and Nathaniel Sawyer and Isaac
Ezmay, trading and doing business under the name and style of
Sawyer, Page & Co., and denying property in plaintiff.

28 Replication to second special plea, denying property in the defen-
dants. Also, replication to the fifth special plea, denying property
in the defendants, as in said plea alleged.

29 Replication to third and fourth special pleas, averring that if any
bill of sale or instrument of writing was made by George W. My-
ers to Sawyer, Page & Co., as in said pleas alleged, the same was
not entered upon the Justices' Docket in the district in which the
said George W. Myers resided or otherwise; nor were the names
of either the mortgagor or mortgagee upon said Justices' Docket;
nor was a description of the property entered upon his Docket;
nor was the possession of the property ever in Sawyer, Page &
Co., but in George W. Myers.

30 Stipulation that all matters of difference may be offered in evi-
dence under the general issue, the same as though special pleas had
been filed.

31 Empanelling of Jury, &c.

32 Verdict of Jury, defendant not guilty.

33 Plaintiff moves for new trial; motion overruled, and judgment
on the verdict, and order of execution.

34 Bill of exceptions.

34 George W. Miers, 2d, testified on direct examination for the
plaintiff, that George W. Miers sold to plaintiff on or about Februa-
ry 12th, 1858, his stock of drugs and other goods, in the store oc-
cupied formerly by Hall & Brothers as a Drug Store, in West Au-
rora, in the city of Aurora; the parties took an invoice of said goods,
& assisted by witness; were some two or three days in taking in-
voice. Plaintiff took possession of said goods immediately after
the sale, and continued in the possession of the same until on or
about the 3d day of March following, when the defendant and oth-
ers took them away. The key was delivered by George W. Miers
to plaintiff, after the sale, and I was hired by plaintiff as clerk, to
sell the goods, and plaintiff was to pay me the same wages that
35 George W. Miers had done. I continued as clerk for plaintiff, af-
ter the purchase, until the goods were taken by defendant, and
plaintiff paid me therefor. The amount of goods taken by defen-
dant on or about March 3d, 1858, amounted to \$1506.47, as near
as could be ascertained. Plaintiff purchased goods of George W.
Myers, February 12th, 1858, amounting in all to \$1873.17. Plain-
tiff purchased goods after he bought of said Miers amounting to
36] \$42.35. Amount of goods left by defendant in the Store on March
3d, 1858 aforesaid, was \$344.47, and amount sold by plaintiff after
his purchase of Miers, was about \$64.61. I did part of the wri-
ting in making out the invoice. The goods were estimated at cost
prices from the bills of purchase. I think we had all or nearly all

27 in said instrument mentioned, took possession of said goods and
27 chattels, which are the said supposed trespasses, &c.

27 Plea of property in defendant and Nathaniel Sawyer and Isaac
Ezmay, trading and doing business under the name and style of
Sawyer, Page & Co., and denying property in plaintiff.

28 Replication to second special plea, denying property in the defen-
dants. Also, replication to the fifth special plea, denying property
in the defendants, as in said plea alleged.

29 Replication to third and fourth special pleas, averring that if any
bill of sale or instrument of writing was made by George W. My-
ers to Sawyer, Page & Co., as in said pleas alleged, the same was
not entered upon the Justices' Docket in the district in which the
said George W. Myers resided or otherwise; nor were the names
of either the mortgagor or mortgagee upon said Justices' Docket;
nor was a description of the property entered upon his Docket;
nor was the possession of the property ever in Sawyer, Page &
Co., but in George W. Myers.

30 Stipulation that all matters of difference may be offered in evi-
dence under the general issue, the same as though special pleas had
been filed.

31 Empanelling of Jury, &c.

32 Verdict of Jury, defendant not guilty.

33 Plaintiff moves for new trial; motion overruled, and judgment
on the verdict, and order of execution.

34 Bill of exceptions.

34 George W. Miers, 2d, testified on direct examination for the
plaintiff, that George W. Miers sold to plaintiff on or about Februa-
ry 12th, 1858, his stock of drugs and other goods, in the store oc-
cupied formerly by Hall & Brothers as a Drug Store, in West Au-
rora, in the city of Aurora; the parties took an invoice of said goods,
& assisted by witness; were some two or three days in taking in-
voice. Plaintiff took possession of said goods immediately after
the sale, and continued in the possession of the same until on or
about the 3d day of March following, when the defendant and oth-
ers took them away. The key was delivered by George W. Miers
to plaintiff, after the sale, and I was hired by plaintiff as clerk, to
sell the goods, and plaintiff was to pay me the same wages that
35 George W. Miers had done. I continued as clerk for plaintiff, af-
ter the purchase, until the goods were taken by defendant, and
plaintiff paid me therefor. The amount of goods taken by defen-
dant on or about March 3d, 1858, amounted to \$1506.47, as near
as could be ascertained. Plaintiff purchased goods of George W.
Myers, February 12th, 1858, amounting in all to \$1873.17. Plain-
tiff purchased goods after he bought of said Miers amounting to
36] \$42.35. Amount of goods left by defendant in the Store on March
3d, 1858 aforesaid, was \$344.47, and amount sold by plaintiff after
his purchase of Miers, was about \$64.61. I did part of the wri-
ting in making out the invoice. The goods were estimated at cost
prices from the bills of purchase. I think we had all or nearly all

36 the original bills of purchase.

36 Cross examination: When defendant took the goods he told plaintiff that he could select out his goods, if he had any. Never heard anything about a mortgage on the goods until after sale to plaintiff. There was a talk about taking the goods to Kansas. Plaintiff had a son there. George W Myers assisted in the store at plaintiff's request, after his sale to plaintiff. Some of the goods which were not purchased of Miers, were taken by defendant, such as opium, stationery, pens, paper and envelopes, were taken before defendant said to plaintiff that he might select the goods he had bought since his purchase of Miers. Miers purchased after December 28th, 1857, part of the goods bought of Miers by plaintiff, and taken by defendant, amounting to about \$47,00.

37 Bills of said goods, which were purchased of Burnham & Smith,
38 offered in evidence, and copies of the same given in bill of exceptions.

39 The invoice which I now hold in my hands, is as follows, and is the one I spoke of in my direct examination.

39 [Here follows a copy of the said invoice, it being an invoice of
to the goods mentioned in plaintiff's declaration.]
71

71 L. R. Wagner testified for plaintiff that he was subscribing witness to a bond now held by him; [here a bond of plaintiff to Geo. W. Myers, was shown to witness, of 160 acres of land in Michigan;] that he became subscribing witness to the same by request of plaintiff and Geo. W. Miers; this was at the date of the bond—that plaintiff told witness at the said time, that the bond was given in part pay for the goods he had been purchasing of Miers, the drugs, &c. (Defendants objected to witness being allowed to testify to statements of plaintiff; objection overruled, and defendant at the time excepted.) There was also talk between Miers and plaintiff about some Kansas land also being turned out in pay.

72 The plaintiff here offered in evidence to the jury, the bond described by Mr. Wagner, and of which he was a subscribing witness. Which is a bond for a deed of the South East quarter of Section 35, in Township No. 2, North of Range 14 west, containing 160 acres of Land, conditioned for the executing of a deed by plaintiff to said Miers in three months from the date thereof.

72 &
73 Copy of said bond.

74 Plaintiff rested his case.

74 Defendant offered as a witness, George W. Myers, Sen.; examined on his *voir dire* by plaintiff, and testified that he was the Geo. W. Myers who sold the goods in question to the plaintiff, whereupon plaintiff by his counsel at the time objected to his being sworn as a witness, which objection the Court sustained and the defendant then and there offered a release to said witness. (There is no copy

36 the original bills of purchase.

36 Cross examination: When defendant took the goods he told plaintiff that he could select out his goods, if he had any. Never heard anything about a mortgage on the goods until after sale to plaintiff. There was a talk about taking the goods to Kansas. Plaintiff had a son there. George W Myers assisted in the store at plaintiff's request, after his sale to plaintiff. Some of the goods which were not purchased of Miers, were taken by defendant, such as opium, stationery, pens, paper and envelopes, were taken before defendant said to plaintiff that he might select the goods he had bought since his purchase of Miers. Miers purchased after December 28th, 1857, part of the goods bought of Miers by plaintiff, and taken by defendant, amounting to about \$47,00.

37 Bills of said goods, which were purchased of Burnham & Smith,
38 offered in evidence, and copies of the same given in bill of exceptions.

39 The invoice which I now hold in my hands, is as follows, and is the one I spoke of in my direct examination.

39 [Here follows a copy of the said invoice, it being an invoice of
to the goods mentioned in plaintiff's declaration.]
71

71 L. R. Wagner testified for plaintiff that he was subscribing witness to a bond now held by him; [here a bond of plaintiff to Geo. W. Myers, was shown to witness, of 160 acres of land in Michigan;] that he became subscribing witness to the same by request of plaintiff and Geo. W. Miers; this was at the date of the bond—that plaintiff told witness at the said time, that the bond was given in part pay for the goods he had been purchasing of Miers, the drugs, &c. (Defendants objected to witness being allowed to testify to statements of plaintiff; objection overruled, and defendant at the time excepted.) There was also talk between Miers and plaintiff about some Kansas land also being turned out in pay.

72 The plaintiff here offered in evidence to the jury, the bond described by Mr. Wagner, and of which he was a subscribing witness. Which is a bond for a deed of the South East quarter of Section 35, in Township No. 2, North of Range 14 west, containing 160 acres of Land, conditioned for the executing of a deed by plaintiff to said Miers in three months from the date thereof.

72 &
73 Copy of said bond.

74 Plaintiff rested his case.

74 Defendant offered as a witness, George W. Myers, Sen.; examined on his *voir dire* by plaintiff, and testified that he was the Geo. W. Myers who sold the goods in question to the plaintiff, whereupon plaintiff by his counsel at the time objected to his being sworn as a witness, which objection the Court sustained and the defendant then and there offered a release to said witness. (There is no copy

36 the original bills of purchase.

36 Cross examination: When defendant took the goods he told plaintiff that he could select out his goods, if he had any. Never heard anything about a mortgage on the goods until after sale to plaintiff. There was a talk about taking the goods to Kansas. Plaintiff had a son there. George W Myers assisted in the store at plaintiff's request, after his sale to plaintiff. Some of the goods which were not purchased of Miers, were taken by defendant, such as opium, stationery, pens, paper and envelopes, were taken before defendant said to plaintiff that he might select the goods he had bought since his purchase of Miers. Miers purchased after December 28th, 1857, part of the goods bought of Miers by plaintiff, and taken by defendant, amounting to about \$47,00.

37 Bills of said goods, which were purchased of Burnham & Smith,
38 offered in evidence, and copies of the same given in bill of exceptions.

39 The invoice which I now hold in my hands, is as follows, and is the one I spoke of in my direct examination.

39 [Here follows a copy of the said invoice, it being an invoice of
to the goods mentioned in plaintiff's declaration.]
71

71 L. R. Wagner testified for plaintiff that he was subscribing witness to a bond now held by him; [here a bond of plaintiff to Geo. W. Myers, was shown to witness, of 160 acres of land in Michigan;] that he became subscribing witness to the same by request of plaintiff and Geo. W. Miers; this was at the date of the bond—that plaintiff told witness at the said time, that the bond was given in part pay for the goods he had been purchasing of Miers, the drugs, &c. (Defendants objected to witness being allowed to testify to statements of plaintiff; objection overruled, and defendant at the time excepted.) There was also talk between Miers and plaintiff about some Kansas land also being turned out in pay.

72 The plaintiff here offered in evidence to the jury, the bond described by Mr. Wagner, and of which he was a subscribing witness. Which is a bond for a deed of the South East quarter of Section 35, in Township No. 2, North of Range 14 west, containing 160 acres of Land, conditioned for the executing of a deed by plaintiff to said Miers in three months from the date thereof.

72 &
73 Copy of said bond.

74 Plaintiff rested his case.

74 Defendant offered as a witness, George W. Myers, Sen.; examined on his *voir dire* by plaintiff, and testified that he was the Geo. W. Myers who sold the goods in question to the plaintiff, whereupon plaintiff by his counsel at the time objected to his being sworn as a witness, which objection the Court sustained and the defendant then and there offered a release to said witness. (There is no copy

74 of the release in the bill of exceptions, the plaintiff being unable to
obtain said release to make a copy of the same.)

75 The defendant then offered again said George W. Myers as a
witness, and plaintiff then and there objected to said witness being
sworn on said trial, or testifying in said cause. Objection overruled
by the Court, and witness permitted to testify in chief; to which
ruling of the Court the plaintiff then and there excepted.

75 George W. Miers then testified, that he was owing Sawyer,
Page & Co., of Chicago, on the 28th of December, 1857, about
75 \$500 or more. The defendant here asked witness whether or not
he informed the plaintiff that there was a mortgage on the goods
before his sale to plaintiff; if Yea, what information he gave him.
To the answering of which plaintiff then and there objected; objec-
76 ted: objection overruled by the Court, to which ruling of the
Court plaintiff then and there excepted.

Witness answers—I did tell plaintiff; plaintiff and myself went
to Albert Fuller's office; Albert thought the mortgage good—plain-
tiff thought it not good; had a copy of mortgage at the time; we
could not find that the mortgage was entered upon any Justice's
docket. I waited upon customers, after sale to plaintiff, when re-
quested so to do. Plaintiffs clerk did not understand the business;
had no interest in the goods after sale to plaintiff; were two or
76 three days making the invoice; goods sold at cash price; didn't
get a deed of Kansas land; went to Kansas to preempt it, but did
not; plaintiff preempted it. Gave a bill of sale of the goods to
plaintiff at the time of sale.

77 Cross Examination: The sale of the goods by me to plaintiff was
on or about February 12th, 1858, took an inventory of the goods.
(The inventory offered in evidence and shown to George W. My-
ers, was shown to witness, who testified it was the inventory taken
by them at the time of plaintiff's purchase.) I received in payment
of the goods from plaintiff, at the time, a bond for 160 acres of land
in Michigan, and that land plaintiff, at my request, afterwards deed-
ed by warrantee deed to Alex. Martin. The Kansas claim of 160
acres I was also to receive in part payment. I went to Kansas to
preempt the land, but found I couldn't on account of my wife not
being there to make actual settlement. Plaintiff then went to Kan-
78 sas and entered it, with the understanding that he should have one-
half the land for his trouble. The sale was made by me to plaintiff
to get property whereby to pay my debts, and immediately after said
sale, I offered the defendant before his mortgage became due, the
land in Michigan in payment of his claim. I had no property in
this State after the sale. We went to the office of Parks, who was
defendant's lawyer, who advised him to take the land and said the
mortgage was not good. The land in Kansas was a good claim,
78 and I was told by persons residing about the claim that it was worth
\$1000.00.

78 Direct examination resumed: I sold to R. W. Hoyt the quit-
78 claim or bill of sale of the Kansas claim.

78 -- Did you, after plaintiff preempted the land, go to plaintiff to get
79 a deed of one-half of the land? Objected to by plaintiff; objection
79 overruled, to which ruling of the Court plaintiff then and there ex-
cepted.

79 Witness answered: I did, and plaintiff declined giving a deed
until he saw how this trial came out, and then he would do what
was right. I gave to plaintiff a bill of sale at the time I sold to
him, which provided that if the goods did not invoice at cost prices
to \$2000, I was to make up the difference sometime.

79 T. C. Williams testified—that he went into the store soon after
the goods were taken by Page; that the goods were in the building
80 formerly occupied by Hall & Bros., for a drug store. The defend-
ant then asked witness if he heard plaintiff say anything about the
existence of a mortgage on said goods at the time of the purchase
by the plaintiff; if so, what? Objected to by plaintiff; objection
overruled by the Court, and to the overruling of the Court plaintiff
80 then and there excepted. Witness answered, that he heard plain-
tiff say that there was a mortgage on the goods, but that it was so
drawn that it was not legal or good for anything; this conversation
was in the store after the goods were taken.

80 Thomas Newlan testified—that he knew where the goods in
question were, and owned the building. It was formerly owned by
81 Hall & Bros., and used for a drug store; witness leased to Myers
& Lightcap; didn't see any change in the apparent possession after
the sale by Miers. Miers in shop waiting on customers same day
goods were moved.

81 Cross examination: Plaintiff paid me for the rent of the store
after the sale by Miers; paid 1½ months rent.

81 Riley W. Hoyt testified—that he purchased of George W. My-
ers and had assigned to him, the quit-claim of the Kansas land;
went to plaintiff to get a deed; plaintiff refused to give one, as he
said he had settled with Miers. Miers remained in the store the
same after sale as before.

82 William W. Walker testified—that he was in the store every
day after sale to Miers, and saw no particular change; that he pur-
chased some of the goods of Fuller, (plaintiff,) after the sale, and
that plaintiff also purchased goods of him for his store.

82 Williams testified—that he is clerk for Sawyer, Paige & Co.,
and went to Aurora and appraised the goods at about \$1000; the
goods were in the upper story of Woodworth's blacksmith shop;
defendant is one of the firm of Sawyer, Paige & Co., of Chicago,
Illinois.

83 Cross examination: Been in defendants' employ six years; went
to Aurora at defendants instance; didn't tell plaintiff my business;
went to Woodworth's shop alone and appraised goods about a year
after they were taken. Am still in defendants employ.

83 Affidavit of Nathaniel Page, that notes and mortgage were sto-
84 len from his coat, and that he has made diligent search and enquiry

for them and has entirely failed to ascertain their whereabouts.

84 Defendant then offered to read in evidence the Record copy of said chattel mortgage from George W. Myers to Sawyer, Paige & Co., to which plaintiff then and there objected; objection overruled by the Court and reading of the record permitted.

86
&
87

Record copy of chattel mortgage.

88 Which ruling of the Court in overruling plaintiff's objection, and permitting said copy of mortgage being read, the plaintiff then and there excepted.

88 Defendant then rested, and plaintiff then introduced as a witness
88 Mark Goulden, who testified—that he has been a druggist for some eight years, and once owned the goods in question; were a new stock; he sold them to Lightcap & Myers about one year previous to defendant's taking them; that he has examined the invoice made by Miers to plaintiff, and the cash price of the goods as there carried out, and knows the same to be correct, and that the same
89 corresponds with the invoice made by witness to Miers and Lightcap.

The plaintiff here rested.

Which was all the testimony offered in the hearing of the Court and Jury, by plaintiff and defendant, except the release to George W. Miers by Sawyer, Paige & Co.

Plaintiff asked the Court to instruct the Jury as follows :

89 1. The mortgage from Miers to Sawyer, Paige & Co., if any mortgage was ever given, is not valid against the rights and interests of any third person or persons, unless the actual possession of the property mortgaged was taken by the mortgagee, or unless the mortgagee provided that the property should remain with Miers, and was duly acknowledged and recorded.

2. If the mortgage which has been read in evidence, was executed and delivered by Miers to Sawyer, Paige & Co., yet it is not sufficient to make a lien upon the property therein named as against the rights of third persons, unless the actual possession of the property was transferred to Sawyer, Paige & Co., and if Paige & Co., did not take possession they have no right to hold it under said mortgage against Fuller, if Fuller purchased the property of Miers for a valuable consideration, and in such case it would make no difference whether Fuller knew of the mortgage or not at the time he purchased.

89 3. If Miers sold the goods in controversy to Fuller for a valuable consideration, Paige & Co. cannot attack such sale on the ground of fraud, unless they are judgment creditors of Miers or subsequent purchasers of the same property.

4. A sale of personal property is not complete so as to change

90 the property from the vendor to the purchaser, without a delivery of the thing sold.

91 5. In order to constitute a good consideration for the sale of goods it is not necessary for the plaintiff to prove that he gave the full value of them, or that he gave an equivalent. But if from the evidence the jury are satisfied the sale was not corruptly and fraudulently entered into, the mere inadequacy of price is not sufficient evidence to prove the sale a fraudulent one.

91 6. If the jury believe from the evidence that Miers sold the goods in question, and that a portion of the consideration of the sale of the goods consisted of a claim of land in Kansas, and that such sale was for a valuable consideration, the fact of Miers not entering the claim, or of Fuller entering the same afterwards under or by virtue of any agreement between Miers and Fuller whereby Miers had not as yet obtained the land, such subsequent act would not render void the contract between Miers and Fuller, of the sale of the goods in question.

91 7. If the jury believe from the evidence that Miers, the vendor, did remain in or about the store after his sale to the plaintiff, and that such remaining was done at the request of the plaintiff and bona-fide, such remaining would not be evidence of fraud; and all inference therefrom if thus explained, should be construed by the jury compatible with the fairness and honesty of the parties.

Plaintiff's refused instructions:

If the defendant undertakes to establish title to the goods in question by a bill of sale or mortgage from Miers to Sawyer, Paige & Co, it is necessary for the defendant to show that the mortgage itself should provide for the possession remaining with the mortgagor, and that the goods mortgaged should have been entered upon the Justice's docket in the district where the mortgagor resided; and also that a description of the mortgaged property should also be entered upon the Justice's docket; and that, unless the defendant, if he relies upon the mortgage for his title, has not proved such facts, he cannot by virtue of his mortgage, sustain his title as against the creditors of Miers purchasing for a valuable consideration.

93 If the jury believes from the evidence that Miers did give to Sawyer, Paige & Co., a mortgage on a portion of the goods in question, and that subsequently Miers added additional goods to the stock, as well also as did Fuller after his purchase of Myers, such additional goods would not be subject to the mortgage; and if the jury believe from the evidence that such goods were taken by Paige, they should find for the plaintiff the value of the same, and the declaration of the defendant made at the time of such taking, that if he owned any of the goods he might take them out, would not debar the plaintiff from the recovery of the same, if the defendant did take such goods without the authority of the plaintiff and against his consent.

Possession is necessary in order to transfer and render valid a sale of personal property, and in a contest between creditors equally meritorious, his is the best right who first gets possession of the goods.

To the Court refusing to give the instructions and each of them, as asked by the plaintiff and refused by the Court, the plaintiff then and there at the time excepted.

The defendant asked the Court to instruct the Jury as follows :

1. If the jury believe from the evidence that Fuller purchased the goods of Miers through fraud, malice, coven, collusion or guile, with a full knowledge of the mortgage of Sawyer, Paige & Co., and with intent to cheat or defraud, hinder or delay, Sawyer, Paige & Co., out of their lien created by said mortgage, then as to all property thus mortgaged and taken under said mortgage by Paige, the law is for the defendant, and that too if Fuller paid a full price for the goods.

2. That the mortgage is good between Miers and Paige & Co., and conveys the title of the property therein described, to Paige & Co., as against Miers.

If the jury believe from the evidence that the plaintiff Fuller purchased the goods in question of Miers with a full knowledge of the mortgage of Paige & Co., with a fraudulent intent to defraud Paige & Co. of the benefits of their rights they had by said mortgage, then as to all property thus affected, the law is for the defendant; and such is the law if the Justice, A. B. Fuller, did not make a memorandum as required by the statute in his docket of the property mortgaged.

In determining the question of whether or not the sale from Myers to Fuller was fraudulent, the jury should take into account all the facts in the proof, the relationship if any between the parties, the consideration paid if anything, by whom received, the fact if it existed in proof of Miers selling all the property he had if proven, all the facts and circumstances in proof, the jury believe the sale to be fraudulent and made with intent to cheat and defraud, hinder and delay in collecting the debts of Sawyer, Paige & Co., secured by the mortgage on the same property so sold, then as to such property the jury should find for the defendant.

Defendant's refused instructions :

That the principal question for the jury to try in this case is, whether the sale of the goods in question from Miers to Fuller, was made for the purpose of cheating and defrauding Sawyer, Paige & Co., out of their lien upon the goods in question, which they had by virtue of their chattel mortgage in question; to this end the jury are instructed that said chattel mortgage is and was good as between

96 Miers, Paige & Co.; therefore, if the jury believe from the evidence that Fuller purchased said goods from Miers with a full knowledge of said mortgage, and without paying any real consideration for said goods, and that said purchase was made by said Fuller with the real intent of cheating and defrauding said Paige & Co., then, in law, said sale was absolutely void as against Paige & Co., and he acquired no title to the goods, and the jury should find the defendant not guilty.

Miers knowing of defendant's mortgage, such knowledge is a fraud in law, and the jury should find for the defendant.

If the jury believe from the evidence that Fuller purchased the goods knowing of the mortgage of Paige & Co., and acting upon such knowledge he deliberately planned to avoid said mortgage and deprive Paige & Co. of any right they might have under the same, such facts would constitute a fraud.

If the jury believe that the sale from Miers to Fuller was fraudulent and merely colorable with intent to cheat or defraud, hinder or delay Paige & Co. out of their rights secured by said mortgage, then as to all property thus affected the law is for the defendant, and in determining that question the fact, if it is proven that Miers still remained in the store, that there was no change in possession, that the clerk did not know of the consideration of the sale and all the facts in proof.

97 If the jury believe from the evidence that Fuller purchased the goods for the purpose of defrauding Paige & Co., then in law said sale was absolutely void as against Paige & Co., and that he acquired no title to the goods, and the jury should find the defendant not guilty.

If the jury believe that Fuller purchased the goods of Miers, subject to the mortgage, and that he was simply to take Miers' place, then the mortgage being good as between Paige & Co., is also as to Fuller, and that too without any fraud on the part of Fuller.

98 If the jury believe that Fuller purchased the goods of Miers, subject to the mortgage, and he was simply to take Miers' place, then the mortgage is good and will hold the property as against Fuller.

If the jury should find the title to the goods mentioned in the mortgage in the defendant, that the plaintiff mixed other goods with them and refused to take them out when requested by defendant, that he cannot recover the goods so mixed.

If the jury believe from the evidence that the sale from Miers to Fuller was fraudulent, and that Fuller mixed up other goods with those thus purchased, and mixed them for the purpose of having some of his goods taken, and refused to separate them when requested, then the law is for the defendant.

If the jury believe from the evidence that the sale from Miers to Fuller was fraudulent, and that Fuller mixed up other goods thus

purchased of Miers, and refused to separate them when requested by defendant, that he cannot recover for the goods so mixed up.

To the giving of which instructions, and each and every one of them, the plaintiff, by his counsel, then and there at the time excepted.

The jury retired, and subsequently returned into Court with a verdict for defendant.

Whereupon, the plaintiff made his motion for a new trial, for the following reasons:

ALVAH FULLER,	}	<i>May Term of Kane County Circuit Court,</i> A. D. 1859.
<i>vs.</i>		
NATHANIEL PAIGE.		

And the plaintiff comes and moves the Court herein for a new trial, for the following reasons, to-wit:

1. The verdict was contrary to law and evidence.
2. It was contrary to the evidence.
3. The Court erred in refusing the plaintiff's instructions, and each of them.
4. The Court erred in giving the instructions of the defendant, and each of them.
5. The Court misdirected the jury in instructions.
6. The Court erred in admitting incompetent evidence, and excluding that which was competent.
7. In overruling the motion for a new trial.
8. In allowing the defendant to release George W. Miers, and allowing him to testify on the trial.

DAY, Att'y for Plff.

100 Which motion for a new trial was overruled by the Court, and judgment thereupon rendered for the defendant.

100 To the overruling of which motion for a new trial, the plaintiff by his counsel, then and there, at the time, excepted; and prays that his bill of exceptions may be signed and sealed by the Court, which is done.

ISAAC G. WILLSON.

{ L. S. }

Here follows the certificate of the Clerk.

And now comes the said Alvah Fuller, by O. D. Day and B. C. Cook, his attorneys, and says that in the record and proceedings aforesaid, and in the rendition of the judgment aforesaid, there is manifest error in this, to-wit:

1st. The Court erred in permitting the witness, George M. Miers to testify in said cause.

2nd. The Court erred in permitting said witness to answer as what he told the plaintiff in relation to a mortgage.

3d. The Court erred in overruling the objections made by plaintiff to the questions asked said witness, and in permitting said witness to answer said questions.

4th. The Court erred in allowing the record of the chattel mortgage aforesaid to be read in evidence.

5th. The Court erred in refusing to admit proper evidence offered by the plaintiff.

6th. The Court erred in admitting improper evidence offered by defendant.

7th. The Court erred in refusing to give the instructions asked by the plaintiff, which were refused severally.

8th. The Court erred in giving the instructions asked by defendant, and each of them severally.

9th. The Court erred in overruling the motion for a new trial.

10th. The Court erred in rendering the judgment aforesaid in manner and form aforesaid.

Reference to the law in the case :

1 Scammon, Page 286.

11 Ill. R., page 618.

19 Ill. R., page 274.

22 Ill. R., pages 45 and 675.

18 Ill. R., pages 401 and 402.

24 Ill. R., page 633.

1 Scammon, page 296.

R. S. of 1845, page 92.

B. C. COOK
And A. M. HERRINGTON,
Attorneys for Plaintiff.

Fuller

vs

Page -

AbstractFiled Apr. 27th 1861

L. Leland

Clark -

Supreme Court of the State of Illinois.
In Third Grand Division.

ABSTRACT OF RECORD.

State of Illinois, } April Term, A. D. 1861.
KANE COUNTY, }

ALVAH FULLER vs. NATHANIEL PAGE.

Error from Kane County Circuit Court.

Page
of
Rec'd

THIS was an action of TRESPASS, commenced in the Court of Common Pleas of the City of Aurora, County aforesaid, and taken, by change of venue, to the Kane County Circuit Court.

2 Record and proceedings before the Court of Common Pleas, of the City of Aurora.

3 Record of demurrer of Plaintiff to Defendant's Pleas.

4 Demurrer overruled, and leave given Plaintiff to reply, and judgment vs. plaintiff for costs. Plaintiff makes motion for change of venue, which is granted, and venue changed to the Kane County Circuit Court.

Certificate of Clerk of Common Pleas of Aurora, and issuing of Summons from Kane County Circuit Court.

5 & 6 Summons in Trespass, ad. dam. \$5000.

7 Declaration in Trespass, in usual form, for taking and carrying to away the goods and chattels of Plaintiff, consisting of a lot of drugs, 20 medicines, paints, oils, liquors, brushes, stationery, toilet articles, &c., &c., therein mentioned and enumerated.

21 Record of plea of general issue.

22 Plea of property in defendant, and Nathaniel Sawyer and Isaac Ezmay, and denying property in plaintiff.

23 Plea that on the 23d day of December, A. D. 1857, at Aurora, one George ; W. Myers was indebted to Nathaniel Sawyer, Isaac Ezmay and defendant, doing business under the name and style of Sawyer, Page & Co., in the sum of \$507,67; and said Myers being so indebted, and the owner of the goods and chattels in the declaration mentioned, to secure the payment of said indebtedness, then and there sold said goods and chattels to said Sawyer, Paige & Co., conditioned that said sale should be void upon the pay-

22 ment of said sum of money, and that the plaintiff well knew of said indebtedness and said bill of sale, and after the making of said bill of sale, and before the Trespass complained of, the plaintiff intending to cheat, &c., the said Sawyer, Page & Co., procured said Myers to sell said goods and chattels to him, and that default being made in the payment of the monies mentioned in said bill of sale, the said defendant, one of said firm of Sawyer, Paige & Co., by virtue of said bill of sale, took said goods and chattels, which are the supposed trespasses, &c.

24 Plea, that George W. Myers was honestly indebted to Sawyer, Page & Co., in \$507,67, and Plaintiff well knew of such indebtedness; and being so indebted, said Myers gave a bill of sale in substance following, to-wit: Dec. 28th, 1857:

"Know all Men by these Presents: That I, George W. Miers, of the city of Aurora, Kane county, and State of Illinois, in consideration of the sum of \$507,67, to me paid by Nathaniel Sawyer, Nathaniel Page and Isaac Ezonay, of the firm of Sawyer, Page & Co., of Chicago, Cook county, and State of Illinois, the receipt whereof is hereby acknowledged, have bargained and sold, and by these presents do grant bargain and sell unto the said Nathaniel Sawyer, Nathaniel Page and Isaac Ezonay, and their assigns, the following goods and chattels, to-wit: All Furniture, Drugs, Dye-Stuffs, Liquors, Paints, Oils and Merchandize generally, now in the Drug Store of said George W. Miers, situated in the West Division of said city of Aurora, Illinois, in building formerly occupied by Hall & Brothers, as Druggists, To have and to hold all and singular, the said goods and chattels, unto the said Sawyer, Page and Ezmay, and their assigns, forever.

to *Provided, Nevertheless,* That if the said George W. Miers shall well or truly pay, or cause to be paid unto the said Sawyer, Page and Ezmay, or their assigns, five promissory notes, bearing date Dec. 23, 1857, four of said notes being for one hundred dollars each, payable respectively, one on the first day of February next, one on the first day of March next, one on the first day of April next, one on the first day of May next, one of one hundred and seven 67-100 dollars, on the first day of June next. Each of said notes bearing ten per cent., payable to Sawyer, Page & Co., of Illinois, as they severally become due, then this Mortgage to be void, otherwise to remain in full force and effect.

In Presence of }
A. B. FULLER." }

GEORGE W. MIERS.

{ L. S. }

That at the time of making said instrument of writing said Myers was the owner and possessor of the property therein mentioned, and the plaintiff, knowing the facts, fraudulently purchased said property of said Myers for a mere nominal sum, with the intent of defrauding said Sawyer, Page & Co., out of their security, which they had by said bill of sale; and the defendant, as one of said firm of Sawyer, Page & Co., on the default of the payment of the monies

27 in said instrument mentioned, took possession of said goods and
27 chattels, which are the said supposed trespasses, &c.

27 Plea of property in defendant and Nathaniel Sawyer and Isaac
Ezmay, trading and doing business under the name and style of
Sawyer, Page & Co., and denying property in plaintiff.

28 Replication to second special plea, denying property in the defen-
dants. Also, replication to the fifth special plea, denying property
in the defendants, as in said plea alleged.

29 Replication to third and fourth special pleas, averring that if any
bill of sale or instrument of writing was made by George W. *My-*
ers to Sawyer, Page & Co., as in said pleas alleged, the same was
not entered upon the Justices' Docket in the district in which the
said George W. *Myers* resided or otherwise; nor were the names
of either the mortgagor or mortgagee upon said Justices' Docket;
nor was a description of the property entered upon his Docket;
nor was the possession of the property ever in Sawyer, Page &
Co., but in George W. *Myers*.

30 Stipulation that all matters of difference may be offered in evi-
dence under the general issue, the same as though special pleas had
been filed.

31 Empanelling of Jury, &c.

32 Verdict of Jury, defendant not guilty.

33 Plaintiff moves for new trial; motion overruled, and judgment
on the verdict, and order of execution.

34 Bill of exceptions.

34 George W. *Miers*, 2d, testified on direct examination for the
plaintiff, that George W. *Miers* sold to plaintiff on or about Februa-
ry 12th, 1858, his stock of drugs and other goods, in the store oc-
cupied formerly by Hall & Brothers as a Drug Store, in West Au-
rora, in the city of Aurora; the parties took an invoice of said goods,
& assisted by witness; were some two or three days in taking in-
voice. Plaintiff took possession of said goods immediately after
the sale, and continued in the possession of the same until on or
about the 3d day of March following, when the defendant and oth-
ers took them away. The key was delivered by George W. *Miers*
to plaintiff, after the sale, and I was hired by plaintiff as clerk, to
sell the goods, and plaintiff was to pay me the same wages that
35 George W. *Miers* had done. I continued as clerk for plaintiff, af-
ter the purchase, until the goods were taken by defendant, and
plaintiff paid me therefor. The amount of goods taken by defen-
dant on or about March 3d, 1858, amounted to \$1506,47, as near
as could be ascertained. Plaintiff purchased goods of George W.
Myers, February 12th, 1858, amounting in all to \$1873,17. Plain-
tiff purchased goods after he bought of said *Miers* amounting to
36 \$42,35. Amount of goods left by defendant in the Store on March
3d, 1858 aforesaid, was \$344,47, and amount sold by plaintiff after
his purchase of *Miers*, was about \$64,61. I did part of the wri-
ting in making out the invoice. The goods were estimated at cost
prices from the bills of purchase. I think we had all or nearly all

36 the original bills of purchase.

36 Cross examination: When defendant took the goods he told plaintiff that he could select out his goods, if he had any. Never heard anything about a mortgage on the goods until after sale to plaintiff. There was a talk about taking the goods to Kansas. Plaintiff had a son there. George W Myers assisted in the store at plaintiff's request, after his sale to plaintiff. Some of the goods which were not purchased of Miers, were taken by defendant, such as opium, stationery, pens, paper and envelopes, were taken before defendant said to plaintiff that he might select the goods he had bought since his purchase of Miers. Miers purchased after December 28th, 1857, part of the goods bought of Miers by plaintiff, and taken by defendant, amounting to about \$47,00.

37 Bills of said goods, which were purchased of Burnham & Smith,
38 offered in evidence, and copies of the same given in bill of exceptions.

39 The invoice which I now hold in my hands, is as follows, and is the one I spoke of in my direct examination.

39 [Here follows a copy of the said invoice, it being an invoice of
to the goods mentioned in plaintiff's declaration.]
71

71 L. R. Wagner testified for plaintiff that he was subscribing witness to a bond now held by him; [here a bond of plaintiff to Geo. W. Myers, was shown to witness, of 160 acres of land in Michigan;] that he became subscribing witness to the same by request of plaintiff and Geo. W. Miers; this was at the date of the bond—that plaintiff told witness at the said time, that the bond was given in part pay for the goods he had been purchasing of Miers, the drugs, &c. (Defendants objected to witness being allowed to testify to statements of plaintiff; objection overruled, and defendant at the time excepted.) There was also talk between Miers and plaintiff about some Kansas land also being turned out in pay.

72 The plaintiff here offered in evidence to the jury, the bond described by Mr. Wagner, and of which he was a subscribing witness. Which is a bond for a deed of the South East quarter of Section 35, in Township No. 2, North of Range 14 west, containing 160 acres of Land, conditioned for the executing of a deed by plaintiff to said Miers in three months from the date thereof.

72 &
73 Copy of said bond.

74 Plaintiff rested his case.

74 Defendant offered as a witness, George W. Myers, Sen.; examined on his *voir dire* by plaintiff, and testified that he was the Geo. W. Myers who sold the goods in question to the plaintiff, whereupon plaintiff by his counsel at the time objected to his being sworn as a witness, which objection the Court sustained and the defendant then and there offered a release to said witness. (There is no copy

74 of the release in the bill of exceptions, the plaintiff being unable to obtain said release to make a copy of the same.)

75 The defendant then offered again said George W. Myers as a witness, and plaintiff then and there objected to said witness being sworn on said trial, or testifying in said cause. Objection overruled by the Court, and witness permitted to testify in chief; to which ruling of the Court the plaintiff then and there excepted.

75 George W. Miers then testified, that he was owing Sawyer, Page & Co., of Chicago, on the 28th of December, 1857, about \$500 or more. The defendant here asked witness whether or not he informed the plaintiff that there was a mortgage on the goods before his sale to plaintiff; if Yea, what information he gave him. To the answering of which plaintiff then and there objected; objected: objection overruled by the Court, to which ruling of the Court plaintiff then and there excepted.

76 Witness answers—I did tell plaintiff; plaintiff and myself went to Albert Fuller's office; Albert thought the mortgage good—plaintiff thought it not good; had a copy of mortgage at the time; we could not find that the mortgage was entered upon any Justice's docket. I waited upon customers, after sale to plaintiff, when requested so to do. Plaintiff's clerk did not understand the business; had no interest in the goods after sale to plaintiff; were two or three days making the invoice; goods sold at cash price; didn't get a deed of Kansas land; went to Kansas to preempt it, but did not; plaintiff preempted it. Gave a bill of sale of the goods to plaintiff at the time of sale.

77 Cross Examination: The sale of the goods by me to plaintiff was on or about February 12th, 1858, took an inventory of the goods. (The inventory offered in evidence and shown to George W. Myers, was shown to witness, who testified it was the inventory taken by them at the time of plaintiff's purchase.) I received in payment of the goods from plaintiff, at the time, a bond for 160 acres of land in Michigan, and that land plaintiff, at my request, afterwards deeded by warrantee deed to Alex. Martin. The Kansas claim of 160 acres I was also to receive in part payment. I went to Kansas to preempt the land, but found I couldn't on account of my wife not being there to make actual settlement. Plaintiff then went to Kansas and entered it, with the understanding that he should have one-half the land for his trouble. The sale was made by me to plaintiff to get property whereby to pay my debts, and immediately after said sale, I offered the defendant before his mortgage became due, the land in Michigan in payment of his claim. I had no property in this State after the sale. We went to the office of Parks, who was defendant's lawyer, who advised him to take the land and said the mortgage was not good. The land in Kansas was a good claim, and I was told by persons residing about the claim that it was worth \$1000,00.

78 Direct examination resumed: I sold to R. W. Hoyt the quit-claim or bill of sale of the Kansas claim.

78 Did you, after plaintiff preempted the land, go to plaintiff to get
79 a deed of one-half of the land? Objected to by plaintiff; objection
79 overruled, to which ruling of the Court plaintiff then and there ex-
cepted.

79 Witness answered: I did, and plaintiff declined giving a deed
until he saw how this trial came out, and then he would do what
was right. I gave to plaintiff a bill of sale at the time I sold to
him, which provided that if the goods did not invoice at cost prices
to \$2000, I was to make up the difference sometime.

79 T. C. Williams testified—that he went into the store soon after
the goods were taken by Page; that the goods were in the building
80 formerly occupied by Hall & Bros., for a drug store. The defend-
ant then asked witness if he heard plaintiff say anything about the
existence of a mortgage on said goods at the time of the purchase
by the plaintiff; if so, what? Objected to by plaintiff; objection
overruled by the Court, and to the overruling of the Court plaintiff
80 then and there excepted. Witness answered, that he heard plain-
tiff say that there was a mortgage on the goods, but that it was so
drawn that it was not legal or good for anything; this conversation
was in the store after the goods were taken.

80 Thomas Newlan testified—that he knew where the goods in
question were, and owned the building. It was formerly owned by
81 Hall & Bros., and used for a drug store; witness leased to Myers
& Lightcap; didn't see any change in the apparent possession after
the sale by Miers. Miers in shop waiting on customers same day
goods were moved.

81 Cross examination: Plaintiff paid me for the rent of the store
after the sale by Miers; paid 1½ months rent.

81 Riley W. Hoyt testified—that he purchased of George W. My-
ers and had assigned to him, the quit-claim of the Kansas land;
went to plaintiff to get a deed; plaintiff refused to give one, as he
said he had settled with Miers. Miers remained in the store the
same after sale as before.

82 William W. Walker testified—that he was in the store every
day after sale to Miers, and saw no particular change; that he pur-
chased some of the goods of Fuller, (plaintiff,) after the sale, and
that plaintiff also purchased goods of him for his store.

82 Williams testified—that he is clerk for Sawyer, Paige & Co.,
and went to Aurora and appraised the goods at about \$1000; the
goods were in the upper story of Woodworth's blacksmith shop;
defendant is one of the firm of Sawyer, Paige & Co., of Chicago,
Illinois.

83 Cross examination: Been in defendants' employ six years; went
to Aurora at defendants instance; didn't tell plaintiff my business;
went to Woodworth's shop alone and appraised goods about a year
after they were taken. Am still in defendants employ.

83 Affidavit of Nathaniel Page, that notes and mortgage were sto-
84 len from his coat, and that he has made diligent search and enquiry

for them and has entirely failed to ascertain their whereabouts.

84 Defendant then offered to read in evidence the Record copy of said chattel mortgage from George W. Myers to Sawyer, Paige & Co., to which plaintiff then and there objected; objection overruled by the Court and reading of the record resumed.

86
&
87

Record copy of chattel mortgage.

88 Which ruling of the Court in overruling plaintiff's objection, and permitting said copy of mortgage being read, the plaintiff then and there excepted.

88 Defendant then rested, and plaintiff then introduced as a witness
88 Mark Goulden, who testified—that he has been a druggist for some eight years, and once owned the goods in question; were a new stock; he sold them to Lightcap & Myers about one year previous to defendant's taking them; that he has examined the invoice made by Miers to plaintiff, and the cash price of the goods as there carried out, and knows the same to be correct, and that the same
89 corresponds with the invoice made by witness to Miers and Lightcap.

The plaintiff here rested.

Which was all the testimony offered in the hearing of the Court and Jury, by plaintiff and defendant, except the release to George W. Miers by Sawyer, Paige & Co.

Plaintiff asked the Court to instruct the Jury as follows:

89 1. The mortgage from Miers to Sawyer, Paige & Co., if any mortgage was ever given, is not valid against the rights and interests of any third person or persons, unless the actual possession of the property mortgaged was taken by the mortgagee, or unless the mortgagee provided that the property should remain with Miers, and was duly acknowledged and recorded.

2. If the mortgage which has been read in evidence, was executed and delivered by Miers to Sawyer, Paige & Co., yet it is not sufficient to make a lien upon the property therein named as against the rights of third persons, unless the actual possession of the property was transferred to Sawyer, Paige & Co., and if Paige & Co., did not take possession they have no right to hold it under said mortgage against Fuller, if Fuller purchased the property of Miers for a valuable consideration, and in such case it would make no difference whether Fuller knew of the mortgage or not at the time he purchased.

89 3. If Miers sold the goods in controversy to Fuller for a valuable consideration, Paige & Co. cannot attack such sale on the ground of fraud, unless they are judgment creditors of Miers or subsequent purchasers of the same property.

4. A sale of personal property is not complete so as to change

90 the property from the vendor to the purchaser, without a delivery of the thing sold.

91 5. In order to constitute a good consideration for the sale of goods it is not necessary for the plaintiff to prove that he gave the full value of them, or that he gave an equivalent. But if from the evidence the jury are satisfied the sale was not corruptly and fraudulently entered into, the mere inadequacy of price is not sufficient evidence to prove the sale a fraudulent one.

91 6. If the jury believe from the evidence that Miers sold the goods in question, and that a portion of the consideration of the sale of the goods consisted of a claim of land in Kansas, and that such sale was for a valuable consideration, the fact of Miers not entering the claim, or of Fuller entering the same afterwards under or by virtue of any agreement between Miers and Fuller whereby Miers had not as yet obtained the land, such subsequent act would not render void the contract between Miers and Fuller, of the sale of the goods in question.

91 7. If the jury believe from the evidence that Miers, the vendor, did remain in or about the store after his sale to the plaintiff, and that such remaining was done at the request of the plaintiff and bona-fide, such remaining would not be evidence of fraud; and all inference therefrom if thus explained, should be construed by the jury compatible with the fairness and honesty of the parties.

Plaintiff's refused instructions :

If the defendant undertakes to establish title to the goods in question by a bill of sale or mortgage from Miers to Sawyer, Paige & Co, it is necessary for the defendant to show that the mortgage itself should provide for the possession remaining with the mortgagor, and that the goods mortgaged should have been entered upon the Justice's docket in the district where the mortgagor resided; and also that a description of the mortgaged property should also be entered upon the Justice's docket; and that, unless the defendant, if he relies upon the mortgage for his title, has not proved such facts, he cannot by virtue of his mortgage, sustain his title as against the creditors of Miers purchasing for a valuable consideration.

93 If the jury believes from the evidence that Miers did give to Sawyer, Paige & Co., a mortgage on a portion of the goods in question, and that subsequently Miers added additional goods to the stock, as well also as did Fuller after his purchase of Myers, such additional goods would not be subject to the mortgage; and if the jury believe from the evidence that such goods were taken by Paige, they should find for the plaintiff the value of the same, and the declaration of the defendant made at the time of such taking, that if he owned any of the goods he might take them out, would not debar the plaintiff from the recovery of the same, if the defendant did take such goods without the authority of the plaintiff and against his consent.

Possession is necessary in order to transfer and render valid a sale of personal property, and in a contest between creditors equally meritorious, his is the best right who first gets possession of the goods.

To the Court refusing to give the instructions and each of them, as asked by the plaintiff and refused by the Court, the plaintiff then and there at the time excepted.

The defendant asked the Court to instruct the Jury as follows :

1. If the jury believe from the evidence that Fuller purchased the goods of Miers through fraud, malice, coven, collusion or guile, with a full knowledge of the mortgage of Sawyer, Paige & Co., and with intent to cheat or defraud, hinder or delay, Sawyer, Page & Co., out of their lien created by said mortgage, then as to all property thus mortgaged and taken under said mortgage by Paige, the law is for the defendant, and that too if Fuller paid a full price for the goods.

2. That the mortgage is good between Miers and Paige & Co., and conveys the title of the property therein described, to Paige & Co., as against Miers.

If the jury believe from the evidence that the plaintiff Fuller purchased the goods in question of Miers with a full knowledge of the mortgage of Paige & Co., with a fraudulent intent to defraud Paige & Co. of the benefits of their rights they had by said mortgage, then as to all property thus affected, the law is for the defendant; and such is the law if the Justice, A. B. Fuller, did not make a memorandum as required by the statute in his docket of the property mortgaged.

In determining the question of whether or not the sale from Myers to Fuller was fraudulent, the jury should take into account all the facts in the proof, the relationship if any between the parties, the consideration paid if anything, by whom received, the fact if it existed in proof of Miers selling all the property he had if proven, all the facts and circumstances in proof, the jury believe the sale to be fraudulent and made with intent to cheat and defraud, hinder and delay in collecting the debts of Sawyer, Paige & Co., secured by the mortgage on the same property so sold, then as to such property the jury should find for the defendant.

Defendant's refused instructions :

That the principal question for the jury to try in this case is, whether the sale of the goods in question from Miers to Fuller, was made for the purpose of cheating and defrauding Sawyer, Paige & Co., out of their lien upon the goods in question, which they had by virtue of their chattel mortgage in question; to this end the jury are instructed that said chattel mortgage is and was good as between

90 Miers, Paige & Co.; therefore, if the jury believe from the evidence that Fuller purchased said goods from Miers with a full knowledge of said mortgage, and without paying any real consideration for said goods, and that said purchase was made by said Fuller with the real intent of cheating and defrauding said Paige & Co., then, in law, said sale was absolutely void as against Paige & Co., and he acquired no title to the goods, and the jury should find the defendant not guilty.

Miers knowing of defendant's mortgage, such knowledge is a fraud in law, and the jury should find for the defendant.

If the jury believe from the evidence that Fuller purchased the goods knowing of the mortgage of Paige & Co., and acting upon such knowledge he deliberately planned to avoid said mortgage and deprive Paige & Co. of any right they might have under the same, such facts would constitute a fraud.

If the jury believe that the sale from Miers to Fuller was fraudulent and merely colorable with intent to cheat or defraud, hinder or delay Paige & Co. out of their rights secured by said mortgage, then as to all property thus affected the law is for the defendant, and in determining that question the fact, if it is proven that Miers still remained in the store, that there was no change in possession, that the clerk did not know of the consideration of the sale and all the facts in proof.

97. If the jury believe from the evidence that Fuller purchased the goods for the purpose of defrauding Paige & Co., then in law said sale was absolutely void as against Paige & Co., and that he acquired no title to the goods, and the jury should find the defendant not guilty.

If the jury believe that Fuller purchased the goods of Miers, subject to the mortgage, and that he was simply to take Miers' place, then the mortgage being good as between Paige & Co., is also as to Fuller, and that too without any fraud on the part of Fuller.

98. If the jury believe that Fuller purchased the goods of Miers, subject to the mortgage, and he was simply to take Miers' place, then the mortgage is good and will hold the property as against Fuller.

If the jury should find the title to the goods mentioned in the mortgage in the defendant, that the plaintiff mixed other goods with them and refused to take them out when requested by defendant, that he cannot recover the goods so mixed.

If the jury believe from the evidence that the sale from Miers to Fuller was fraudulent, and that Fuller mixed up other goods with those thus purchased, and mixed them for the purpose of having some of his goods taken, and refused to separate them when requested, then the law is for the defendant.

If the jury believe from the evidence that the sale from Miers to Fuller was fraudulent, and that Fuller mixed up other goods thus

purchased of Miers, and refused to separate them when requested by defendant, that he cannot recover for the goods so mixed up.

To the giving of which instructions, and each and every one of them, the plaintiff, by his counsel, then and there at the time excepted.

The jury retired, and subsequently returned into Court with a verdict for defendant.

Whereupon, the plaintiff made his motion for a new trial, for the following reasons:

ALVAH FULLER,	}	<i>May Term of Kane County Circuit Court,</i> A. D. 1859.
vs.		
NATHANIEL PAIGE.		

And the plaintiff comes and moves the Court herein for a new trial, for the following reasons, to-wit:

1. The verdict was contrary to law and evidence.
2. It was contrary to the evidence.
3. The Court erred in refusing the plaintiff's instructions, and each of them.
4. The Court erred in giving the instructions of the defendant, and each of them.
5. The Court misdirected the jury in instructions.
6. The Court erred in admitting incompetent evidence, and excluding that which was competent.
7. In overruling the motion for a new trial.
8. In allowing the defendant to release George W. Miers, and allowing him to testify on the trial.

DAY, Att'y for Plt.

100 Which motion for a new trial was overruled by the Court, and judgment thereupon rendered for the defendant.

100 To the overruling of which motion for a new trial, the plaintiff by his counsel, then and there, at the time, excepted; and prays that his bill of exceptions may be signed and sealed by the Court, which is done.

ISAAC G. WILLSON. { L. S. }

Here follows the certificate of the Clerk.

And now comes the said Alvah Fuller, by O. D. Day and B. C. Cook, his attorneys, and says that in the record and proceedings aforesaid, and in the rendition of the judgment aforesaid, there is manifest error in this. to-wit:

1st. The Court erred in permitting the witness, George M. Miers to testify in said cause.

2nd. The Court erred in permitting said witness to answer as what he told the plaintiff in relation to a mortgage.

3d. The Court erred in overruling the objections made by plaintiff to the questions asked said witness, and in permitting said witness to answer said questions.

4th. The Court erred in allowing the record of the chattel mortgage aforesaid to be read in evidence.

5th. The Court erred in refusing to admit proper evidence offered by the plaintiff.

6th. The Court erred in admitting improper evidence offered by defendant.

7th. The Court erred in refusing to give the instructions asked by the plaintiff, which were refused severally.

8th. The Court erred in giving the instructions asked by defendant, and each of them severally.

9th. The Court erred in overruling the motion for a new trial.

10th. The Court erred in rendering the judgment aforesaid in manner and form aforesaid.

Reference to the law in the case :

1 Scammon, Page 286.

11 Ill. R., page 618.

19 Ill. R., page 274.

22 Ill R., pages 45 and 675.

18 Ill. R., pages 401 and 402.

24 Ill. R., page 633.

1 Scammon, page 296.

R. S. of 1845, page 92.

B. C. COOK

And A. M. HERRINGTON,

Attorneys for Plaintiff.

Supreme Court of the State of Illinois.
In Third Grand Division.

ABSTRACT OF RECORD.

State of Illinois, } April Term, A. D. 1861.
KANE COUNTY, }

ALVAH FULLER vs. NATHANIEL PAGE.

Error from Kane County Circuit Court.

Page
of
Rec'd

THIS was an action of TRESPASS, commenced in the Court of Common Pleas of the City of Aurora, County aforesaid, and taken, by change of venue, to the Kane County Circuit Court.

2 Record and proceedings before the Court of Common Pleas, of the City of Aurora.

3 Record of demurrer of Plaintiff to Defendant's Pleas.

4 Demurrer overruled, and leave given Plaintiff to reply, and judgment vs. plaintiff for costs. Plaintiff makes motion for change of venue, which is granted, and venue changed to the Kane County Circuit Court.

Certificate of Clerk of Common Pleas of Aurora, and issuing of Summons from Kane County Circuit Court.

5 & 6 Summons in Trespass, ad. dam. \$5000.

7 Declaration in Trespass, in usual form, for taking and carrying to away the goods and chattels of Plaintiff, consisting of a lot of drugs, 20 medicines, paints, oils, liquors, brushes, stationery, toilet articles, &c., &c., therein mentioned and enumerated.

21 Record of plea of general issue.

22 Plea of property in defendant, and Nathaniel Sawyer and Isaac Ezmay, and denying property in plaintiff.

23 Plea that on the 23d day of December, A. D. 1857, at Aurora, one George W. Myers was indebted to Nathaniel Sawyer, Isaac Ezmay and defendant, doing business under the name and style of Sawyer, Page & Co., in the sum of \$507,67; and said Myers being so indebted, and the owner of the goods and chattels in the declaration mentioned, to secure the payment of said indebtedness, then and there sold said goods and chattels to said Sawyer, Paige & Co., conditioned that said sale should be void upon the pay-

22 ment of said sum of money, and that the plaintiff well knew of said indebtedness and said bill of sale, and after the making of said bill of sale, and before the Trespass complained of, the plaintiff intending to cheat, &c., the said Sawyer, Page & Co., procured said Myers to sell said goods and chattels to him, and that default being made in the payment of the monies mentioned in said bill of sale, the said defendant, one of said firm of Sawyer, Page & Co., by virtue of said bill of sale, took said goods and chattels, which are the supposed trespasses, &c.

24 Plea, that George W. Myers was honestly indebted to Sawyer, Page & Co., in \$507,67, and Plaintiff well knew of such indebtedness; and being so indebted, said Myers gave a bill of sale in substance following, to-wit: Dec. 28th, 1857:

"Know all Men by these Presents: That I, George W. Miers, of the city of Aurora, Kane county, and State of Illinois, in consideration of the sum of \$507,67, to me paid by Nathaniel Sawyer, Nathaniel Page and Isaac Ezonay, of the firm of Sawyer, Page & Co., of Chicago, Cook county, and State of Illinois, the receipt whereof is hereby acknowledged, have bargained and sold, and by these presents do grant bargain and sell unto the said Nathaniel Sawyer, Nathaniel Page and Isaac Ezonay, and their assigns, the following goods and chattels, to-wit: All Furniture, Drugs, Dye-Stuffs, Liquors, Paints, Oils and Merchandize generally, now in the Drug Store of said George W. Miers, situated in the West Division of said city of Aurora, Illinois, in building formerly occupied by Hall & Brothers, as Druggists, To have and to hold all and singular, the said goods and chattels, unto the said Sawyer, Page and Ezonay, and their assigns, forever.

to *Provided, Nevertheless,* That if the said George W. Miers shall well or truly pay, or cause to be paid unto the said Sawyer, Page and Ezonay, or their assigns, five promissory notes, bearing date Dec. 23, 1857, four of said notes being for one hundred dollars each, payable respectively, one on the first day of February next, one on the first day of March next, one on the first day of April next, one on the first day of May next, one of one hundred and seven 67-100 dollars, on the first day of June next. Each of said notes bearing ten per cent., payable to Sawyer, Page & Co., of Illinois, as they severally become due, then this Mortgage to be void, otherwise to remain in full force and effect.

In Presence of
A. B. FULLER." }

GEORGE W. MIERS.

{ L. S. }

That at the time of making said instrument of writing said Myers was the owner and possessor of the property therein mentioned, and the plaintiff, knowing the facts, fraudulently purchased said property of said Myers for a mere nominal sum, with the intent of defrauding said Sawyer, Page & Co., out of their security, which they had by said bill of sale; and the defendant, as one of said firm of Sawyer, Page & Co., on the default of the payment of the monies

27 in said instrument mentioned, took possession of said goods and
27 chattels, which are the said supposed trespasses, &c.

27 Plea of property in defendant and Nathaniel Sawyer and Isaac
Ezmay, trading and doing business under the name and style of
Sawyer, Page & Co., and denying property in plaintiff.

28 Replication to second special plea, denying property in the defen-
dants. Also, replication to the fifth special plea, denying property
in the defendants, as in said plea alleged.

29 Replication to third and fourth special pleas, averring that if any
bill of sale or instrument of writing was made by George W. My-
ers to Sawyer, Page & Co., as in said pleas alleged, the same was
not entered upon the Justices' Docket in the district in which the
said George W. Myers resided or otherwise; nor were the names
of either the mortgagor or mortgagee upon said Justices' Docket;
nor was a description of the property entered upon his Docket;
nor was the possession of the property ever in Sawyer, Page &
Co., but in George W. Myers.

30 Stipulation that all matters of difference may be offered in evi-
dence under the general issue, the same as though special pleas had
been filed.

31 Empanelling of Jury, &c.

32 Verdict of Jury, defendant not guilty.

33 Plaintiff moves for new trial; motion overruled, and judgment
on the verdict, and order of execution.

34 Bill of exceptions.

34 George W. Miers, 2d, testified on direct examination for the
plaintiff, that George W. Miers sold to plaintiff on or about Februa-
ry 12th, 1858, his stock of drugs and other goods, in the store oc-
cupied formerly by Hall & Brothers as a Drug Store, in West Au-
rora, in the city of Aurora; the parties took an invoice of said goods,
& assisted by witness; were some two or three days in taking in-
voice. Plaintiff took possession of said goods immediately after
the sale, and continued in the possession of the same until on or
about the 3d day of March following, when the defendant and oth-
ers took them away. The key was delivered by George W. Miers
to plaintiff, after the sale, and I was hired by plaintiff as clerk, to
sell the goods, and plaintiff was to pay me the same wages that
35 George W. Miers had done. I continued as clerk for plaintiff, af-
ter the purchase, until the goods were taken by defendant, and
plaintiff paid me therefor. The amount of goods taken by defen-
dant on or about March 3d, 1858, amounted to \$1506,47, as near
as could be ascertained. Plaintiff purchased goods of George W.
Myers, February 12th, 1858, amounting in all to \$1873,17. Plain-
tiff purchased goods after he bought of said Miers amounting to
36 \$42,35. Amount of goods left by defendant in the Store on March
3d, 1858 aforesaid, was \$344,47, and amount sold by plaintiff after
his purchase of Miers, was about \$64,61. I did part of the wri-
ting in making out the invoice. The goods were estimated at cost
prices from the bills of purchase. I think we had all or nearly all

36 the original bills of purchase.

36 Cross examination: When defendant took the goods he told plaintiff that he could select out his goods, if he had any. Never heard anything about a mortgage on the goods until after sale to plaintiff. There was a talk about taking the goods to Kansas. Plaintiff had a son there. George W Myers assisted in the store at plaintiff's request, after his sale to plaintiff. Some of the goods which were not purchased of Miers, were taken by defendant, such as opium, stationery, pens, paper and envelopes, were taken before defendant said to plaintiff that he might select the goods he had bought since his purchase of Miers. Miers purchased after December 28th, 1857, part of the goods bought of Miers by plaintiff, and taken by defendant, amounting to about \$47,00.

37 Bills of said goods, which were purchased of Burnham & Smith,
38 offered in evidence, and copies of the same given in bill of exceptions.

39 The invoice which I now hold in my hands, is as follows, and is the one I spoke of in my direct examination.

39 [Here follows a copy of the said invoice, it being an invoice of
to the goods mentioned in plaintiff's declaration.]
71

71 L. R. Wagner testified for plaintiff that he was subscribing witness to a bond now held by him; [here a bond of plaintiff to Geo. W. Myers, was shown to witness, of 160 acres of land in Michigan;] that he became subscribing witness to the same by request of plaintiff and Geo. W. Miers; this was at the date of the bond—that plaintiff told witness at the said time, that the bond was given in part pay for the goods he had been purchasing of Miers, the drugs, &c. (Defendants objected to witness being allowed to testify to statements of plaintiff; objection overruled, and defendant at the time excepted.) There was also talk between Miers and plaintiff about some Kansas land also being turned out in pay.

72 The plaintiff here offered in evidence to the jury, the bond described by Mr. Wagner, and of which he was a subscribing witness. Which is a bond for a deed of the South East quarter of Section 35, in Township No. 2, North of Range 14 west, containing 160 acres of Land, conditioned for the executing of a deed by plaintiff to said Miers in three months from the date thereof.

72 &
73 Copy of said bond.

74 Plaintiff rested his case.

74 Defendant offered as a witness, George W. Myers, Sen.; examined on his *voir dire* by plaintiff, and testified that he was the Geo. W. Myers who sold the goods in question to the plaintiff, whereupon plaintiff by his counsel at the time objected to his being sworn as a witness, which objection the Court sustained and the defendant then and there offered a release to said witness. (There is no copy

74 of the release in the bill of exceptions, the plaintiff being unable to
obtain said release to make a copy of the same.)

75 The defendant then offered again said George W. Myers as a
witness, and plaintiff then and there objected to said witness being
sworn on said trial, or testifying in said cause. Objection overruled
by the Court, and witness permitted to testify in chief; to which
ruling of the Court the plaintiff then and there excepted.

75 George W. Miers then testified, that he was owing Sawyer,
Page & Co., of Chicago, on the 28th of December, 1857, about
75 \$500 or more. The defendant here asked witness whether or not
he informed the plaintiff that there was a mortgage on the goods
before his sale to plaintiff; if Yea, what information he gave him.
To the answering of which plaintiff then and there objected; objec-
76 ted: objection overruled by the Court, to which ruling of the
Court plaintiff then and there excepted.

Witness answers—I did tell plaintiff; plaintiff and myself went
to Albert Fuller's office; Albert thought the mortgage good—plain-
tiff thought it not good; had a copy of mortgage at the time; we
could not find that the mortgage was entered upon any Justice's
docket. I waited upon customers, after sale to plaintiff, when re-
quested so to do. Plaintiffs clerk did not understand the business;
had no interest in the goods after sale to plaintiff; were two or
76 three days making the invoice; goods sold at cash price; didn't
get a deed of Kansas land; went to Kansas to preempt it, but did
not; plaintiff preempted it. Gave a bill of sale of the goods to
plaintiff at the time of sale.

77 Cross Examination: The sale of the goods by me to plaintiff was
on or about February 12th, 1858, took an inventory of the goods.
(The inventory offered in evidence and shown to George W. My-
ers, was shown to witness, who testified it was the inventory taken
by them at the time of plaintiff's purchase.) I received in payment
of the goods from plaintiff, at the time, a bond for 160 acres of land
in Michigan, and that land plaintiff, at my request, afterwards deed-
ed by warrantee deed to Alex. Martin. The Kansas claim of 160
acres I was also to receive in part payment. I went to Kansas to
preempt the land, but found I couldn't on account of my wife not
being there to make actual settlement. Plaintiff then went to Kan-
78 sas and entered it, with the understanding that he should have one-
half the land for his trouble. The sale was made by me to plaintiff
to get property whereby to pay my debts, and immediately after said
sale, I offered the defendant before his mortgage became due, the
land in Michigan in payment of his claim. I had no property in
this State after the sale. We went to the office of Parks, who was
defendant's lawyer, who advised him to take the land and said the
mortgage was not good. The land in Kansas was a good claim,
78 and I was told by persons residing about the claim that it was worth
\$1000.00.

78 Direct examination resumed: I sold to R. W. Hoyt the quit-
78 claim or bill of sale of the Kansas claim.

78 Did you, after plaintiff preempted the land, go to plaintiff to get
79 a deed of one-half of the land? Objected to by plaintiff; objection
79 overruled, to which ruling of the Court plaintiff then and there ex-
cepted.

79 Witness answered: I did, and plaintiff declined giving a deed
until he saw how this trial came out, and then he would do what
was right. I gave to plaintiff a bill of sale at the time I sold to
him, which provided that if the goods did not invoice at .0.0. prices
to \$2000, I was to make up the difference sometime.

79 T. C. Williams testified—that he went into the store soon after
the goods were taken by Page; that the goods were in the building
80 formerly occupied by Hall & Bros., for a drug store. The defend-
ant then asked witness if he heard plaintiff say anything about the
existence of a mortgage on said goods at the time of the purchase
by the plaintiff; if so, what? Objected to by plaintiff; objection
overruled by the Court, and to the overruling of the Court plaintiff
80 then and there excepted. Witness answered, that he heard plain-
tiff say that there was a mortgage on the goods, but that it was so
drawn that it was not legal or good for anything; this conversation
was in the store after the goods were taken.

80 Thomas Newlan testified—that he knew where the goods in
question were, and owned the building. It was formerly owned by
81 Hall & Bros., and used for a drug store; witness leased to Myers
& Lightcap; didn't see any change in the apparent possession after
the sale by Miers. Miers in shop waiting on customers same day
goods were moved.

81 Cross examination: Plaintiff paid me for the rent of the store
after the sale by Miers; paid 1½ months rent.

81 Riley W. Hoyt testified—that he purchased of George W. My-
ers and had assigned to him, the quit-claim of the Kansas land;
went to plaintiff to get a deed; plaintiff refused to give one, as he
said he had settled with Miers. Miers remained in the store the
same after sale as before.

82 William W. Walker testified—that he was in the store every
day after sale to Miers, and saw no particular change; that he pur-
chased some of the goods of Fuller, (plaintiff,) after the sale, and
that plaintiff also purchased goods of him for his store.

82 Williams testified—that he is clerk for Sawyer, Paige & Co.,
and went to Aurora and appraised the goods at about \$1000; the
goods were in the upper story of Woodworth's blacksmith shop;
defendant is one of the firm of Sawyer, Paige & Co., of Chicago,
Illinois.

83 Cross examination: Been in defendants' employ six years; went
to Aurora at defendants instance; didn't tell plaintiff my business;
went to Woodworth's shop alone and appraised goods about a year
after they were taken. Am still in defendants employ.

83 Affidavit of Nathaniel Page, that notes and mortgage were sto-
84 len from his coat, and that he has made diligent search and enquiry

for them and has entirely failed to ascertain their whereabouts.

84 Defendant then offered to read in evidence the Record copy of
said chattel mortgage from George W. Myers to Sawyer, Paige &
Co., to which plaintiff then and there objected; objection overruled
by the Court and reading of the record permitted.

86
&
87

Record copy of chattel mortgage.

88

Which ruling of the Court in overruling plaintiff's objection, and
permitting said copy of mortgage being read, the plaintiff then and
there excepted.

88

88

Defendant then rested, and plaintiff then introduced as a witness
Mark Goulden, who testified—that he has been a druggist for some
eight years, and once owned the goods in question; were a new
stock; he sold them to Lightcap & Myers about one year previous
to defendant's taking them; that he has examined the invoice
made by Miers to plaintiff, and the cash price of the goods as there
carried out, and knows the same to be correct, and that the same
corresponds with the invoice made by witness to Miers and Light-
cap.

89

The plaintiff here rested.

Which was all the testimony offered in the hearing of the Court
and Jury, by plaintiff and defendant, except the release to George
W. Miers by Sawyer, Paige & Co.

Plaintiff asked the Court to instruct the Jury as follows:

89

1. The mortgage from Miers to Sawyer, Paige & Co., if any
mortgage was ever given, is not valid against the rights and inter-
ests of any third person or persons, unless the actual possession of
the property mortgaged was taken by the mortgagee, or unless the
mortgagee provided that the property should remain with Miers,
and was duly acknowledged and recorded.

2. If the mortgage which has been read in evidence, was exe-
cuted and delivered by Miers to Sawyer, Paige & Co., yet it is not
sufficient to make a lien upon the property therein named as against
the rights of third persons, unless the actual possession of the prop-
erty was transferred to Sawyer, Paige & Co., and if Paige & Co.,
did not take possession they have no right to hold it under said
mortgage against Fuller, if Fuller purchased the property of Miers
for a valuable consideration, and in such case it would make no dif-
ference whether Fuller knew of the mortgage or not at the time he
purchased.

89

3. If Miers sold the goods in controversy to Fuller for a valua-
ble consideration, Paige & Co. cannot attack such sale on the ground
of fraud, unless they are judgment creditors of Miers or subsequent
purchasers of the same property.

4. A sale of personal property is not complete so as to change

90 the property from the vendor to the purchaser, without a delivery of the thing sold.

91 5. In order to constitute a good consideration for the sale of goods it is not necessary for the plaintiff to prove that he gave the full value of them, or that he gave an equivalent. But if from the evidence the jury are satisfied the sale was not corruptly and fraudulently entered into, the mere inadequacy of price is not sufficient evidence to prove the sale a fraudulent one.

91 6. If the jury believe from the evidence that Miers sold the goods in question, and that a portion of the consideration of the sale of the goods consisted of a claim of land in Kansas, and that such sale was for a valuable consideration, the fact of Miers not entering the claim, or of Fuller entering the same afterwards under or by virtue of any agreement between Miers and Fuller whereby Miers had not as yet obtained the land, such subsequent act would not render void the contract between Miers and Fuller, of the sale of the goods in question.

91 7. If the jury believe from the evidence that Miers, the vendor, did remain in or about the store after his sale to the plaintiff, and that such remaining was done at the request of the plaintiff and bona-fide, such remaining would not be evidence of fraud; and all inference therefrom if thus explained, should be construed by the jury compatible with the fairness and honesty of the parties.

Plaintiff's refused instructions :

If the defendant undertakes to establish title to the goods in question by a bill of sale or mortgage from Miers to Sawyer, Paige & Co, it is necessary for the defendant to show that the mortgage itself should provide for the possession remaining with the mortgagor, and that the goods mortgaged should have been entered upon the Justice's docket in the district where the mortgagor resided; and also that a description of the mortgaged property should also be entered upon the Justice's docket; and that, unless the defendant, if he relies upon the mortgage for his title, has not proved such facts, he cannot by virtue of his mortgage, sustain his title as against the creditors of Miers purchasing for a valuable consideration.

93 If the jury believes from the evidence that Miers did give to Sawyer, Paige & Co., a mortgage on a portion of the goods in question, and that subsequently Miers added additional goods to the stock, as well also as did Fuller after his purchase of Myers, such additional goods would not be subject to the mortgage; and if the jury believe from the evidence that such goods were taken by Paige, they should find for the plaintiff the value of the same, and the declaration of the defendant made at the time of such taking, that if he owned any of the goods he might take them out, would not debar the plaintiff from the recovery of the same, if the defendant did take such goods without the authority of the plaintiff and against his consent.

90 the property from the vendor to the purchaser, without a delivery of the thing sold.

91 5. In order to constitute a good consideration for the sale of goods it is not necessary for the plaintiff to prove that he gave the full value of them, or that he gave an equivalent. But if from the evidence the jury are satisfied the sale was not corruptly and fraudulently entered into, the mere inadequacy of price is not sufficient evidence to prove the sale a fraudulent one.

91 6. If the jury believe from the evidence that Miers sold the goods in question, and that a portion of the consideration of the sale of the goods consisted of a claim of land in Kansas, and that such sale was for a valuable consideration, the fact of Miers not entering the claim, or of Fuller entering the same afterwards under or by virtue of any agreement between Miers and Fuller whereby Miers had not as yet obtained the land, such subsequent act would not render void the contract between Miers and Fuller, of the sale of the goods in question.

91 7. If the jury believe from the evidence that Miers, the vendor, did remain in or about the store after his sale to the plaintiff, and that such remaining was done at the request of the plaintiff and bona-fide, such remaining would not be evidence of fraud; and all inference therefrom if thus explained, should be construed by the jury compatible with the fairness and honesty of the parties.

Plaintiff's refused instructions :

If the defendant undertakes to establish title to the goods in question by a bill of sale or mortgage from Miers to Sawyer, Paige & Co, it is necessary for the defendant to show that the mortgage itself should provide for the possession remaining with the mortgagor, and that the goods mortgaged should have been entered upon the Justice's docket in the district where the mortgagor resided; and also that a description of the mortgaged property should also be entered upon the Justice's docket; and that, unless the defendant, if he relies upon the mortgage for his title, has not proved such facts, he cannot by virtue of his mortgage, sustain his title as against the creditors of Miers purchasing for a valuable consideration.

93 If the jury believes from the evidence that Miers did give to Sawyer, Paige & Co., a mortgage on a portion of the goods in question, and that subsequently Miers added additional goods to the stock, as well also as did Fuller after his purchase of Myers, such additional goods would not be subject to the mortgage; and if the jury believe from the evidence that such goods were taken by Paige, they should find for the plaintiff the value of the same, and the declaration of the defendant made at the time of such taking, that if he owned any of the goods he might take them out, would not debar the plaintiff from the recovery of the same, if the defendant did take such goods without the authority of the plaintiff and against his consent.

Possession is necessary in order to transfer and render valid a sale of personal property, and in a contest between creditors equally meritorious, his is the best right who first gets possession of the goods.

To the Court refusing to give the instructions and each of them, as asked by the plaintiff and refused by the Court, the plaintiff then and there at the time excepted.

The defendant asked the Court to instruct the Jury as follows :

1. If the jury believe from the evidence that Fuller purchased the goods of Miers through fraud, malice, coven, collusion or guile, with a full knowledge of the mortgage of Sawyer, Paige & Co., and with intent to cheat or defraud, hinder or delay, Sawyer, Page & Co., out of their lien created by said mortgage, then as to all property thus mortgaged and taken under said mortgage by Paige, the law is for the defendant, and that too if Fuller paid a full price for the goods.

2. That the mortgage is good between Miers and Paige & Co., and conveys the title of the property therein described, to Paige & Co., as against Miers.

If the jury believe from the evidence that the plaintiff Fuller purchased the goods in question of Miers with a full knowledge of the mortgage of Paige & Co., with a fraudulent intent to defraud Paige & Co. of the benefits of their rights they had by said mortgage, then as to all property thus affected, the law is for the defendant; and such is the law if the Justice, A. B. Fuller, did not make a memorandum as required by the statute in his docket of the property mortgaged.

In determining the question of whether or not the sale from Myers to Fuller was fraudulent, the jury should take into account all the facts in the proof, the relationship if any between the parties, the consideration paid if anything, by whom received, the fact if it existed in proof of Miers selling all the property he had if proven, all the facts and circumstances in proof, the jury believe the sale to be fraudulent and made with intent to cheat and defraud, hinder and delay in collecting the debts of Sawyer, Paige & Co., secured by the mortgage on the same property so sold, then as to such property the jury should find for the defendant.

Defendant's refused instructions :

That the principal question for the jury to try in this case is, whether the sale of the goods in question from Miers to Fuller, was made for the purpose of cheating and defrauding Sawyer, Paige & Co., out of their lien upon the goods in question, which they had by virtue of their chattel mortgage in question; to this end the jury are instructed that said chattel mortgage is and was good as between

Possession is necessary in order to transfer and render valid a sale of personal property, and in a contest between creditors equally meritorious, his is the best right who first gets possession of the goods.

To the Court refusing to give the instructions and each of them, as asked by the plaintiff and refused by the Court, the plaintiff then and there at the time excepted.

The defendant asked the Court to instruct the Jury as follows :

1. If the jury believe from the evidence that Fuller purchased the goods of Miers through fraud, malice, coven, collusion or guile, with a full knowledge of the mortgage of Sawyer, Paige & Co., and with intent to cheat or defraud, hinder or delay, Sawyer, Page & Co., out of their lien created by said mortgage, then as to all property thus mortgaged and taken under said mortgage by Paige, the law is for the defendant, and that too if Fuller paid a full price for the goods.

2. That the mortgage is good between Miers and Paige & Co., and conveys the title of the property therein described, to Paige & Co., as against Miers.

If the jury believe from the evidence that the plaintiff Fuller purchased the goods in question of Miers with a full knowledge of the mortgage of Paige & Co., with a fraudulent intent to defraud Paige & Co. of the benefits of their rights they had by said mortgage, then as to all property thus affected, the law is for the defendant; and such is the law if the Justice, A. B. Fuller, did not make a memorandum as required by the statute in his docket of the property mortgaged.

In determining the question of whether or not the sale from Myers to Fuller was fraudulent, the jury should take into account all the facts in the proof, the relationship if any between the parties, the consideration paid if anything, by whom received, the fact if it existed in proof of Miers selling all the property he had if proven, all the facts and circumstances in proof, the jury believe the sale to be fraudulent and made with intent to cheat and defraud, hinder and delay in collecting the debts of Sawyer, Paige & Co., secured by the mortgage on the same property so sold, then as to such property the jury should find for the defendant.

Defendant's refused instructions :

That the principal question for the jury to try in this case is, whether the sale of the goods in question from Miers to Fuller, was made for the purpose of cheating and defrauding Sawyer, Paige & Co., out of their lien upon the goods in question, which they had by virtue of their chattel mortgage in question; to this end the jury are instructed that said chattel mortgage is and was good as between

96 Miers, Paige & Co.; therefore, if the jury believe from the evidence that Fuller purchased said goods from Miers with a full knowledge of said mortgage, and without paying any real consideration for said goods, and that said purchase was made by said Fuller with the real intent of cheating and defrauding said Paige & Co., then, in law, said sale was absolutely void as against Paige & Co., and he acquired no title to the goods, and the jury should find the defendant not guilty.

Miers knowing of defendant's mortgage, such knowledge is a fraud in law, and the jury should find for the defendant.

If the jury believe from the evidence that Fuller purchased the goods knowing of the mortgage of Paige & Co., and acting upon such knowledge he deliberately planned to avoid said mortgage and deprive Paige & Co. of any right they might have under the same, such facts would constitute a fraud.

If the jury believe that the sale from Miers to Fuller was fraudulent and merely colorable with intent to cheat or defraud, hinder or delay Paige & Co. out of their rights secured by said mortgage, then as to all property thus affected the law is for the defendant, and in determining that question the fact, if it is proven that Miers still remained in the store, that there was no change in possession, that the clerk did not know of the consideration of the sale and all the facts in proof.

97 If the jury believe from the evidence that Fuller purchased the goods for the purpose of defrauding Paige & Co., then in law said sale was absolutely void as against Paige & Co., and that he acquired no title to the goods, and the jury should find the defendant not guilty.

If the jury believe that Fuller purchased the goods of Miers, subject to the mortgage, and that he was simply to take Miers' place, then the mortgage being good as between Paige & Co., is also as to Fuller, and that too without any fraud on the part of Fuller.

98 If the jury believe that Fuller purchased the goods of Miers, subject to the mortgage, and he was simply to take Miers' place, then the mortgage is good and will hold the property as against Fuller.

If the jury should find the title to the goods mentioned in the mortgage in the defendant, that the plaintiff mixed other goods with them and refused to take them out when requested by defendant, that he cannot recover the goods so mixed.

If the jury believe from the evidence that the sale from Miers to Fuller was fraudulent, and that Fuller mixed up other goods with those thus purchased, and mixed them for the purpose of having some of his goods taken, and refused to separate them when requested, then the law is for the defendant.

If the jury believe from the evidence that the sale from Miers to Fuller was fraudulent, and that Fuller mixed up other goods thus

purchased of Miers, and refused to separate them when requested by defendant, that he cannot recover for the goods so mixed up.

To the giving of which instructions, and each and every one of them, the plaintiff; by his counsel, then and there at the time excepted.

The jury retired, and subsequently returned into Court with a verdict for defendant.

Whereupon, the plaintiff made his motion for a new trial, for the following reasons:

ALVAH FULLER,	}	<i>May Term of Kane County Circuit Court,</i> A. D. 1859.
vs.		
NATHANIEL PAIGE.		

And the plaintiff comes and moves the Court herein for a new trial, for the following reasons, to-wit:

1. The verdict was contrary to law and evidence.
2. It was contrary to the evidence.
3. The Court erred in refusing the plaintiff's instructions, and each of them.
4. The Court erred in giving the instructions of the defendant, and each of them.
5. The Court misdirected the jury in instructions.
6. The Court erred in admitting incompetent evidence, and excluding that which was competent.
7. In overruling the motion for a new trial.
8. In allowing the defendant to release George W. Miers, and allowing him to testify on the trial.

DAY, Att'y for Plff.

100 Which motion for a new trial was overruled by the Court, and judgment thereupon rendered for the defendant.

100 To the overruling of which motion for a new trial, the plaintiff by his counsel, then and there, at the time, excepted; and prays that his bill of exceptions may be signed and sealed by the Court, which is done.

ISAAC G. WILLSON.

{ L. S. }

Here follows the certificate of the Clerk.

And now comes the said Alvah Fuller, by O. D. Day and B. C. Cook, his attorneys, and says that in the record and proceedings aforesaid, and in the rendition of the judgment aforesaid, there is manifest error in this, to-wit:

1st. The Court erred in permitting the witness, George M. Miers to testify in said cause.

2nd. The Court erred in permitting said witness to answer as what he told the plaintiff in relation to a mortgage.

3d. The Court erred in overruling the objections made by plaintiff to the questions asked said witness, and in permitting said witness to answer said questions.

4th. The Court erred in allowing the record of the chattel mortgage aforesaid to be read in evidence.

5th. The Court erred in refusing to admit proper evidence offered by the plaintiff.

6th. The Court erred in admitting improper evidence offered by defendant.

7th. The Court erred in refusing to give the instructions asked by the plaintiff, which were refused severally.

8th. The Court erred in giving the instructions asked by defendant, and each of them severally.

9th. The Court erred in overruling the motion for a new trial.

10th. The Court erred in rendering the judgment aforesaid in manner and form aforesaid.

Reference to the law in the case :

1 Scammon, Page 286.

11 Ill. R., page 618.

19 Ill. R., page 274.

22 Ill R., pages 45 and 675.

18 Ill. R., pages 401 and 402.

24 Ill. R., page 633.

1 Scammon, page 296.

R. S. of 1845, page 92.

B. C. COOK
And A. M. HERRINGTON,
Attorneys for Plaintiff.

39

Fuller
vs
Page

Abstract

Filed Apr. 17th 1861

L. Leland
Clerk

Attorneys for Leland.

Reference to the law in the case:

1. Criminal Code Sec. 280.

2. In the case of the State vs. Page.

3. In the case of the State vs. Page.

4. In the case of the State vs. Page.

5. In the case of the State vs. Page.

6. In the case of the State vs. Page.

7. In the case of the State vs. Page.

8. In the case of the State vs. Page.

9. In the case of the State vs. Page.

10. In the case of the State vs. Page.

10th. The Court cited in sustaining the judgment rendered in

3th. The Court cited in overruling the motion for a new trial.
and each of them separately.

8th. The Court cited in giving the instructions asked by the defendant, which were refused separately.

11th. The Court cited in refusing to give the instructions asked by the defendant.

6th. The Court cited in admitting improper evidence offered by the plaintiff.

5th. The Court cited in refusing to admit proper evidence offered by the plaintiff.

4th. The Court cited in allowing the receipt of the check made by the plaintiff.

3th. The Court cited in overruling the objections made by the plaintiff to the admission of the witness and in permitting him to testify.

2nd. The Court cited in permitting the witness to answer as to liability in said case.

1st. The Court cited in permitting the witness George M. Miller to testify in said case.

Supreme Court of the State of Illinois.
In Third Grand Division.

ABSTRACT OF RECORD.

State of Illinois, }
KANE COUNTY, } April Term, A. D. 1861.

ALVAH FULLER vs. NATHANIEL PAGE.

Error from Kane County Circuit Court.

Page
of
Rec'd

- THIS was an action of TRESPASS, commenced in the Court of Common Pleas of the City of Aurora, County aforesaid, and taken, by change of venue, to the Kane County Circuit Court.
- 2 Record and proceedings before the Court of Common Pleas, of the City of Aurora.
- 3 Record of demurrer of Plaintiff to Defendant's Pleas.
- 4 Demurrer overruled, and leave given Plaintiff to reply, and judgment vs. plaintiff for costs. Plaintiff makes motion for change of venue, which is granted, and venue changed to the Kane County Circuit Court.
- 5 & 6 Certificate of Clerk of Common Pleas of Aurora, and issuing of Summons from Kane County Circuit Court.
Summons in Trespass, ad. dam. \$5000.
- 7 Declaration in Trespass, in usual form, for taking and carrying away the goods and chattels of Plaintiff, consisting of a lot of drugs, medicines, paints, oils, liquors, brushes, stationery, toilet articles, &c., &c., therein mentioned and enumerated.
- 21 Record of plea of general issue.
- 22 Plea of property in defendant, and Nathaniel Sawyer and Isaac Ezmay, and denying property in plaintiff.
- 23 Plea that on the 23d day of December, A. D. 1857, at Aurora, one George W. Myers was indebted to Nathaniel Sawyer, Isaac Ezmay and defendant, doing business under the name and style of Sawyer, Page & Co., in the sum of \$507,67; and said Myers being so indebted, and the owner of the goods and chattels in the declaration mentioned, to secure the payment of said indebtedness, then and there sold said goods and chattels to said Sawyer, Paige & Co., conditioned that said sale should be void upon the pay-

22 ment of said sum of money, and that the plaintiff well knew of said indebtedness and said bill of sale, and after the making of said bill of sale, and before the Trespass complained of, the plaintiff intending to cheat, &c., the said Sawyer, Page & Co., procured said Myers to sell said goods and chattels to him, and that default being made in the payment of the monies mentioned in said bill of sale, the said defendant, one of said firm of Sawyer, Paige & Co., by virtue of said bill of sale, took said goods and chattels, which are the supposed trespasses, &c.

24 Plea, that George W. Myers was honestly indebted to Sawyer, Page & Co., in \$507,67, and Plaintiff well knew of such indebtedness; and being so indebted, said Myers gave a bill of sale in substance following, to-wit: Dec. 28th, 1857:

"Know all Men by these Presents: That I, George W. Miers, of the city of Aurora, Kane county, and State of Illinois, in consideration of the sum of \$507,67, to me paid by Nathaniel Sawyer, Nathaniel Page and Isaac Ezonay, of the firm of Sawyer, Page & Co., of Chicago, Cook county, and State of Illinois, the receipt whereof is hereby acknowledged, have bargained and sold, and by these presents do grant bargain and sell unto the said Nathaniel Sawyer, Nathaniel Page and Isaac Ezonay, and their assigns, the following goods and chattels, to-wit: All Furniture, Drugs, Dye-Stuffs, Liquors, Paints, Oils and Merchandize generally, now in the Drug Store of said George W. Miers, situated in the West Division of said city of Aurora, Illinois, in building formerly occupied by Hall & Brothers, as Druggists, To have and to hold all and singular, the said goods and chattels, unto the said Sawyer, Page and Ezmay, and their assigns, forever.

to *Provided, Nevertheless,* That if the said George W. Miers shall well or truly pay, or cause to be paid unto the said Sawyer, Page and Ezmay, or their assigns, five promissory notes, bearing date Dec. 23, 1857, four of said notes being for one hundred dollars each, payable respectively, one on the first day of February next, one on the first day of March next, one on the first day of April next, one on the first day of May next, one of one hundred and seven 67-100 dollars, on the first day of June next. Each of said notes bearing ten per cent., payable to Sawyer, Page & Co., of Illinois, as they severally become due, then this Mortgage to be void, otherwise to remain in full force and effect.

In Presence of }
A. B. FULLER." }

GEORGE W. MIERS.

L. S.

That at the time of making said instrument of writing said Myers was the owner and possessor of the property therein mentioned, and the plaintiff, knowing the facts, fraudulently purchased said property of said Myers for a mere nominal sum, with the intent of defrauding said Sawyer, Page & Co., out of their security, which they had by said bill of sale; and the defendant, as one of said firm of Sawyer, Page & Co., on the default of the payment of the monies

27 in said instrument mentioned, took possession of said goods and
27 chattels, which are the said supposed trespasses, &c.

27 Plea of property in defendant and Nathaniel Sawyer and Isaac
Ezmay, trading and doing business under the name and style of
Sawyer, Page & Co., and denying property in plaintiff.

28 Replication to second special plea, denying property in the defen-
dants. Also, replication to the fifth special plea, denying property
in the defendants, as in said plea alleged.

29 Replication to third and fourth special pleas, averring that if any
bill of sale or instrument of writing was made by George W. My-
ers to Sawyer, Page & Co., as in said pleas alleged, the same was
not entered upon the Justices' Docket in the district in which the
said George W. Myers resided or otherwise; nor were the names
of either the mortgagor or mortgagee upon said Justices' Docket;
nor was a description of the property entered upon his Docket;
nor was the possession of the property ever in Sawyer, Page &
Co., but in George W. Myers.

30 Stipulation that all matters of difference may be offered in evi-
dence under the general issue, the same as though special pleas had
been filed.

31 Empanelling of Jury, &c.

32 Verdict of Jury, defendant not guilty.

33 Plaintiff moves for new trial; motion overruled, and judgment
on the verdict, and order of execution.

34 Bill of exceptions.

34 George W. Miers, 2d, testified on direct examination for the
plaintiff, that George W. Miers sold to plaintiff on or about Februa-
ry 12th, 1858, his stock of drugs and other goods, in the store oc-
cupied formerly by Hall & Brothers as a Drug Store, in West Au-
rora, in the city of Aurora; the parties took an invoice of said goods,
& assisted by witness; were some two or three days in taking in-
voice. Plaintiff took possession of said goods immediately after
the sale, and continued in the possession of the same until on or
about the 3d day of March following, when the defendant and oth-
ers took them away. The key was delivered by George W. Miers
to plaintiff, after the sale, and I was hired by plaintiff as clerk, to
sell the goods, and plaintiff was to pay me the same wages that
35 George W. Miers had done. I continued as clerk for plaintiff, af-
ter the purchase, until the goods were taken by defendant, and
plaintiff paid me therefor. The amount of goods taken by defen-
dant on or about March 3d, 1858, amounted to \$1506.47, as near
as could be ascertained. Plaintiff purchased goods of George W.
Myers, February 12th, 1858, amounting in all to \$1873.17. Plain-
tiff purchased goods after he bought of said Miers amounting to
36] \$42.35. Amount of goods left by defendant in the Store on March
3d, 1858 aforesaid, was \$344.47, and amount sold by plaintiff after
his purchase of Miers, was about \$64.61. I did part of the writ-
ing in making out the invoice. The goods were estimated at cost
prices from the bills of purchase. I think we had all or nearly all

36 the original bills of purchase.

36 Cross examination: When defendant took the goods he told plaintiff that he could select out his goods, if he had any. Never heard anything about a mortgage on the goods until after sale to plaintiff. There was a talk about taking the goods to Kansas. Plaintiff had a son there. George W Myers assisted in the store at plaintiff's request, after his sale to plaintiff. Some of the goods which were not purchased of Miers, were taken by defendant, such as opium, stationery, pens, paper and envelopes, were taken before defendant said to plaintiff that he might select the goods he had bought since his purchase of Miers. Miers purchased after December 28th, 1857, part of the goods bought of Miers by plaintiff, and taken by defendant, amounting to about \$47,00.

37 Bills of said goods, which were purchased of Burnham & Smith,
38 offered in evidence, and copies of the same given in bill of exceptions.

39 The invoice which I now hold in my hands, is as follows, and is the one I spoke of in my direct examination.

39 [Here follows a copy of the said invoice, it being an invoice of
to the goods mentioned in plaintiff's declaration.]
71

71 L. R. Wagner testified for plaintiff that he was subscribing witness to a bond now held by him; [here a bond of plaintiff to Geo. W. Myers, was shown to witness, of 160 acres of land in Michigan;] that he became subscribing witness to the same by request of plaintiff and Geo. W. Miers; this was at the date of the bond—that plaintiff told witness at the said time, that the bond was given in part pay for the goods he had been purchasing of Miers, the drugs, &c. (Defendants objected to witness being allowed to testify to statements of plaintiff; objection overruled, and defendant at the time excepted.) There was also talk between Miers and plaintiff about some Kansas land also being turned out in pay.

72 The plaintiff here offered in evidence to the jury, the bond described by Mr. Wagner, and of which he was a subscribing witness. Which is a bond for a deed of the South East quarter of Section 35, in Township No. 2, North of Range 14 west, containing 160 acres of Land, conditioned for the executing of a deed by plaintiff to said Miers in three months from the date thereof.

72
&
73

Copy of said bond.

74

Plaintiff rested his case.

74

Defendant offered as a witness, George W. Myers, Sen.; examined on his *voir dire* by plaintiff, and testified that he was the Geo. W. Myers who sold the goods in question to the plaintiff, whereupon plaintiff by his counsel at the time objected to his being sworn as a witness, which objection the Court sustained and the defendant then and there offered a release to said witness. (There is no copy

74

74 of the release in the bill of exceptions, the plaintiff being unable to obtain said release to make a copy of the same.)

75 The defendant then offered again said George W. Myers as a witness, and plaintiff then and there objected to said witness being sworn on said trial, or testifying in said cause. Objection overruled by the Court, and witness permitted to testify in chief; to which ruling of the Court the plaintiff then and there excepted.

75 George W. Miers then testified, that he was owing Sawyer, Page & Co., of Chicago, on the 28th of December, 1857, about
75 \$500 or more. The defendant here asked witness whether or not he informed the plaintiff that there was a mortgage on the goods before his sale to plaintiff; if Yea, what information he gave him. To the answering of which plaintiff then and there objected; objected:
76 objection overruled by the Court, to which ruling of the Court plaintiff then and there excepted.

Witness answers—I did tell plaintiff; plaintiff and myself went to Albert Fuller's office; Albert thought the mortgage good—plaintiff thought it not good; had a copy of mortgage at the time; we could not find that the mortgage was entered upon any Justice's docket. I waited upon customers, after sale to plaintiff, when requested so to do. Plaintiffs clerk did not understand the business; had no interest in the goods after sale to plaintiff; were two or
76 three days making the invoice; goods sold at cash price; didn't get a deed of Kansas land; went to Kansas to preempt it, but did not; plaintiff preempted it. Gave a bill of sale of the goods to plaintiff at the time of sale.

77 Cross Examination: The sale of the goods by me to plaintiff was on or about February 12th, 1858, took an inventory of the goods. (The inventory offered in evidence and shown to George W. Myers, was shown to witness, who testified it was the inventory taken by them at the time of plaintiff's purchase.) I received in payment of the goods from plaintiff, at the time, a bond for 160 acres of land in Michigan, and that land plaintiff, at my request, afterwards deeded by warrantee deed to Alex. Martin. The Kansas claim of 160 acres I was also to receive in part payment. I went to Kansas to preempt the land, but found I couldn't on account of my wife not being there to make actual settlement. Plaintiff then went to Kan-
78 sas and entered it, with the understanding that he should have one-half the land for his trouble. The sale was made by me to plaintiff to get property whereby to pay my debts, and immediately after said sale, I offered the defendant before his mortgage became due, the land in Michigan in payment of his claim. I had no property in this State after the sale. We went to the office of Parks, who was defendant's lawyer, who advised him to take the land and said the mortgage was not good. The land in Kansas was a good claim,
78 and I was told by persons residing about the claim that it was worth \$1000.00.

78 Direct examination resumed: I sold to R. W. Hoyt the quit-
78 claim or bill of sale of the Kansas claim.

78 Did you, after plaintiff preempted the land, go to plaintiff to get
79 a deed of one-half of the land? Objected to by plaintiff; objection
79 overruled, to which ruling of the Court plaintiff then and there ex-
cepted.

79 Witness answered: I did, and plaintiff declined giving a deed
until he saw how this trial came out, and then he would do what
was right. I gave to plaintiff a bill of sale at the time I sold to
him, which provided that if the goods did not invoice at cost prices
to \$2000, I was to make up the difference sometime.

79 T. C. Williams testified—that he went into the store soon after
the goods were taken by Page; that the goods were in the building
80 formerly occupied by Hall & Bros., for a drug store. The defend-
ant then asked witness if he heard plaintiff say anything about the
existence of a mortgage on said goods at the time of the purchase
by the plaintiff; if so, what? Objected to by plaintiff; objection
overruled by the Court, and to the overruling of the Court plaintiff
80 then and there excepted. Witness answered, that he heard plain-
tiff say that there was a mortgage on the goods, but that it was so
drawn that it was not legal or good for anything; this conversation
was in the store after the goods were taken.

80 Thomas Newlan testified—that he knew where the goods in
question were, and owned the building. It was formerly owned by
81 Hall & Bros., and used for a drug store; witness leased to Myers
& Lightcap; didn't see any change in the apparent possession after
the sale by Miers. Miers in shop waiting on customers same day
goods were moved.

81 Cross examination: Plaintiff paid me for the rent of the store
after the sale by Miers; paid 1½ months rent.

81 Riley W. Hoyt testified—that he purchased of George W. My-
ers and had assigned to him, the quit-claim of the Kansas land;
went to plaintiff to get a deed; plaintiff refused to give one, as he
said he had settled with Miers. Miers remained in the store the
same after sale as before.

82 William W. Walker testified—that he was in the store every
day after sale to Miers, and saw no particular change; that he pur-
chased some of the goods of Fuller, (plaintiff,) after the sale, and
that plaintiff also purchased goods of him for his store.

82 Williams testified—that he is clerk for Sawyer, Paige & Co.,
and went to Aurora and appraised the goods at about \$1000; the
goods were in the upper story of Woodworth's blacksmith shop;
defendant is one of the firm of Sawyer, Paige & Co., of Chicago,
Illinois.

83 Cross examination: Been in defendants' employ six years; went
to Aurora at defendants instance; didn't tell plaintiff my business;
went to Woodworth's shop alone and appraised goods about a year
after they were taken. Am still in defendants employ.

83 Affidavit of Nathaniel Page, that notes and mortgage were sto-
84 len from his coat, and that he has made diligent search and enquiry

for them and has entirely failed to ascertain their whereabouts.

84 Defendant then offered to read in evidence the Record copy of said chattel mortgage from George W. Myers to Sawyer, Paige & Co., to which plaintiff then and there objected; objection overruled by the Court and reading of the record peamiited.

86
&
87 Record copy of chattel mortgage.

88 Which ruling of the Court in overruling plaintiffs objection, and permitting said copy of mortgage being read, the plaintiff then and and there excepted.

88 Defendant then rested, and plaintiff then introduced as a witness
88 Mark Goulden, who testified—that he has been a druggist for some eight years, and once owned the goods in question; were a new stock; he sold them to Lightcap & Myers about one year previous to defendant's taking them; that he has examined the invoice made by Miers to plaintiff, and the cash price of the goods as there carried out, and knows the same to be correct, and that the same
89 corresponds with the invoice made by witness to Miers and Lightcap.

The plaintiff here rested.

Which was all the testimony offered in the hearing of the Court and Jury, by plaintiff and defendant, except the release to George W. Miers by Sawyer, Paige & Co.

Plaintiff asked the Court to instruct the Jury as follows :

89 1. The mortgage from Miers to Sawyer, Paige & Co., if any mortgage was ever given, is not valid against the rights and interests of any third person or persons, unless the actual possession of the property mortgaged was taken by the mortgagee, or unless the mortgagee provided that the property should remain with Miers, and was duly acknowledged and recorded.

2. If the mortgage which has been read in evidence, was executed and delivered by Miers to Sawyer, Paige & Co., yet it is not sufficient to make a lien upon the property therein named as against the rights of third persons, unless the actual possession of the property was transferred to Sawyer, Paige & Co., and if Paige & Co., did not take possession they have no right to hold it under said mortgage against Fuller, if Fuller purchased the property of Miers for a valuable consideration, and in such case it would make no difference whether Fuller knew of the mortgage or not at the time he purchased.

89 3. If Miers sold the goods in controversy to Fuller for a valuable consideration, Paige & Co. cannot attack such sale on the ground of fraud, unless they are judgment creditors of Miers or subsequent purchasers of the same property.

4. A sale of personal property is not complete so as to change

90 the property from the vendor to the purchaser, without a delivery of the thing sold.

91 5. In order to constitute a good consideration for the sale of goods it is not necessary for the plaintiff to prove that he gave the full value of them, or that he gave an equivalent. But if from the evidence the jury are satisfied the sale was not corruptly and fraudulently entered into, the mere inadequacy of price is not sufficient evidence to prove the sale a fraudulent one.

91 6. If the jury believe from the evidence that Miers sold the goods in question, and that a portion of the consideration of the sale of the goods consisted of a claim of land in Kansas, and that such sale was for a valuable consideration, the fact of Miers not entering the claim, or of Fuller entering the same afterwards under or by virtue of any agreement between Miers and Fuller whereby Miers had not as yet obtained the land, such subsequent act would not render void the contract between Miers and Fuller, of the sale of the goods in question.

91 7. If the jury believe from the evidence that Miers, the vendor, did remain in or about the store after his sale to the plaintiff, and that such remaining was done at the request of the plaintiff and bona-fide, such remaining would not be evidence of fraud; and all inference therefrom if thus explained, should be construed by the jury compatible with the fairness and honesty of the parties.

Plaintiff's refused instructions:

If the defendant undertakes to establish title to the goods in question by a bill of sale or mortgage from Miers to Sawyer, Paige & Co, it is necessary for the defendant to show that the mortgage itself should provide for the possession remaining with the mortgagor, and that the goods mortgaged should have been entered upon the Justice's docket in the district where the mortgagor resided; and also that a description of the mortgaged property should also be entered upon the Justice's docket; and that, unless the defendant, if he relies upon the mortgage for his title, has not proved such facts, he cannot by virtue of his mortgage, sustain his title as against the creditors of Miers purchasing for a valuable consideration.

93 If the jury believes from the evidence that Miers did give to Sawyer, Paige & Co., a mortgage on a portion of the goods in question, and that subsequently Miers added additional goods to the stock, as well also as did Fuller after his purchase of Myers, such additional goods would not be subject to the mortgage; and if the jury believe from the evidence that such goods were taken by Paige, they should find for the plaintiff the value of the same, and the declaration of the defendant made at the time of such taking, that if he owned any of the goods he might take them out, would not debar the plaintiff from the recovery of the same, if the defendant did take such goods without the authority of the plaintiff and against his consent.

93 Possession is necessary in order to transfer and render valid a sale of personal property, and in a contest between creditors equally meritorious, his is the best right who first gets possession of the goods.

To the Court refusing to give the instructions and each of them, as asked by the plaintiff and refused by the Court, the plaintiff then and there at the time excepted.

94 The defendant asked the Court to instruct the Jury as follows :

1. If the jury believe from the evidence that Fuller purchased the goods of Miers through fraud, malice, coven, collusion or guile, with a full knowledge of the mortgage of Sawyer, Paige & Co., and with intent to cheat or defraud, hinder or delay, Sawyer, Page & Co., out of their lien created by said mortgage, then as to all property thus mortgaged and taken under said mortgage by Paige, the law is for the defendant, and that too if Fuller paid a full price for the goods.

2. That the mortgage is good between Miers and Paige & Co., and conveys the title of the property therein described, to Paige & Co., as against Miers.

95 If the jury believe from the evidence that the plaintiff Fuller purchased the goods in question of Miers with a full knowledge of the mortgage of Paige & Co., with a fraudulent intent to defraud Paige & Co. of the benefits of their rights they had by said mortgage, then as to all property thus affected, the law is for the defendant; and such is the law if the Justice, A. B. Fuller, did not make a memorandum as required by the statute in his docket of the property mortgaged.

96 In determining the question of whether or not the sale from Myers to Fuller was fraudulent, the jury should take into account all the facts in the proof, the relationship if any between the parties, the consideration paid if anything, by whom received, the fact if it existed in proof of Miers selling all the property he had if proven, all the facts and circumstances in proof, the jury believe the sale to be fraudulent and made with intent to cheat and defraud, hinder and delay in collecting the debts of Sawyer, Paige & Co., secured by the mortgage on the same property so sold, then as to such property the jury should find for the defendant.

Defendant's refused instructions :

96 That the principal question for the jury to try in this case is, whether the sale of the goods in question from Miers to Fuller, was made for the purpose of cheating and defrauding Sawyer, Paige & Co., out of their lien upon the goods in question, which they had by virtue of their chattel mortgage in question; to this end the jury are instructed that said chattel mortgage is and was good as between

96 Miers, Paige & Co.; therefore, if the jury believe from the evidence that Fuller purchased said goods from Miers with a full knowledge of said mortgage, and without paying any real consideration for said goods, and that said purchase was made by said Fuller with the real intent of cheating and defrauding said Paige & Co., then, in law, said sale was absolutely void as against Paige & Co., and he acquired no title to the goods, and the jury should find the defendant not guilty.

Miers knowing of defendant's mortgage, such knowledge is a fraud in law, and the jury should find for the defendant.

If the jury believe from the evidence that Fuller purchased the goods knowing of the mortgage of Paige & Co., and acting upon such knowledge he deliberately planned to avoid said mortgage and deprive Paige & Co. of any right they might have under the same, such facts would constitute a fraud.

If the jury believe that the sale from Miers to Fuller was fraudulent and merely colorable with intent to cheat or defraud, hinder or delay Paige & Co. out of their rights secured by said mortgage, then as to all property thus affected the law is for the defendant, and in determining that question the fact, if it is proven that Miers still remained in the store, that there was no change in possession, that the clerk did not know of the consideration of the sale and all the facts in proof.

97 If the jury believe from the evidence that Fuller purchased the goods for the purpose of defrauding Paige & Co., then in law said sale was absolutely void as against Paige & Co., and that he acquired no title to the goods, and the jury should find the defendant not guilty.

If the jury believe that Fuller purchased the goods of Miers, subject to the mortgage, and that he was simply to take Miers' place, then the mortgage being good as between Paige & Co., is also as to Fuller, and that too without any fraud on the part of Fuller.

98 If the jury believe that Fuller purchased the goods of Miers, subject to the mortgage, and he was simply to take Miers' place, then the mortgage is good and will hold the property as against Fuller.

If the jury should find the title to the goods mentioned in the mortgage in the defendant, that the plaintiff mixed other goods with them and refused to take them out when requested by defendant, that he cannot recover the goods so mixed.

If the jury believe from the evidence that the sale from Miers to Fuller was fraudulent, and that Fuller mixed up other goods with those thus purchased, and mixed them for the purpose of having some of his goods taken, and refused to separate them when requested, then the law is for the defendant.

If the jury believe from the evidence that the sale from Miers to Fuller was fraudulent, and that Fuller mixed up other goods thus

purchased of Miers, and refused to separate them when requested by defendant, that he cannot recover for the goods so mixed up.

To the giving of which instructions, and each and every one of them, the plaintiff, by his counsel, then and there at the time excepted.

The jury retired, and subsequently returned into Court with a verdict for defendant.

Whereupon, the plaintiff made his motion for a new trial, for the following reasons:

ALVAH FULLER,	}	<i>May Term of Kane County Circuit Court,</i> A. D. 1859.
vs.		
NATHANIEL PAIGE.		

And the plaintiff comes and moves the Court herein for a new trial, for the following reasons, to-wit:

1. The verdict was contrary to law and evidence.
2. It was contrary to the evidence.
3. The Court erred in refusing the plaintiff's instructions, and each of them.
4. The Court erred in giving the instructions of the defendant, and each of them.
5. The Court misdirected the jury in instructions.
6. The Court erred in admitting incompetent evidence, and excluding that which was competent.
7. In overruling the motion for a new trial.
8. In allowing the defendant to release George W. Miers, and allowing him to testify on the trial.

DAY, Att'y for P^{tf}.

100 Which motion for a new trial was overruled by the Court, and judgment thereupon rendered for the defendant.

100 To the overruling of which motion for a new trial, the plaintiff by his counsel, then and there, at the time, excepted; and prays that his bill of exceptions may be signed and sealed by the Court, which is done.

ISAAC G. WILLSON. { L. S. }

Here follows the certificate of the Clerk.

And now comes the said Alvah Fuller, by O. D. Day and B. C. Cook, his attorneys, and says that in the record and proceedings aforesaid, and in the rendition of the judgment aforesaid, there is manifest error in this, to-wit:

1st. The Court erred in permitting the witness, George M. Miers to testify in said cause.

2nd. The Court erred in permitting said witness to answer as what he told the plaintiff in relation to a mortgage.

3d. The Court erred in overruling the objections made by plaintiff to the questions asked said witness, and in permitting said witness to answer said questions.

4th. The Court erred in allowing the record of the chattel mortgage aforesaid to be read in evidence.

5th. The Court erred in refusing to admit proper evidence offered by the plaintiff.

6th. The Court erred in admitting improper evidence offered by defendant.

7th. The Court erred in refusing to give the instructions asked by the plaintiff, which were refused severally.

8th. The Court erred in giving the instructions asked by defendant, and each of them severally.

9th. The Court erred in overruling the motion for a new trial.

10th. The Court erred in rendering the judgment aforesaid in manner and form aforesaid.

Reference to the law in the case:

1 Scammon, Page 286.

11 Ill. R., page 618.

19 Ill. R., page 274.

22 Ill. R., pages 45 and 675.

18 Ill. R., pages 401 and 402.

24 Ill. R., page 633.

1 Scammon, page 296.

R. S. of 1845, page 92.

B. C. COOK

And A. M. HERRINGTON,

Attorneys for Plaintiff.

United States of America }
State of Illinois Kane County }

Pleas before the
Honorable Isaac G. Wilson Judge of the
Fifteenth Judicial Circuit in the State of
Illinois and presiding Judge of the Circuit
Court of Said Kane County at a term of
said court begun and held at the Court
House in Genoa in said Kane County
on the Sixteenth day of May being the
third Monday of May in the year of
Our Lord One Thousand Eight Hundred
& Fifty Nine and of the Independence of
the United States the Eighty Third

Present The Hon. Isaac G. Wilson Judge
" Ethan J. Allen Sheriff
" Paul R. Wright Clerk

attest
Paul R. Wright }
Clerk }

Be it remembered that heretofore I witness the
9th day of November A.D. 1858 there was filed
in office of the clerk of said circuit court
a copy from the record of the court of
Common Pleas of the city of Aurora in said
county & State which is in the words & figures
following To wit:

United States of America }
State of Illinois } City of Aurora }

Page 2.

Plas Before the Honorable Alexander
C. Gibson the Judge of the Court of
Common Pleas of the City of
Aurora Kane County State of
Illinois at a Term of said Court
began & holden at the Court room
at the City of Aurora aforesaid on
the Twentieth day of June in the year of
our Lord One Thousand Eight Hundred
and Fifty Eight

Present the Honorable Alexander C. Gibson Judge
Richard G. Montony State attorney
George E. Corwin Sheriff

Attest
James G. Barr }
Clerk }

Be it remembered that on the 22^d day of June
A.D. 1858 the same being one of the days of
the June Term of the Court of Common
Pleas of the City of Aurora the following
among other proceedings were had and
entered of record To wit:

Page 3.

Abrahm Fuller

v
Nathaniel Page

} Excess

This day comes the Plaintiff
and enters his ~~motion~~ Demurrer to defend-
ants Plea herein

And afterwards Do wit: on the 23^d day of
June A.D. 1858 the same still being one
of the days of said Term of said Court
the following among other proceedings were
had and entered of record Do wit

Abrahm Fuller

v
Nathaniel Page

} Excess

This day the cause coming
on to be heard upon Plaintiffs demurrer to
defendants Pleas & the Court not being
fully advised takes time to consider.

And afterwards to wit on the 24th day of
June A.D. 1858 the same still being one of
the days of said Term of said Court the
following among other proceedings were
had and entered of Record Do wit

Abrahm Fuller

@

Page 4. Noah Fuller

Nathaniel Pago

Ex parte

This day this cause ^{again} coming on to be heard upon the Plaintiff's demurrer to defendant's plea and the court now being fully advised overrules said demurrer and on Plaintiff's Motion leave is given by the court for him to reply. Therefore it is considered by the court that the defendant have and recover of the Plaintiff his costs about this demurrer expended and have execution therefor.

And afterwards Do sit. on the same day last mentioned the following among other proceedings now had and ended of record Do sit:

Noah Fuller

Nathaniel Pago

Ex parte

This day again comes the Plaintiff and enters his motion for a change of venue of this cause and the court being fully advised it is ordered that the venue in this cause be changed to the same county circuit court in the thirteenth judicial circuit of the State of Illinois.

page 5. State of Illinois }
Kane County } ss
City of Aurora } I James G. Barr clerk
of the court of Common
Pleas of the city of Aurora do hereby certify
that the above and foregoing is a true
& complete copy of all the Proceedings
had in said Cause and entered of
record in our said Court.
And I do further certify that the
accompanying papers marked with letters
from A to P inclusive are all the Papers
now on file in said court in said cause.
Witness my hand and the seal
of said Court at Aurora this
First day of October A.D. 1858
James G. Barr
Clerk

Seal of
Court of
Common Pleas

And also on the said 9th day of November
A.D. 1858 a Summons was filed in the office
of the said clerk of the circuit court afore-
said in the words & figures following to wit:

State of Illinois }
County of Kane } ss
City of Aurora }

The People of the State of
Illinois to the Sheriff of said
county greeting: We command you that you

page 6.

Summon Nathaniel Paige if he shall
be found in your county personally to be
and appear before the court of common Pleas
of the city of Aurora in said County on the
first day of the next term thereof to be holden
at the Court house in the city of Aurora
in said County ~~on the first day of the~~
~~next term thereof to be holden at the~~
~~Court House in the city of Aurora in~~
~~said County~~ on the second Monday of March
1858 to answer unto Abiah Fuller in a
plea of Trespass to the damage of said
plaintiff as he says in the Sum of Five
Thousand Dollars

And have you then and then this
writ with an endorsement thereon in what
manner you shall have executed the same
Witness James G Barr Clerk of
our said Court and the Seal
thereof at Aurora aforesaid this
4th day of March A.D. 1858

James G. Barr - clerk

Endorsed

Filed March 5 1858

J. G. Barr - clerk

page 7.

And afterwards Do wit: on the said 9th day of November 1858 there was also filed in the office of the clerk of said circuit court a Declaration in the words & figures following
Do wit

Abrah Duller } The Court of common Pleas of
v } the city of Aurora Kane County
Nathaniel Paige } State of Illinois from A.D. 1858

Abrah Duller plaintiff in this
suit by Day & Wagner his attorneys complains
of Nathaniel Paige defendant in this suit
who has been summoned of a plea of Despoise
Or that the said defendants on the third
day of March A.D. 1858 and on divers other
days & times between that day and the day
of commencing this suit with force and
arms at and within the City of Aurora
County of Kane and State aforesaid
Seized Took and Carried away the Goods &
 Chattels of the said Plaintiff Do wit: Three
Gallons of Sweet oil, One Gallon of Castor oil
One gallons Varinsh Two pounds blackberry
root One pounds Chloride of Lime one pound
alcointe One pounds Flax seed One pounds
tubois Three pounds of Canary seed Three pounds
of hemp Ten pounds cinnamon leaves
One gross Sarsaparilla One pounds Iceland

page 8. Moss Four pounds Irish Moss Three
pounds lemon Peel Two pounds Juniper Stone
One pound Prussian Blue Two pounds of white
glue Three pounds Isinglass Five pounds
Elm bark ~~Four pounds Elm Bark~~ four
pounds Chalk Three pounds pulverized
Sassa One pound of peppermint One carb.
nate of Iron Two pounds lbs pulverized
cloves Two pounds Turkey Rishi One
pound of Squills Two pounds of Cayenne
Pepper One pound of pulverized Rishi Two
pound pulverized ginseng Two pounds of
fenugreek One pound Mandrake One pound
orange Peel one pound arnica Blisters Two
pounds Lavender Two pounds Blood Root
Two pounds Pulvis Sanguis Two pounds
Golden Seal Two pounds Quassia Two
pounds Specac Pulvis Three pounds Valerian
One pound Cubebs Two pounds cud Bear
One pound pulvis Mustard Two pounds
cinnamon One pound nutmeg Two pounds
of Iron Mice One pound gum Myrrh Two
pounds Nut gall pulvis One pound cuttle
fish Two pounds pulvis fumigant One pound
white wax one pound pulvis acacia Two pounds
aron-root one pound Magnesia one pound
Gentian Two pounds Ginger root ^{two pounds} also one pound
passion one pound Mace one pound

page 9. Cardamum Seed Two pounds Spanish Illis
One pound Mustard Seed One pound
lobelia One pound pulvis ascorbata one pound
Euphorbium Two ~~Cardamum~~ one pound ~~can-~~
~~hardt's~~ pounds Muriate ammonia one pound
pulvis Cathartidis one pound Cardamum one
pound coly cinch Two pounds Rochelle salts
one pound annise seed one pound lobelia
one pound aloes Scription one pound
Green Myrrh one pound Sena one pound
Valeriana one pound Jallop one pound
gamboge one pound lobelia one pound
Jumorian Bark one pound Liquorice twelve
bottles of Jaynes Expectoant One bottle
of alterative One bottle of Hoffmanns
Littus One bottle Balsam Wild cherry One
bottle Ayer's Cherry Pectoral One bottle
nature Cologogne One bottle of Sanyrs
Extract of bark One bottle of Liniment
of Oat One bottle of Wood's Hair dye
One bottle and allus dye One bottle
Tricophurus One bottle Lyons Catharon
One bottle gargling oil (large) One bottle
of the Balsam of a Thousand flowers One
bottle of Ogers Ambroscation One bottle
Janes Balsam One bottle Cornufoxy
One bottle Mustang liniment One
bottle Arabian Liniment One bottle

Osgate's Cordial Ombro bottles Strawberry
 Cordial Balsam Ombro bottles Radway's Ready
 relief Ombro bottles Ripstein Ombro bottles
 of Davis' Pain Killer Ombro bottles Indian
 Colicogen Sountee pounds of Emory One
 pound Box Wood bark one pound Juniper
 bark One pound Burdock root one pound
 Sweet fern one pound raspberries leaves
 one pound Summer Savory one pound life
 root one pound Spikenard one pound
 black alder one pound angelica root One
 pound Juniper bark one pound Wild
 Turnip one pound Rose leaves Two pounds
 Solomons Seal Two pounds yellow dock
 root one pound calcium One pound
 annatto Three pounds brimstone Ombro
 pounds Brimstone Two pounds Blue Swallow
 one pound cults foot Amoreem Holibon
 one pound baby bark One pound prickly
 ash Two pounds skunk cabbage Two
 pounds dug root Two pounds Canberry
 One pound cohush one pound Stillingia
 One pound bitter sweet Bark (red) One pound
 Dandelion root one pound bitter root one pound
 Black root Two pounds Scammonium one
 pound White ash bark Two pounds Blue
 cohush one pound of gum Eragacanth
 Two pounds Sal Soda arnica seed Two pounds

page 11

ounce Sord Amloz pounds oat Meal Three
pounds pumice stone Four pounds Rose Pink
One pound red chalks one pound aloes
one pound ginger root one pound gum
arabic One pound of Burgundy pitch One
pound Snake root Two pounds Sina One pound
gum guaiac one pound Red Pher one pound
camomile flowers Three pounds Selt-Marm
Blue One pound trace De Ceanna one pound
Squills one pound ~~Calto~~ Ruscolumb one
pound Spice one pound Jallop one pound
Isinglass Three pounds pulvized aloes Two
pounds Guassia Eight pounds coriander seed
Three pounds bapery bark Three pounds pluney
root one pound poppy capsules Two pounds
bitter root Three pounds lady slippers Two pounds
pluney root (pulvized) Two pounds of Scullcap
one pound berries one pound pulvized
Lincon Eight oz oxalic acid Three pounds
pulvized lobelia One pound balm Giltad buds
Two pounds Musk Mellon one pound mandrake
one pound colts foot Two pounds cranes bill
Three pounds Golden seal one pound Natron
one pound fennell seed Two pounds shunk
cabbage Two pounds Elm bark Two pounds
elecampagne one pound burdock root one
pound birth root Two pounds Mandrake
Two reams wrapping paper Fifty paint-brushes

page 12. one pair scales Two sets of brass weights
Twenty gallons Special Jars one gallon Small
Mouth four $\frac{1}{2}$ gallons Jars Embos Quarts
pans four pint Jars Twenty Small Jars Two
Show Globes Six gallons colored fluid in
globes one Show case one Show Stand
One counter one Desk Stand one coal box
One Metal Jarsign one Camphene lamp
Plaster image one gallon Kato foot oil can
One pound Calchum seed Two pounds Spirits
Coriander caned one pound cinnamon
water one pound fumigal Nine pounds ^{bottles}
sweet oil One gallon cold fluid Three gallons
Port wine Two of Madeira one of Cherry one
barrel bourbon Whiskey Three gallons Denner
varnish Three gallons Turpentine Twenty
gallons camphene Forty gallons Linseed oil
Forty gallons boiled oil Twenty gallons
lamp oil Embos gallons peach brandy Six
gallons Madeira Nine Embos gallons St. Louis
Rum Three gallons Sumatra Twenty gallons
of Brandy three gallons Cherry wine Forty
gallons port wine Forty gallons Brandy Thirty
gallons Bourbon Whiskey Twenty gallons ^{common}
Whiskey Forty gallons of currant wine four gallons
of castor oil Twenty bottles of castor oil Fifty
Bottles of Godfrey's cordial Two Hundred flint
vials one Hundred pint flasks Embos

4
page 13. Bottles Hair oil one hundred 4 oz vials one
Hundred vials Amlo gallons Turpentine varnish
ten large tin cans two sets Measurs two
funnels one tin oil Pump Show oil drains
one Hundred boxes pills two pails one
Sprinkler Elder flowers Spirit from paper
Show apples one pound ardisin one pound
ointment one pound cantharides Amlo
Jaw one gallon of the following oils Do not
Hemlock Cubeb Spruce Cloves wormwood
laurel Wintergreen annis Sassafras worm
seed amber pincery Almonds Juniper Rose-
Mary Spurrment Star nitric acid Cassia
solum one ounce Spincture castor four
ounces chloroform Amlo ounces Copivia
two ounces Spirit Mandaria one ounce
anise egot one ounce Syrup Iodine one ounce
phosphoric acid Show ounces Butte castor oil
six ounces, spachders Amlo paper large one
pound tin foil Show Books gold leaf two
Dusters United States respirator two
pounds Chloride lead four francs Five
Masks one pill till four glass funnels
Amlo glass graduated Measurs Ream
filtering paper forty four scoop golden
extract thirty papers British lustre three
pounds kinger two pounds Resin ten pounds
extract logwood four pounds Scotch snuff

page 15. Sloans condition powder twenty bottles each
of British and Harlem oil diamond cure
Magnetic ointment Holoways ointment Twenty
boxes Sloans ointment Fifty bottles Eastwicks
eye cure Emulor bottles Hunters bottles
Emulor bottles Hoopes cordial Eridhyes oint-
ment Forty barrels County Keys Sea bottles
cod liver oil twelve bottles claret wine Emulor
bottles Bay rum Twenty Syringes Emulor catha-
ters Bargas Emulor bottles carmine Emulor
Druses Twenty Suppositories Forty Syringes
Emulor Male catheters Six pounds acetate Potash
Six pounds Salts tartar Six pounds Iodide
Potasso Six pounds calomel Emulor bottles
eye water Emulor bottles husbands Magnesian
scotch candy Vermifuge ten boxes Siddleys
Powder Emulor ounces Turmin Eight ounces
Colodon Six ounces chloride zinc Two ounces
Styrachnine Six ounces Hydrarganic acid Six
ounces Crozoti Six ounces extract bark
one ounce nitrate silver Six ounces Turck
Silver Six ounces Musk Six ounces citrate
iron Six ounces creation Six ounces Rhod-
oran Six ounces Rhubarb Six ounces
Sanguinaria Six ounces ylsennet Six
pounds emery Six pounds Borax amber
Indian Hemp Six pounds Persian
Prava Six pounds white pine Turpentine

page 16. Ten pounds red sand forty pounds alum
fifty bunches forty Charvois skins Ten pounds
Sponge twenty fluid ounces glycerine points
fifty muffle shells twenty Karsung bottles
Dip jars One thousand corks five pounds
winter bark forty packing bottles One Hun-
dred pounds borax One hundred pound
red lead fifty pounds kumtan red One
Hundred pounds whiting One Hundred
pounds white lead One Hundred pounds
yellow ochre Sixty pounds Lamp Black
fifty pounds justic fifty pounds red wood
One Hundred pounds of the following
articles Do nit: Log wood Madras White
chalk Gum allum coparas Bicarbonate
soda gum camphor twenty bottles ink
forty pounds brown yellow & green Ten
pounds american Vermillion twenty pounds
Paris green in oil One Hundred Drawers
Ten pounds spirits nitre twenty pounds
of the following articles Do nit: Spirits
Ammonia Nitric acid Muriatic acid Oil
Sarsaparilla Calciind Magnesia gum
Kum Rose Mary Oil Lavender cassia oil oil
peppermint oil Storaxwood Cloves Hemlock
Almonds Wintergreen Oregano Venice Sassa-
parilla potash fifteen pounds sand paper One
set of Drawers Ten pounds hops Ten pounds

Page 17. Yum Arabic Ten pounds cattle flesh Ten
pounds Burgundy pitch Shitum pounds
Slap sud Ten pounds orange pul Ten
pounds Mass Ten pounds gum Shellac
Two pounds Structure stand Twenty pounds
ground flax seed Twenty Bath Brick
Ten pounds of the following articles to wit:
Bonnet-Sprunnet-Bugle curanto lances
Tanga peppermint catnip Hysof Mullin
Twenty paper omnium Ten pounds Kumban
poundy Smulw omies Cold thread Smulw omies
principium Ten pounds bladona one pound
Motherwort peruroyal one pound acornito
Twenty pounds each of the following articles
to wit lobelia Camposition Hops Sweet
bugle garden Calumdim Catnip Bonnet
Scabrous Horse round Hypan parsely livianat
life root Hysof one Hundred corns Fifty
bottles into Ten cork serums Twenty into
stands Twenty wanes bill paper Ten
gumms legal cap Fifty Hair pencils Twenty
dozen each of pens & pencils Extracts lead
pencils Hrights one Hundred paint brushes
Ten pulthy Kins Ten pound extract Kumban
Five pounds extract Gentian Five pounds
Hrights shade Twenty pounds each of the
following articles to wit: Spannum
Galum Log wood acornito Culycuth

Blue Pills Confusion of roses Ex of Dandelion
 Blue ointment Extract of Guassia Balsam
 Ten ounces Oxy Veronica Ten ounces pulv.
 Rhi Ten pounds Tincture Asafetida Ten
 pound Peladonia Ten pounds of each of the
 following articles Do not Dyabatus Ointment
 Cinnamon acornite alois Pim ~~o~~
 copricum Soap & Camphor acetate Oulo
 Myrrh cantharidis Valerian Iodine Rhi
 Salina Sandarum purgior quacs lobelia
 Veronica guttan Chloride Iron Suppiment
 Water min Amboemay Speac Squills
 Red alder Slippy Elm Ten comfrey Lavender
 Red Shornock berries ginger root Elder
 Iron wood Birch root Eucampain cranio
 bill Pluney Root Golden seal Sulphate
 Zinc Spumiciti lac Sulphur cantharidis
 Copras Amgar redyris Jera Dart
 Emulic Kins cubibi cochonol palam
 Chloride Soap Stone Snuff beans Iron
 powder pulverized salt niter Castor cobalt
 Red precipitate Sulphate of Iron Cayenne
 Supper Peruvian Bark Cammonile Flowers
 Tartaric acid Lays starch Spruce Gum
 Pink Root Blood Root coporia Borax Drop
 Black Ten poor man's plaster Blue nitre
 Two pounds cream Tartar Ten pounds
 arsenic Ten pounds arsenic Ten pounds

Page 20. Bicarbonate potassa one pound one Ounce Six
conuts six Cans
Fifty one gallons alcohol Ten pounds Epsom
salts Fifty pounds Soap Ten pounds Salts
of nitre Ten pounds Sugar \$100 Ten
pounds cinnamon Ten pounds Opium Turkey
Ten pounds Magnesia one gross Paper Cakes
one ream Paper one gross pens one thousand
Envelopes Ten gallons camphene Ten
gallons alcohol The goods of the said plain-
tiff then and then buy of great value
to wit The value of Ten thousand Dollars
then and then buy in a certain Drug
Store of the said plaintiff & in said City &
County aforesaid and converted and
disposed of the same to his the said defend-
ant's use and other wrongs and injuries
to the said plaintiff then and then did
to the great damage of the said plaintiff &
against the peace and dignity of the Citizens
of this state and to the damage of the said
plaintiff of five thousand Dollars and
therefor he brings suit by

Day & Wagner
Plffs. attys

Filed June 4th 1858
J. S. Burr
Clerk

page 21. And also on the Said ninth day of Novem
ber pleas were filed in the office of the
clerk of said circuit court in the words
& figures following to wit:

Nathaniel Paige } Court of common Pleas
 ads } of the city of Aurora from
Abraham Fuller } Term A.D. 1858

And the said defendant
by Dridley & Parks his attorneys comes & says
he is not guilty of the said trespass in
plaintiffs declaration mentioned or any or
either of them or any part thereof in manner
and form as the said Plaintiff hath above
thence complained against him and that
he prays may be inquired of by the country
&c

Dridley & Parks
defts attys

And the said plffs
doth the like by
Waymors & Day
attys }

And for a further Plea in
this behalf the said defendant says acts now
because he says that the said goods & chattels
in plaintiffs declaration mentioned at
the time when &c were the property of

Page 22. the said defendants Nathaniel Sawyer and
Isaac Ersmey and without this the property
of the said Plaintiff and this the said
defendant is ready to verify whereof he
prays judgment &c

Wardly & Parks
Defts attys

And for a further Plea in this behalf the
said defendants say actio non because he
says that hitherto to wit: on the 23^d day
of December A.D. 1857 at Aurora to wit
out the city of Aurora our George W. Myers
was justly indebted to Nathaniel Sawyer
Isaac Ersmey and this defendant
doing business under the name & style of
Sawyer Paige & Co. in the sum of \$o wit in
the sum of \$o wit Five Hundred and Seven
& 67/100 Dollars and ~~the~~ said George W. Myers
being so indebted and being then and
then owners of the Goods & Chattels in Plaintiffs
Declaration mentioned then & then sold said
goods & chattels in said plaintiffs declaration
mentioned to secure the payment of said indebted-
ness of said Myers to said Sawyer Paige
& Co. conditioned that said sale should be void
upon the payment of said money aforesaid and
afterwards defendants aver that said Abrah

page 23. Duller will know said fact of said indebtedness and also of said bill of Sale aforesaid and defendants further aver that said Duller after the making of such bill of Sale as aforesaid and before the said supposed Embezzlement the said Abraham Duller intending to cheat said defendant Thunders and delay the said Sawyer Paige & Co. as aforesaid procured and instigated the said George W. Myers fraudulently to kill and convey said property goods & Chattels as aforesaid to cheat and defraud said Sawyer Paige & Co. out of their said security as aforesaid to him the said Duller with intent and default having been made of the payment of the said Monies for which said bill of goods sold was given the said defendant one of the said firm of Sawyer Paige & Co. and at their request took said goods & chattels under & by virtue of said Bill of Sale as he lawfully might which are the said said defendant Embezzlements in plaintiffs declaration mentioned and this he is ready to ^{swear} verify

Bridley & Parks
defts attys

And for a further plea in this behalf the said defendant says active on because he says that hitherto to wit: on the 28th day of December

page 24. George W. Myers was fully indebted to Nathaniel Sawyer doing business under the name and style of Sawyer Page & Co. Nathaniel Page & Isaac Ewing doing business under the name and style of Sawyer Page & Co on the sum of One Thousand & Seven & 7/10 Dollars which indebtedness was an honest bona fide indebtedness and which was well known to said Alva Fuller and being so indebted the said George W. Myers gave to said Sawyer Page & Company an instrument of writing in substance as following to wit

On the 28th day of December A.D. 1859

I know all men by these presents that I George W. Myers of the city of Aurora Kane County and state of Illinois in consideration of One Thousand & Seven & 7/10 Dollars to me paid by Nathaniel Sawyer Nathaniel Page & Isaac Ewing of the firm of Sawyer Page & Co. of Chicago Cook County and state of Illinois the receipt whereof I do hereby acknowledge have granted bargained and sold and by these presents do grant bargain and sell unto the said Nathaniel Sawyer Nathaniel Page & Isaac Ewing and their assigns the following goods to wit All Furniture Drugs Dye & Stuffs Liquors Paints oils & Merchandise

Page 25.
generally

now in the Drug Store of said George W. Myers
situate in the west division of said city of
Aurora Illinois in building formerly occupied
by Hall & Brothers as druggist

Do have and to hold all and singular the
said goods & chattels unto the said Sawyer
Paige & Embury and their assigns forever provided
notwithstanding that of the said George W. Myers
should will and truly pay or cause to be
paid unto the said said Sawyer Paige &
Embury or their assigns four promissory
notes bearing date Decr 23^d 1857 four
of said notes being for one Hundred
Dollars each payable respectively on
^{one the first day of February next} one
on the first day of March next - one
on the first day of April next - one on the
first day of May next - one of One Hundred
& Seven 67/100 Dollars on the first day of
June next each of said notes bearing
two per cent payable to Sawyer Paige & Co
of Chicago Ills as they severally become
due then this Mortgage is to be void
otherwise remain in full force and
effect

In presence of
H. D. Fuller

G. W. Myers

Read

And this defendant further avers that
said property in said instrument mentioned

7
Page 26 was and is the Identical property goods & chattels in said declaration mentioned & no other or different property and this defendant further avers that at the time of making such instrument in writing as aforesaid the said George W. Myers was the owner and possessor of said property in plaintiffs declaration mentioned being the same property in said instrument of writing mentioned and the said Noah Haller well knowing the facts and then and there fraudulently purchased the said goods & chattels in Plaintiffs declaration mentioned of the said George W. Myers for a then nominal sum with the intent of him the said Noah Haller & George W. Myers of cheating & defrauding the said Sawyer Page & Co. out of their security which they had under and by virtue of said instrument in writing aforesaid And this defendant further avers that default having been made in the payment of said moneys in said instrument in writing mentioned as aforesaid the said Nathaniel Paige out of the said firm of Sawyer Page & Co. by the advice and at the request of Sawyer Page & Co. then took possession of the same as he lawfully might which are the said supposed trespasses in

page 27. Said Plaintiff's declaration mentioned &
that the said defendant is ready to verify
wherefore he prays Judgment &c
Fridley & Parks
Depps Atty

And for a further plea in this behalf the said
defendant says actio non because he says
that the said goods & chattels in plaintiff's
declaration mentioned at the time when &c.
now the property of the said defendant
Nathaniel Sawyer & Isaac Esmag trading
and doing business under the name and
style of Sawyer Page & Co without this they
own the property of the said Plaintiffs and
that the said defendant is ready to verify
wherefore he prays Judgment

Filed June 16th 1858 J. V. Barr Mr
And also on the said 9th day of Nov.
1858 Replication was filed in the office
of the Clerk of the said Circuit Court
in the words & figures following to wit:

Abraham Fuller }
Att } June Term of the Court
Nathaniel Page } of Common Pleas of the
City of Aurora A.D. 1858
And the said plaintiff by
Wagner & Day his attorney comes and for

7
page 28. replication to defendants Second Special plea
above pleaded says that the said Goods &
Chattels in plaintiffs declaration were not
at the time when in said plaintiffs
declaration mentioned the goods & chattels
of the said defendants as is in said plea
alleged and of this he the plaintiff puts
himself upon the country By

Wagner & Day
attys for Plffs

And the said Plaintiff as to the defend-
ants ^{5th} plea by him above pleaded says
Replie now because he says that the said
Goods & Chattels at the said time where &c
were not the Goods & Chattels of the defendants
as is in the said Plea alleged but were the
Goods & Chattels of the Plaintiff and of
this he the said plaintiff puts himself
upon the country by

Wagner & Day
attys for Plffs

Filed Jan 21st 1858
J. D. Barr Clerk

page 29,

And also on the said 2^d day of June
A.D. 1859 a Replication was filed in the
office of the clerk of the said Circuit Court
in the words & figures following to wit:

Abraham Fuller } May Term of the Circuit
or } Court of Kansas County - 1859
Nathaniel Paige }

And the said plaintiff
Abraham Fuller by Day & Wagner his attorneys
come and for replication to the defendants third
& fourth Pleas by him thirdly & fourthly above
pleaded says preclude now Because he says
that if any bill of sale or instrument of
writing was made by George W. Myers to
Sawyer Paige & Company as is in said defendants
third & fourth pleas alleged the said bill of
sale or instrument of writing was not entered
upon the justices docket in the district in
which the said George W. Myers resided or
otherwise nor in the names of either the
Mortgagor or Mortgagee upon said justices
Docket Nor was a description of the property
entered upon his docket nor was the possession
of the said property ever in Sawyer Paige & Company
but in George W. Myers the Mortgagor and
this the Plaintiff is ready to verify &c

Day & Wagner attys for Plff

8
Page 30: And also on the 2^d day of June A.D. 1859
a Stipulation was filed in the office of the
said Circuit Clerk in the words & figures
following to wit:

Abrah Fuller }
v
Nathaniel Paige }

It is stipulated that
~~the~~ matters of ^{dispute} ~~difference~~ may be opened
under the general issue the same as though
Special pleas had been filed and no
objection ^{shall} ~~should~~ be made simply from
the fact that no plea was filed of a
Special Motion

Given June 2^d 1859

Wayman & Day Plf. attys.

Dredly & Parks Dfts. attys.

And afterwards to wit on the 2^d day of June
1859 the same being one of the days of the
May Term of said Circuit Court the following
among other proceedings was had and
entered of record

Abrah Fuller

6541

It } Dispass - Change of venue from Aurora
Nathaniel Paige } This day comes the Plaintiff

page 31.

by Hays & Day his attorneys and the
defendant by Bridley & Parks his attorneys
also come and on Motion of the Plaintiffs
it is ordered by the court that a jury come
whenever come a jury of good and lawful
men of the county do sit

Abner Currier James Corley Noble D. Gray
Thomas Barnidge Albert Babcock Harry Gay
Helen Woodcock Miles W. Kemp E. H. Chapman
Scott Wilson Silas J. Wright James G. Knud
who being severally tried and elected are
sworn to try the issues found in the cause
and after hearing a portion of the evidence the
jury are allowed by the court by consent of the
parties to separate to meet the court at the
coming in thereof tomorrow morning

And afterwards to sit on the 3^d day of June
1859 the same being one of the days of the May
Term of said circuit court the following,
among other proceedings was had and entered
of record

65741
Abner Fuller
v.
Nathaniel Paige } Dispass
This day come again the
parties to this suit by their respective

page 32. attorneys and the jury heretofore unparoled &
juror also come and after hearing the remain-
der of the evidence the arguments of counsel
& instructions of the court the jury retire
under the charge of a sworn officer of this
court to consider of their verdict And by
agreement of the Parties it is ordered by the court
that when the jury agree upon their verdict they
have leave to seal the same and separate to meet
the court at the coming in thereof of the same
tomorrow morning

And afterwards do sit on the 4th day of June
A.D. 1857 the same being one of the days of the
May Term of said Circuit Court the following
among other proceedings was had and
entered of Record

6571
Abner Diller }
 v }
Nathaniel Large } Trespass

This day come again the
parties ⁱⁿ to this Suit by their respective attor-
neys and the jury heretofore unparoled
juror also come and for a verdict upon
their oaths do say The jury find the defendant not
guilty which verdict is ordered by the court to be entered of record

Page 33.

6541

This day comes the plaintiff

Page 34.

And afterwards to wit, on the 26th day of March, A.D. 1860, there was a Bill of Exceptions filed in the Clerk's office of said Kane County Circuit Court which is in the words and figures following, to wit:-

Kane County Circuit Court.
May Term. A.D. 1859.

Abraham Miller }
Nathaniel Paige } Be it remembered that
on the trial of the above
entitled cause the Plaintiff offered the
following evidence, to wit:
George W. Miers being first duly
sworn, testified as follows. I know
the parties to the above entitled cause. -
George W. Miers sold to the Plaintiff, -
Abraham Miller, Plaintiff in this cause.
on or about the 12th day of February 1858.
his stock of drugs and other goods in
the store occupied formerly by Hall &
Brothers as a Drug store in West Aurora
in said city. The parties took an in-
voice of said Goods, assisted by witness
we were some two or three days in

Page 35. taking the same. Plaintiff took possession of said Drugs and Goods immediately after the sale, and continued in the possession of the same until on or about the 3^d day of March following, when the defendant & others took them away. The Key was delivered by George W. Miers to plaintiff after the sale, and I was hired by the Plaintiff as clerk to sell the Goods & Plaintiff was to pay me the same wages that George W. Miers, Sen had done. I continued as clerk for Plaintiff after the purchase until the goods were taken by Defendant & Plaintiff paid me therefor. The amount of Goods taken by defendant on or about the 3^d day of March, 1858 amounted to \$1506.47 as near as could be ascertained - Plaintiff purchased goods of George W. Miers on or about the 12^d day of February 1858, amounting in all to \$1873.17 - Plaintiff purchased goods after he bought of said Miers amounting to \$42.35. The amount of goods left by the defendant in the Store on or about the 3^d day of March, aforesaid was \$344.47 - and the amount sold by Plaintiff of the goods

Page 36. after his purchase of Miers was about \$64.61 I done a part of the writing in making out the invoice. The goods were estimated at cost prices, and from Bills of purchase of the same as far as we could find them. I think we had all or nearly all the original bills of purchase.

Cross Examined. When Defendant took the goods he told Plaintiff he could select out his goods, if he had any among the goods - never heard anything about a Mortgage being on the goods until after ^{the} sale to plaintiff. There was talk about taking the goods to Kansas. Plaintiff had a son living in Kansas at the time. George W. Miers assisted in the store, after his sale to Plaintiff, at plffs request. There was some of the goods not purchased of Miers taken by defendant such as opium stationary pens-paper & envelopes taken before defendant said to Plaintiff to select the goods he had bought since his purchase of Miers. George W. Miers purchased after the 28th day of December 1857 a part of the

goods, bought by Plaintiff & taken by Defendant - the amount of such goods was about \$47.00 -

Here the bills of said goods were offered in evidence - Three bills in the words & figures following:

Chicago Dec 30 1857
Mr. George H. Meier, Aurora Ills. Bought of Burnham & Smith (Successors to Sears, Smith & Co) Wholesale Druggists and dealers in Paints, oils & Dry stuffs No. 113 Lake Street.

3 gall sweet oil can 4/6	14/-	\$5.81
1 doz Tur Solid oil		4.90
10 Sal Nitre Cemerel 9 $\frac{1}{2}$		\$ " 95
3 doz Tur Flasks 4/6		1.69
1 gross Paper Bor corks		" 50
6 - America Vermillion 2/-		1.50
1 Rem Dry wrapping paper		3.75
2 " Cloves 2/-		.50
3 " - Cinnamon 4 $\frac{1}{2}$		1.68
1 Doz Seidlitz Powders		2.50
1 " Stone Candy		.75
1 " Dyers & Confection		" 88
1 " Lyons Katharon		1.50
		<u>\$27.91</u>

Chicago January 1, 1858.

page 38.

Chicago, January 4, 1858.
Mr. George W. Miers, Aurora, Ill.
Bought of Burham & Smith
(Successors to Sears, Smith & Co.)
Wholesale Druggists, and dealers in Paints
oils, and Dye stuffs No 113 Lake street.
1 Drg Ayer's Ectoral 7.50
12 - Sulphur 7^c .84
1 Bot. Balsam Pir .75
2 " Balsam Leaperine Bot 9 .60 1.29
2 " oil organum " 9 4/6 1.21
1 - Cardman seeds 1.50
5^c Eng ven Red Box 2/- 2.25
4^c smal spts nitre 1/2 Box 16 14 .72
5^c cal Leonian 32 1.60
Box & Cartage .65
\$18.31

Chicago January 5th 1858
Mr. George W. Miers, Aurora Ill
Bought of Burham & Smith (suc-
cessors to Sears, Smith & Co.) Wholesale
Druggists and dealers in Paints, oils and
Dye stuffs No. 113 Lake street. Amos cash.
1 Bot 8/- $\frac{41.72}{40.72}$ gall Camphene 75^c 31.38
1 " 8/- 41 - " alcohol 45 19.45
Cartage .00
50.83

The Invoice which I now hold in my hands is as follows: and is the one I spoke of in my direct examination:

Ulrah Muller.

Bought of Geo. H. Miers.

2 ³ / ₄ gall	Sweet oil	1.65	4.53
¹ / ₂ "	Castor "		" 80
4 "	No. 2 varnish	1.60	6.40
1 ³ / ₁₆ lb	Blackberry Root		" 28
3 ⁸ / ₁₆ "	Chloride lime		" 44
8 oz	Alconite	31-	" 19
3 ⁸ / ₁₆ lb	Flax seed	9 ¹ / ₂	" 28
1 "	" " silv		" 08
2 ² / ₁₆ lb	Canary seed		" 25
2 ¹ / ₁₆ "	Hemp "		" 25
10 oz	Dramor Seams		" 20
¹ / ₄ lb	Sarsaparilla		" 38
1 ⁵ / ₁₆ lb	Iceland Moss		" 16
3 oz	Irish "		" 5
9 "	Lemon Peel		" 20
2 ¹ / ₁₆ "	Pumice Stone		" 30
1 ¹ / ₁₆ "	Prussia Blue		" 75
1 ³ / ₁₆ "	white glue		" 46
3 oz	Isinglass		" 16
4 ¹ / ₁₆ lb	Elm Bark	16-	" 72
3 ¹³ / ₁₆ "	Prep. Chalk		" 34

page 40	2 ⁴ / ₁₆ lb	Pulvis Senna		" 90
	1 ¹⁰ / ₁₆ "	Peppermint		" 40
	1 ¹⁰ / ₁₆ "	Carbonate Iron		" 38
	2 "	Pulv Cloves	40	.80
	1 ¹ / ₁₆ lb	Turkey Rhubarb		6.40
	12 oz	Squills		.16
	1 ² / ₁₆ lb	Cayenne Pepper		.25
	10 oz	Pulv Rhubarb		1.75
	2 lb.	Jenugree	40 ⁺	.80
	9 oz	pulv mandrake		" 18
	3 oz	Orange Peel		" 3
	6 "	Arnica Flowers		" 10
	1 ¹ / ₁₆ lb	Lavender		" 38
	1 ¹⁵ / ₁₆ "	Blood Root	2/-	" 49
	1 ² / ₁₆ "	Pulv. Licorice	20 ⁺	" 30
	1 ⁵ / ₁₆ "	golden seal		.63
	14 oz	Lucasia		" 06
	1 ¹⁴ / ₁₆ lb	Pulv Ipecac		4.00
	2 ⁷ / ₁₆ "	" realiron		" 92
	13 oz	Cubeb		36.45
	1 ² / ₁₆ "	Cud Bear		" 54
	15 oz	pulv. Mustard		" 25
	1 lb.	" Conium		.40
	10 oz	Nutmeg		1.28
	1 ² / ₁₆ "	Rosa Resin		.14
	14 oz	Gum Myrrh		" 20
	1 ¹ / ₁₆ lb.	Pulv. Nut gall		" 35
	7 oz	cattle fish		" 12

Page 41

1 $\frac{7}{16}$ lb	Peruvian Red	2.00
1 "	white wax	" 56
12 oz	pulv. acacia	" 38
2 lb	arrow Root	1.13
13 oz	Magnesia	" 50
1 $\frac{7}{16}$ lb	Gentian	" 25
1 $\frac{8}{16}$ lb	Ginger Root	" 55
1 $\frac{7}{16}$ lb	" leape albes	" 64
13 oz	Saffron	1.60
13 oz	Mace.	.98
10 "	Cordia seeds	" 92
1 $\frac{7}{16}$ lb	Spanish flies	2.00
1 "	Mustard seed	.20
6 oz	Saledia	.30
4 "	Pulv apafidta	.22
14 oz.	Eupfllim	1.10
1 $\frac{7}{16}$ lb.	Minialce acorned	.55
9 oz.	Pulv. Cordouan	1.00
3 oz.	Pulv. Carthouda	.44
15 oz.	Coly cinth	.62
1 $\frac{8}{16}$ lb.	Rockal Salts	" 22
15 oz.	anise seed & pulv.	" 24
1 lb	Lobelia	1.00
1 "	Alves Locotine	.56
11 oz	gum Myrrh	.45
6 "	Senna	" 13
10 "	Valeria	.35
6 "	Jalap	" 60

page 42	4 oz	Gamboge		" 32
	10 "	Lobelia		" 85
	8 "	Peruvian bark		1.05
	8 "	Licorice		" 31
				<u>62.00</u>
	1 Doz.	Jaynes Expectorant		8.00
	" 1/2 "	" " Alterative		7.25
	10 1/2 "	Dr. Hooflands Bitters		5.83
	7/3 "	Balsam Wild cherry (800)		2.66
	8 1/2 "	Ayers Cherry Pectoral	7.50	5.00
	9 1/2 "	Western Colagogue	" -	8.25
	3/4 "	Sawyers Ext. Bark	7.25	5.44
	5 1/2 "	Liver wort Tar	8.00	3.34
	5 1/2 "	Woods Hair dye	9.00	2.95
	5 1/2 "	Mrs. Allen's " "	12.00	5.00
	1 1/2 "	Onocophorus	12/-	" 75
	" 1/2 "	Syons Kathairon	1.68	1.54
	5 1/2 "	Gargling oil lye	8.00	3.34
	10 1/2 "	" " wood work	4.00	3.34
	4 1/2 "	" " small		.33
	2 1/2 "	Balm 1000 flowers	12/-	.25
	10 1/2 "	Ayers Ambrocadia	2.00	1.68
	2 1/2 "	Janes Cor. Balsam	2.00	.34
	5 1/2 "	Vermifuge	2.00	.85
	7 1/2 "	Mustary Lin	12/-	" 88
	1 1/2 "	Arabian Lin	10/-	" 16
	1/2 "	Harjates cordial	200	1.00
	1 10 1/2 "	Strawberry Balsam	13/-	3.00

Page 43.	3/4 doz	Radway's Ready Relief	2.00	1.70
	10 1/2 "	Pepsin	6.00	5.50
	1 2/12 "	Darries Pain Killer	14/-	3.06
	1/4 "	India Colagogue	96/-	3.00
				146.44
	3 2	Emery, No 1	11 ^c	.38
	2 2	" " 2	11	.27
	8	" " 4	11	.88
	6 oz	Box wood Bark	2/6	.12
	1 lb	Hemlock	" 13	.13
	3/4 "	Burdick Root	20	.15
	1/2 "	French Green	20	.10
	9 oz	Raspberry leaves	20	.10
	11 "	Summer Savory	20	.20
	5 "	Life Root	2/6	.11
	12 "	Spikenard	3 2	.24
	12 "	Black alder	20	.15
	1 "	Angelica Root	2/6	.31
	2 "	Pulv. Hemlock bark	30	.60
	13 "	wild Turnep	40	.30
	6 "	Rose leaves		.50
	1 1/16 "	Salamus Seal	3/-	.40
	1 6/16 "	Yellow dock Root		.15
	15 oz	Calceium		.30
	7 "	annatta		.10
	2 3/16 lb	Rose Brimstone		.18
	4 12/16 "	Emery		.52
	4 15/16 "	"		.54
	3 7/16 "	"		.36

Page 44.	2 ¹² / ₁₆	" Blue Small		" 44
	1 ¹⁴ / ₁₆	Coltsfoot		" 28
	7 oz	American Halibut		" 15
	15 "	Barley Barks		" 25
	3 "	Prickley ash		" 10
	1 ¹ / ₁₆ lb	Skunk cabbage Root		.31
	1 ¹ / ₁₆ "	Dug Root		" 31
	2 ⁸ / ₁₆ "	Cremory	² / ₆ .	" 81
	8 oz	Black Cohosh		.18
	13 "	Stillingia		" 31
	10 "	Burton Sweet Root Red		" 32
	9 "	Dandelion Root		" 18
	3 "	Bitter Root		" 10
	1 lb.	Black Root		" 78
	1 ² / ₁₆ "	Scammonia		.80
	13 oz.	white oak Bark		.18
	1 ¹ / ₁₆ "	Blue Cohosh		.30
	10 oz	Gum Tragacanth		<u>158.53</u>
	2 ² / ₁₆ lb	Sat Soda		" 10
	1 ¹⁰ / ₁₆ "	anise seed		" 30
	11 ⁸ / ₁₆ "	Oat meal		" 92
	5 "	Pumice stone		" 63
	3 ² / ₁₆ "	Rose Pink	16 ²	" 50
	1 lb	Red Chalk		.50
	4 oz	Aloes	32 ¹	" 08
	6 "	Ginger Root		.60
	10 "	Gum Arabic	2 ¹	.15
	11 lb	Burgundy Pitch	9 ¹	.36

page 45.	8 oz Virginia Snake-root	90	.45
	1 ¹⁰ / ₁₆ lb Senna	22 ³	.37
	9 oz Gum Guaiac	40	.25
	4 " Rad. Rheni	3.00	.75
	13 " Scamonee Flowers		.39
	3 lb Bell Marie Blue		1.65
	4 ⁸ / ₁₆ Senna De Oceanna	7/-	.56
	1 lb Squills		.15
	1 " Pulv. Columbo		.25
	8 oz Rad. Specac	5.40	2.70
	1 lb Coopers Ising Glass		.80
	1 " Pulv. Jalap		.90
	3 " " Cape allves	30 ⁴	.90
	1 ⁸ / ₁₆ " Quassia	6 ³	.09
	5 " Barley Bark	15	.75
	8 " Coriander Seed	22 ³	1.76
	3 " Pulv. Pleeniny Root	2/6	.93
	1 " Papy Capsulus	3/-	.38
	2 " Bitter Root	3/-	.75
	5 " Pulv. Lady Slipper	2/6	1.55
	5 " Pleeniny Root	2/-	1.25
	2 " Skull Cap	44 ⁷	.88
	1 " P. Bennis	3/-	.38
	1 " Pulv. Renicorn		.44
	8 oz oxolii acid		.25
	3 lb Pulv. Lobelia	2/6	.94
	1 lb Balm Gilead Birds		2.00
	2 " Marsh Mellow	2/-	.50

page 46.

1 lb	Pulv. Mandrake	2/-	..25
14 oz	Coltsfoot	.4/-	"44
2 lb	Crane's Bill	30	<u>.60</u>
			\$187.24
5 lb	Golden Seal	2/6	1.56
1 "	Male Fern	2/6	"31
1 "	Brennell Seed	2/-	"25
2 "	Pulv skunk Cabbage	2/6	"63
2 ²	ground Elm Bark	16 ²	"40
2 "	Eleum. Pame	2/-	"50
1 "	Burdick Seed	15	"15
1 "	Pulv. Bath Root	6/-	"75
2 "	Mandrake	2/-	"50
2	Rem Warp Paper	10/-	2.50
1	" " "	6/-	"75
1 1/2 doz	No 1 Sash Brushes	6/-	.69
6 1/2	" " 2 " "	7/-	"44
2 1/2	" " 3 " "	8/-	"16
1 Doz	" 8 " "	22/-	2.75
1 "	" 6 " "	16/-	2.00
1	Prescription Scale		7.50
1 set	Brass Scales & weights		9.50
1	" " " " "		4.00
1 10 1/2 doz	gal specia Jars		7.34
1	" " " small mouths		6.00
6	" 9 lb	" 20/-	15.00
4	" 1/2 gall	" 28/-	14.00
4	1 lb	" 12/-	6.00

page 47.	4 doz	1/2 pt	"	"	"	10/-	5.00
	4	1/2	gall.	Specie jars		2.80	11.20
	6	"	1/4	"	"	16/-	12.00
	2	"	1/2	"	Smelt jars	26/-	6.50
	6	"	1/4	"	"	17/-	12.75
	4	Pint	"	"	"	140	5.60
	3 1/2	1/2	pints	Citrus		45 ⁴	1.57
	2	show	glasses				14.75
	6	gall	cold fluid	in	glasses		3.90
	1	Show	case				30.00
	1	"	"	Stand			4.00
	1	Counter	.	-			12.00
	1	desk	stand				3.00
	1	coal	hod				1.00
	1	Mortar	sign				30.00
	1	Camphene	Lamp				2.00
	1	Paris	Plaster	Image			.75
	1/2	gall	Neats foot	oil & can			.90
	1	lb	vine	Culchiri	seed		427.84
	2	"	spts	Lavender	can		1.30
	1	"	Cinnamon	water			.60
	1	"	Ess	Cinnamon			.30
	1/2	"	Penroyal				.15
	9	Butter	Fresh	oil	4.90		3.60
	5	quarts	cold	flame			1.50
	2	"	"	Port	wine		2.50
	2	"	Maderie	"			2.00
	1	pint	Cherry	"			.37

page 48.	2 gts	Bamber whisky		50
	3 galls	Demar Varnish		6.00
	1 "	Japan	7-	1.00
	3 "	Camphene		2.40
	13 "	Linseed oil		12.48
	18 "	Boiled oil		19.08
	6 "	Lamp oil		6.36
	2 "	Peach Brandy		3.50
	4 "	Medic wine	5.00	20.00
	6 "	St. Croix Rum		10.50
	3 "	Jamaica		5.25
	10 "	Brandy	4.00	4.00
	2 "	"	20/-	5.00
	1 "	"		4.50
	2 "	Cherry wine		4.50
	3 1/2 "	Port wine	4.00	14.50
	15 "	"	3.25	48.75
	30 "	Brandy	5.00	150.00
	30 "	Banban whisky		30.00
	20 "	Whisky	36	7.20
	25 "	Current wine	12/-	37.50
	3 1/2 "	Castor oil	1.65	5.78
	6 1/2 doz	Castor oil Bottles		2.02
	4 "	Godfrey's Cordial		1.50
	18 1/2 "	flask vials		5.78
	6 "	8 oz vials		4.00
	3 1/2 "	"		1.50
	9 1/2 "	8 "		6.39

Page 49.	30 $\frac{8}{12}$ " 2 " "	6.45
	3 $\frac{5}{12}$ " pint flasks	.74
	1 doz Hair oil Bottles	.96
	9 $\frac{4}{12}$ " 6 oz Common vials	1.43
		<u>904.61</u>
	21 $\frac{1}{12}$ doz 4 oz vials	2.86
	4 " " Castor bottles	1.60
	3 ² gro $\frac{1}{2}$ oz vials	4.00
	4 $\frac{2}{12}$ doz 2 " "	" 60
	40 " 1 " "	3.80
	8 galls No 1 furniture varnish 2.20	17.60
	1 gross 8 oz flint vials & } 2 boxes assorted flint vials }	13.13
	2 doz qt flasks 4/-	1.50
	3 " $\frac{1}{2}$ pts	1.13
	4 ² " Castor oil Corks	1.69
	6 Large tin cans	36.00
	1 Tin can small 5 gall	2.50
	1 Large funnel	.40
	2 Lotts Menus 1.63	3.26
	2 funnels 4/-	1.00
	22 ³ doz $\frac{1}{2}$ oz. vials	2.12
	2 ³ " 4 " "	" 34
	2 $\frac{7}{12}$. 6 " "	" 40
	1 $\frac{1}{2}$ " 4 " " flint	" 60
	3 " 1 " " "	" 80
	4 $\frac{1}{12}$ " 8 " " "	.21
	3 oil drinkers	3.00

Page 50,

1 oil	Oil pump		2.00
1	Iron shovel		1.00
1 1/4	Doz Mores Pills	1.80	2.25
1/2	" Moffats		1.81
1 1/2	" Wrights reyt Pills	12/-	2.25
1/2	" McLeans	12/-	.75
5 1/2	" Ayer Cathartic Pills	1.80	.75
1/2	" Graffenburghs	14/-	.88
10 1/2	" James Liver Pills	2.00	1.67
1	" Lees	10/-	1.25
1/2	" Shallenberghs	7.00	3.50
1 1/2	" Halloways	10/-	1.84
2	" Tin Boxes	2/-	.50
4	" " "	1/-	.50
2	pails	2/-	.50
1	sprinkler	3/-	.38
2 1/4	Gun Cateham	2/-	.50
2 1/2	Doz Elder Flowers		1.44
2	" Thin Apples		.60
			<u>\$1026.55</u>
2 oz	Ardepin	12/-	3.00
1/2 lb	ointment	8/-	.50
4 oz	out Carb Lead	12/-	.50
1 lb	Centhaodis	12/-	1.50
6 oz	Cetrin	8/-	.38
1 lb	Borelya ointment	12/-	1.50
1/2 doz	Blue Jars hall	3.00	1.50
5 1/2	" " " Large	5.00	2.08

page 51.

5 Jars Ext. Sarsaparilla	12/-	7.50
1 ph. wine	4/-	.50
3 pts. Brandy	2/-	.75
3 " "	5	1.88
1/2 lb oil Neellock	10 Bot 7 ^c	.67
1/2 " Culus Bot 6 ^d	6.00	3.06
1/2 " Spruce 6 ^d	60	.36
1/4 " cloves 7 ^c		1.16
1/2 " Warmwood 7.	4.00	2.07
1/2 " Lavender	8/-	.57
1/4 " Wintergreen	5.00	1.32
6 oz oil annis Bot 6 ^d	6.00	2.25
1/4 lb Sassafras 8/-	Bot 7	.27
1/2 " Warmwood Bot 6/	2.80	1.46
1/2 " Amber		.51
1/2 " Peneryal Bot 6 ^d		.94
1/2 " Almonds 7-	4/6	.63
3 oz Juniper 7	4/-	.23
8 " Rosemary 7	6 ^c 5	.38
8 " Oar	2/-	.13
1/2 lb Spearmint 6	165	.88
1/2 " Acetic acid	20	.10
1/2 " oil cassia Bot 7	6 ⁵⁰	3.25
1/2 " Salvia Bot 6-	8/-	.56
1/2 " Dist Castor	8	
3/4 " Chloroform	12/-	1.13
2 " Balsam Copavia	2/-	.50
2 " Spts milderia	4/-	1.00

page 52.	1 lb mine Ergot	4/-	.50
	1 " Syid Indide Iron sf		1.00
	1 " Phosphoric acid		1.38
	1 " Balsam Copernicia		.25
	3 Bottles Castor oil	8	..20
	6 Spachelors	2/6	1.88
	7/12 doz triple shells	40	.40
	7/12 " papers Bronze	4/-	3.50
	7/2 lb Tin foil	40	.20
	4 Books Gold leaf	3/6	1.76
	1 Bottle Duster	4/-	..50
	1 Feather "	10/-	1.25
	1 H. S. Dispensatory		5.50
	1 lb. Chloride Iodo		1.00
	1 Roll adhesive plaster		.90
	3 Bed Pans		2.88
	1 ² gross Prescription Boxes		3.00
	1 gall Iron Mortar		2.13
	1 qt " "		.87
	1 pt glass Mortar		1.35
	1 Pill tile		1.25
	1 wedge wood Mortar		1.30
	1 " " "		.55
	1 " " "		.32
	1 glass Stunnel		.10
	1 " " "		.22
	1 " " "		.26
	1.2-gt glass mortar		2.00

Page 53.

1-2-doz. graduate		" 50
1-4 " "		" 60
1 6 " "		" 80
1 8 " "		" 75
1 Drop "		" 38
1/2 Ream filling Paper		1.88
1/2 doz Van Sclaps	7/-	3.94
1 " " "	9-	1.13
1 lb golden est		.30
2 gross Homeopathy vials	8/-	2.00
27 papers British Lustre		.81
1 lb Guinger		.13
2 " Vireo	18	36
9 lb ext Logwood	17-	1.61
3 lb Scotch Snuff	2/-	.75
1 lb " Black "	2/-	.38
14 " Africa guinger	7-	1.75
1 lb gross Homeopathy vials	14/-	2.63
14 lb Saffron	22	1.88
1 " ground Hemlock Bark		<u>.50</u>
		1129.41
5/12 doz Small cologne 20		.83
3/12 " Vertena water		1.05
3/12 " Cologne Bottles		1.13
1 oz oil Citrusald		2.00
7/8 " " Nutmeg		1.54
3/4 " " Rose		2.75
7/8 " " Heliotrope		1.09

Page 54.	7/8 oz	oil Geranium		1.28
	7/8 "	" Ansalie		1.75
	1/4 doz	" Peters Bears oil		1.44
	1/2 "	"		1.84
	5/12 "	Wauls " "		1.40
	1/3 "	Pomade		1.40
	9/12 "	Rose Hair oil		1.35
	1/3 "	Chrysetal Pomade		.60
	2/3 "	ox marrow	11/-	.96
	1/2 "	oriental Pomade	14/-	.88
	2/3 "	Littlefields Bears oil	12/-	.85
	3/4 "	" " "	10/-	.96
	9/12 "	Ext Rose		1.38
	9/12 "	" Peach		1.13
	1/2 "	" veruella		1.90
	5/12 "	" Lemon		1.50
	1/2 doz	Yankee soap in cups		2.25
	4 Bars	Transparent soap		1.20
	1/3 doz	Perazine		1.80
	1 2/3 "	Honey		1.35
	1/2 "	Transparent smell		1.12
	2/3 "	Yankee saving soap		1.56
	5/12 "	Military		1.50
	11/12 "	near Hem		1.92
	1/3 "	Rose Toilet Powder		1.25
	1/3 "	French " "		1.25
	1/3 "	Smelling salts		1.94
	5/12 "	Craton oil		1.50

page 55.	7/12 doz	Camphor Ju		1.13
	1	" Lip glue		1.13
	1/4	" " salve		.38
	1/4 doz	Prescription boxes		3.50
	9/12	" Court Plaster		.13
	8/12	" Small Launces		3.36
				<u>51173.75</u>
	1/4 doz	Gum Launces		1.87
	1 lb	Blue Cohash		.13
	3	" Blk. Snake root	2/-	.75
	1	" skunk cabbage		" 18
	1	" Parsley root	2/-	" 25
	2	" Prickly ash	2/-	" 50
	1	" Poke root		" 13
	1	" Canada snake root		" 50
	1	" Queen of the meadow		" 20
	1	" Burdock root		" 20
	2	" Skkenad	30-	" 60
	3	" Yellow dock	20	" 60
	2	" Dandelion root	35-	" 70
	1	" Poplar Bark		" 15
	2	" Torane bill	22	" 44
	1	" Solomons Seal		.25
	1	" Blk Cohash		" 25
	1	" Bitter Sweet Bark		" 38
	1	" S. Elm Bark		" 20
	1	" Summer Savary		" 30
	1/2	" Wormwood		" 15

page 56.	3 lb wild cherry bark		.38
	1 " Peppermint		"19
	1 " Eleabone	3/-	"38
	2 bark Presers		1.13
	15 lb Paris Green	32	4.80
	2 ² " Scull cap	3/-	.94
	2 " Lobelia	2/-	"50
	2 " Deadly night shade	3/-	"75
	2 " Elder Flowers	4/-	1.00
	2 " Fox Gloves	1/4	.38
	1/2 " Dog wood Silans	2/-	"13
	1 " witch hazel		"15
	1 " Black alder		"20
	1 " wormwood		"26
	1/2 " Raspberry leaves	2/-	"13
	2 " Burdock leaves	2/-	"50
	5 papers Sloan's C. Powders	12/-	"63
	3 " " " "	19c	"75
	1 1/2 doz British oil	4/-	"96
	1 " Harlem oil	4/-	.50
	1/2 " Diamond Cerant		.75

\$1197.69

2/3 doz	Magnetic ointment		1.18
1 7/12	" Halloways "		2.82
7/12	" Sloan's Small "		1.00
4/12	" " Lige "		1.00
1 ² lb	Sloan's Root	3/-	"56
3 doz	Easterly aque cure		21.50

page 57.	11/12 doz	Hunters Bitters	3 ⁵⁰	3.20
	1/2 "	Hoopers Cordial	7 ⁵⁰	3.50
	1/2 "	Gridley's R. ointment		2.25
	21 -	Empty Barrels	8/-	21.00
	14	Kegs	8/-	14.00
	1/2 doz	Good liver oil	7 ²⁵	3.63
	9/12 "	Claret wine	6.00	4.50
	1/12 "	Bay Rum		.31
	1/4 "	Gulgrats Sarsaparilla		1.98
	2/12 "	Waters Best Pumps		1.94
	1/12 "	good Jews		.87
	1 ² lb	wrapping Swine	40	.60
	10/12 doz	No 2 Syringes	10/-	1.02
	2/12 "	" 1 "	8/-	1.16
	1/12 "	" 4 "	13	1.14
	10/12 "	" 2 Female "	8/-	1.81
	9/12 "	" 4 "	16/-	1.50
	5/12 "	" " gauge "	20/-	1.04
	1 1/2 "	" Catheters Bages	12/-	2.25
	1/2 "	Carmine No. 8	11.28	5.64
	5/12 "	" " 6	7.20	3.00
	1/2 "	Markes Trusses	25.00	12.50
	5/12 "	" " "		5.96
	1/6 "	" " "		2.44
	1/6 "	" " "		4.00
	1/12 "	" " "		1.00
	2	Female Supporters	24/-	6.00
	1	Catheter silver		.63

page 58.

1 doz	No. 2 Syringes		2.20
10 1/2 "	" " " "		.70
1/4 "	" " " "		..63
2	"	35-	..70
2	"	16	..32
2	"	40	..80
1	"	66	..60
1 Doz	Female		2.60
1 Doz	Female sponges		1.00
1 male	Catheter		1.13
1 lb	acetate Putusa	3/-	..53
1 "	Salts Tartar		..52
1/2 "	Iodide Potassa		3.30
2 oz	Parini	2/6	..63
2 lb	Calomel	9/-	2.25
10 1/2 doz	Thompson's Eye water		1.50
5 1/2	Hurbands Magnesia	2.00	..81
7 1/2	Scotch Candy	6/-	..44
9 1/2	Henstocks Vermifuge	13/-	1.21
8 1/2	M ^c Leans	9/-	..75
1 Doz	Boxs Acidletz Powders		2.44
11 oz	Quinine	2.00	22.00
8 1/2 doz	Calodian	14/-	1.17
1 oz	Chloride Zinc	2/-	..25
2 "	Strichuine	4/-	1.00
1 "	Hydrocyania acid		..25
1/2 "	Cluvert		..25
6 "	Ext. Bark	3/-	..13

page 59.	1 3/4 oz	Nitrate silver	1.07-	2.18
	6 oz	Quick silver	Bot 65	.30
	1/2 "	Musk	2.65	1.32
	8 "	Nitrate Iron		2.08
	3/4 Bot	Suit Rucsi Vaide		.75
	2 "	Gelsium	1.06	2.12
	3 oz.	Scutellaria	2.00	6.00
	1 "	uratin	6/-	.75
	1 "	Epadonian		.96
	1 "	Stilinger		.89
	3 "	Sanguanin		1.59
	2 1/2 "	Gelsium	1.40	3.50
	2 "	Candophyllan		1.12
	14 "	Hydrostima	9/-	4.50
	3 "	Mercatum	44	1.32
	1 1/2 "	Carmin	90	1.30
	1/2 "	Ardepin	105	.53
	3 "	Pado phyllan	53	1.59
	1 "	Phy	96	.96
	3 "	Geran	44	1.32
	4 1/2 "	Septembur	53	2.35
	1 "	Pren		.53

1419.30

5.4	Burnt & gro	umber		.62
5 "	Emery	No 2		.55
2 "	Indian Hemp	30		.60
1 "	Persia	Brown		.75
2 "	white pine	Serpentine	1/-	.25

page 60.	5 lb Red Sanders	8 ^c	40
	19 " Alum	4 ^c	.70
	1 1/2 " Scrub Brushes	2.00	3.30
	3 " "	3/-	1.13
	5 " "	1/-	.63
	6 " "	1/6	1.12
	2 Charcoal Skins	3/-	.75
	1 1/4 lb Sponge		1.38
	1/4 " "		.70
	1 1/2 Doz fluid wicks	25	.50
	6 " Camphene "	20	1.20
	5 papers grazers paints	1/-	.63
	7 doz triple shells	1/-	" 87
	4 vaning Pots	2 1/2	1.00
	5 Best Jars	2 ²	.10
	3 ² grass corks		3.50
	1 1/4 lb winter bark	2	1.63
	1 1/2 Doz Packing bottles		.48
	9 gross oval corks	1/-	1.13
	42 lb Borax	32	13.44
	50 " Red Lead	9	4.50
	30 " Venetian Red	3 ²	1.05
	60 " Whiting	3 ²	1.80
	46 " White lead	9	4.14
	40 " Yellow ochre	3 ²	1.40
	35 " Lamp Black	10	3.50
	20 " Lustic	3	.60
	22 " Red wood	3	.66

Page 61.	30 lb	Logwood	3	.90
	42 "	Madder	16	6.72
	67 "	White chalk	3	2.01
	9 "	Common glue	20	1.80
	94 "	Alum	4 ^c	3.76
	100 "	Copperas	4	4.00
	82 "	Bicarbonate soda	7	5.74
	1 ² "	Gum camphor	44	.66
	1/12	Dog Blue Lump		.42
	2	Bottles Carnie Lark		1500.29
	72 lb	Chrome yellow	23	173
	12 "	" green	"	2.76
	4 ² "	Amelia Vermillion		1.25
	10 "	Paris Green in oil	26	2.60
	9 "	Chrome yellow	2/-	2.25
	69	Drawers	2/-	17.25
	11 "	Spts nitre	1/6	.75
	4 "	" Ammonia	1/6	.75
	5 ² "	Nitre acid	20	1.10
	3 "	Muriatic	16	.48
	3 "	oil Tar	2/-	.75
	2 "	Jamaica	9	.18
	1/2 "	Colc Magnesia	4/-	.25
	1 "	Gum Resin		.25
	1/2 "	Rose Mary		.33
	1/2 "	oil Lavender		.50
	3/4 "	Cassia oil		5.47
	1 "	oil Peppermint		4.25

Page 62.	1/3 lb.	oil wormwood		1.34
	1/2 "	" cloves		1.13
	1/3 "	Heemlock		.25
	1/2 "	Almonds		.28
	1/3 "	Wintergreen		.85
	1 1/2 "	Organi		.84
	1 1/4 "	venice Turpentine		.30
	1 doz	2 qt Bottles		1.38
	23	one qt Blasks		.96
	30 lb	Potash	9 ^c	2.70
	13	quires Sand paper		1.95
	1 set	Drawers		30.00
	8 ² lb	Hops	2/-	2.13
	7 ² "	Gum arabic	2/-	1.88
	1 10/16 "	Cuttle fish	26 ^c	.40
	4 ² lb	Burgundy Pitch	9 ^c	.41
	13 lb	Flax seed	9 ^c	1.23
	1 6/16 "	orange Peel	1/-	.17
	1 3/16	Iceland moss	1/-	.15
	4 ² "	Gum shellac	20	.90
	1	Sinature stand		2.12
	10 lb	ground flax seed	9 ^c	.95
	14	Bath Brick	8 ²	1.19
				<u>\$1598.25</u>
	1 H.	Bone sett		.36
	1 "	Spearminit		.25
	1 "	Bugle		.40
	1 "	Hoare Hamud		.36

1 lb	Scirpus leaves		" 36
3/4 "	Jammy	40	" 30
3/4 "	Peppermint		" 21
1 lb 3	Catnip		" 21
1 lb	Hyssop		" 38
1/2 "	Willow		" 14
12 "	Papers & Vermillion		1.80
1 "	Black Mentane		.30
1 "	Parsley		" 36
1/2 "	Morehouse		" 18
6 oz	gould Shudd		" 66
12 "	Principine		" 28
1 lb	Beladonna		" 63
1 "	Mathurouth		" 20
1 "	Peru Royal		" 30
1 "	Aconite		" 40
1 "	Lobelia		" 38
1/4 "	Composition	4/-	" 13
15 "	Keaps in Papers	2/-	3.75
1	cleaner		.25
1/2 lb	Principine		" 19
1/2 "	Sweet Boyle	2	.13
1/2 "	Box Stone	1/6	.09
1/2 "	garden Catendine	2/-	" 13
1/2 "	Catnip	1/6	.19
1 "	Boneset	1/6	" 19
3 "	Morehouse	1/6	.56
1 "	Sweet Magnolia	3/6	.44

1 lb Boneset		.19
1 " Sweet Bayle	2/-	.25
2 " Scullins	15	.30
3 " Catnip	1/6	.56
2 " Thyme	1/6	.38
1 " Parsley	3/-	.38
2 " Liverwort	4/6	1.13
1 " Life Root	2/-	.25
1 " Hysop		.19
1/4 " Deadly Night shade	3	.09
		<u>1643.16</u>

Am't Brought forward

\$1616.43

1 lb Goula Colendine	1/-	.13
1 " Cramp Bark	2/-	.25
8/12 doz Lather brushes	1/-	1.00
10/12 " Kearn "		2.50
3/12 " Tooth Brushes	16/-	..50
4/12 " " "	4/6	..14
1/6 " "	16/-	..33
1/2 " "	12/-	..75
4/12 " Pocket comb	88	..66
9/12 " " "	1.35	1.09
10/12 India Rubber	6.75	5.60
1/3 Kearn combs		.76
1/2 Ivory "	3.50	1.75
5/12 " "	20	1.05
1/6 " "	1.30	.22
1/2 " " brushes	16/-	1.00

Page 63.	1/12	Cloth brushes		1.23
	1/6	" " "	12/-	.25
	1/6	" Infants	12/-	" 25
	1/6	" Hair "		1.75
	1/12	" " "		.73
	1/12	" " "		" 75
	1/4	" " "		1.20
	1/12	" " "		.56
	3/12	" " "		.56
	1/12	" " "		.35
	5/12	Buff Horn combs		1.00
	9/12	doz Indelible Ink	3.00	2.25
	1/4	doz Ink stands		.50
	11	cork screws		1.50
	1/2	Ream Bill Paper	3.00	1.50
	3	quires legal cap		.45
	1	" note paper		" 13
	2 doz	Salde Hair Pencils	3/6	.88
	5 1/12	" Combs		.78
	4 1/12	Ebony Pen holders	60	2.45
	17/12	Combs		.40
	4	" Lead pencils		" 99
	4	" Steel pens		" 20
	1 qt.	Rose water		" 40
	1/3 doz	Julius text		2.00
	1/12	wrights		3.50
				1659.43
	9/12 doz	4-0 Paint Brushes		6.75

Page 64.	1 1/2 doz	5-0	Paint brushes	12.40
	8/12	"	6-0	8.00
	11/12	"	3-0	7.37
	1	"	2-0	7.25
	11/12	"	1-0	5.00
	1	"	No. 1	4.50
	7/12	"	" 3	3.80
	1	"	" 4	2.25
	4/12	"	" 2	1.16
	1	"	" 6	1.50
	9/12	"	" 5	1.37
	8/12	"	Patty Knives	1.63
	10/12	"	No. 5 Sash Brushes	1.12
	10/12	"	" 4 " "	1.15
	1 lb		Ext Heribane	3.00
	2 Jars		Scicuta 18/-	4.50
	2 lb		Ext Gentian 9/-	2.25
	2 "		" Deadly night shade 13/-	3.25
	2 "		" Stramonian 12/-	3.00
	1 "		" Coly cith	" 90
	2 "		" Valeria 16/-	4.00
	1 "		" Acunite 13/-	1.63
	2 "		" Dypoval Bush	1.13
	1 1/2 "		Blue Pills 60	.90
	1/2 "		Camphete Runer	.23
	1 lb		Ext Dandelion	1.66
	2 "		Blue ointment 8/-	3.00
	1/2 "		Campheteon S.	" 30

Page 65.	1/2 lb	Ext Quassia	645	3.22
	1 lb	Balsam Tolu		.44
	1/2 "	Prato Carb Iron	4.00	2.00
	2 oz	Ext ruz vomica		.60
	1/2 "	opii Pulv	56	.28
	2 "	white precipitate		.25
	1 "	Citrate of Iron		.32
	2 "	Pulv Rhia	4	.80
	2 "	Peperin	61	1.22
	1 "	Fruct assafoedita		.30
	1 lb	Fruct Cordian		.31
	1 "	" Sanguinaria		.30
	1 "	" Beladonna		.30
				1764.77
	1 lb	Fruct Hyoscamus		30
	2 "	" Digitalis		30
	1 "	" Cinnamon		30
	1 "	" aconite		30
	1 "	" albes		30
	1 "	" Rhus		30
	1 "	" Capsicum		30
	1 "	" Sapo Camphor		30
	1 "	" ascetide apia		30
	1 "	" Tolu		40
	2 "	" Myrrh		.60
	1/2 "	" Cantharidis	60	30
	2 "	" Pinet Valerian		60
	1 "	" Cinnamon Compust		30

page 66.	1	"	Camphor	30
	1	"	Iodine	30
	1	"	Cardomian	30
	1	"	Rhen & Senna	30
	1	"	Alloes & Myrror	30
	2	"	very S. Root	60
	2	"	Cornachona	60
	1	"	Laudum	60
	2	"	Paragoric	60
	1	"	Snac	30
	1	"	Salula	30
	1	"	varnica	30
	1	"	quac ananized	30
	2	"	Gutta Compound	60
	1	"	Chloride Iron	30
	1	"	Sulph Acid	30
	1½	"	Peppermint water	45
	1	"	Antimonial Wine	30
	2	"	Ipecac	60
	1	"	Compound S. Squills	30
	1	"	Syrup Squills	30
	1	"	" Rhei	30
	1	"	" ventia vuide	30
	2	"	Spts Lavender	60
	1	"	Ammonia	25
	1	"	Hawley's solution	30
	1	"	Syrup Iota	30

1780.86

page 67.	13 oz	Red alder		16
	1 lb	Pulo S. Elm		20
	15 oz	Male Fern		36
	13 "	Reemey		35
	1 ³ / ₁₂ "	Campney		25
	13 "	Scorander Seed		16
	1 ² / ₁₀ lb	Shonak Berries		22
	12 oz	fox glove		22
	1 lb	Ginger Root		30
	1/2 "	Dwarf Elder		19
	1/2 "	Wormwood		15
	1 "	Berth Root		60
	1 "	Elucim pane		13
	1 "	Crane's bill		38
	10 oz	Plumy Root		15
	14 "	golden seal	3/-	35
	5 "	Sulphate Zinc		15
	9 "	Skimalata		23
	14 "	Lac Sulphur		07
	1 lb	Fenocoy		30
	1 ² / ₁₀ "	Pulo Cantheradies		2.50
	10 oz	Palana Carb	40	25
	1 ¹ / ₁₆ lb	acitate Patuna	4/-	1.15
	7 oz	Picea		30
	1 ¹ / ₄ "	Caperas	10	12
	1 do	Pulo Ocunda		20
	10 oz	Verdigris		40
	13 "	Columbo		16

Page 68.

10 oz	Sart Emetic	44
2 lb	Kino	50
7 oz	Pulv Gentian 20	14
1 ¹ / ₁₆ lb	Pul Penny Root	44
14 oz	Culub	56
13 "	Cachauri	1.43
11 "	Balsam Chloride	.34
12 "	Soap stone	.12
8 "	Snuff Beers	.50
3 "	Pulv Ergot	18
10 "	Dones Paneders	1.10
4 "	Potona	24
12 "	Pulv Sal autre	18
4 oz	Castor.	16
		\$1796.87
9 oz	Corrosive sublimate	65
5 oz	white Precipitate	20
3 "	Citric acid	23
3 "	Benzoin "	1.20
3 "	Pulv apes	1.66
1 "	Iodide Potassium	.38
1 "	Cineage	.75
1 ² / ₁₆ lb	Cobalt	.25
5 oz	Peperum	.18
4 "	Red precipitate	.45
9 "	Gum Guac	.07
6 "	Sulphate Iron	.50
9 papers	Tarima	.75

Page 69.	3 ³ / ₁₆ lb	Pearled Barley	.30
	1 ⁹ / ₁₆ "	Barley Bark	.33
	15 oz	Cayenne Pepper	.29
	1 ¹⁴ / ₁₆ lb	Peruvia bark	3.28
	2 ³ / ₁₆ "	Gum Camphor	.92
	1 ⁴ / ₁₆ "	Perm Bark	2.96
	7 oz	Cammonite flowers	.45
	2 ⁷ / ₁₆ lb	Tartaric acid	1.95
	3 ⁷ / ₁₆	Sago	.43
	5 ¹² / ₁₆	Bees wax	1.44
	10 lb	Starch	.80
	5 "	Seneca L. Root	30
	1 ¹² / ₁₆	Spruce Gum	.88
	2 ⁷ / ₁₆	Red Columbo	.19
	1 ¹⁰ / ₁₆ "	Pink Root	.70
	1 ¹⁰ / ₁₆ "	Blood Root	.38
	2 ⁶ / ₁₆ "	Japivia	.60
	2 ⁴ / ₁₆ "	Borax	.70
	8 ¹⁰ / ₁₆ "	Drop Black	1.56
	1 ² / _{oz}	white stick salve	.45
	¹ / ₄ "	Poor Man's Plaster	.32
	¹ / ₂ "	warming "	.75
	1 ¹³ / ₁₆ "	Sticking Salve	.45
	3 ² / _{lb}	Sulphur	.25
	7 "	Blue vitriol	1.12
	1 ¹⁵ / ₁₆ "	Cream Tartar	.74
	1 ⁹ / ₁₆ "	Valeria root	.48
	1 ¹⁴ / ₁₆ lb	Gentian	.30

page 70.	1 3/10 lb	Sarsaparilla		45
	1/2 "	Pulv Epiae		1.12
	1 1/10 "	Oxalic acid		.82
	11 oz	urine		.08
	13 "	Bi carb Potassiu		.25
	1 stove			15.00
	1 Desk			8.00
	1 arm chair			1.00
	1 open			.25
	1 desk stool			.25
	2 counters			12.00
	6 5 gall cans	ap-		4.50
	4 3 " "	4		<u>2.00</u>
				\$1873.17

A. Haller Bot of Thos. Lord				
41 gall alcohol	44			18.04
5 lb Sal Epion	4 ^c			.20
1 Box 2/- 31 lb Castile soap	14 ²			4.50
10 lb Sal nitre	10			1.00
1 " Sugar. lead				.18
1 mat 4 1/2 lb Cinnamon	44			1.87
1 lb apia Turkey				6.25
1 ² " Carb Magnesia				.31
1 gross pint Paper corks				.45
Box 2/- Cartage 2/-				<u>.50</u>
				33.30

Bought of Pedler
 1/2 Rem Paper 1.00

Page 71.

1 gross Pens	af	75	
1000 Envelopes		1.00	
2 4 Sage		.70	
4 gall Camphene	80	3.20	
5 " alcohol	48	2.40	9.05
Total			\$1915.52

L. P. Wagner being also first duly sworn testified as follows. I was a subscribing witness to a bond now held by me (here a bond of Plaintiff to George W. Miers was shown to the witness of 160 acres of Land in Michigan) I became a subscribing witness to the same by the request of Plaintiff, and George W. Miers. this was at the date of the bond. I became a subscribing witness - Miers & Plaintiff came into my office at that time. Plaintiff told me in the presence of Miers at that time that the bond was given in part pay for the goods he had been purchasing of Miers, the Drugs, &c.

The Defendant objected to the witness being allowed to testify to the statements of the plff. but the objection was overruled & the

page 2.

witnesses allowed to testify, to which ruling, the defendants at the time excepted.

There was also talk between Miers & Plaintiff about some Kansas land also being turned out in pay, but what it was I am not able to state. I cannot recall all the conversation.

The Plaintiff here offered in evidence to the jury the bond described by Mr. Wagner & of which he was a subscribing witness - which bond is in the words and figures following to-wit:

Know all men by these presents, that I, Alvah Fuller of Aurora Kane Co. Ill am held & bound unto George W. Miers of the same place in the penal sum of one thousand dollars to be paid to the said George W. Miers, his Executors, administrators heirs or assigns, to which payment well and truly to be made I bind myself, my heirs, executors, and administrators, and every of them firmly by these presents. Sealed

page 73, with my seal this 12th day of February
A.D. 1858

The condition of the above obligation is such, that whereas, the above bounden Alvah Fuller has this day sold to the said George W. Miers, his heirs and assigns, for the sum of one thousand dollars, the following described piece or parcel of land, lying and being in the State of Michigan, and County of Allegan to wit, The South East quarter (S.E. 1/4) of Section No. thirty five (35) In Township No. two (2) North of Range No. Fourteen (14) west, containing one hundred and sixty acres as per government survey, the same, more or less, It is agreed by the parties in this contract, that no abstract of Title shall be required of said Alvah Fuller, as to said land.

Now if the said Alvah Fuller shall execute and deliver to the said George W. Miers a good and sufficient deed of the within described land in three months from the date hereof, then this obligation to be null & void - otherwise to

page 74. remain in full force and virtue
Sealed, signed and delivered in
presence of
L. R. Wagner Alvah Muller (Seal)

Here the Plaintiff rested his
case, and the Defendant offered as
a witness George W. Miers Sen. at
Plaintiffs request, he was sworn
to answer questions with regard to
his interest. he testified that he was
the George W. Miers who sold the
goods in question to the Plaintiff
in this suit whereupon the Plaintiff
by his counsel at the time objected
to his being sworn as a witness
in said cause, which objection the
Court sustained, and the defendant
then and there offered a release to
said witness, which release is in the
words and figures following, to wit.

After which the said George H. Miers was again offered as a witness on the part of the defendant and the plaintiff then and there at the time objected to said witness being sworn on said trial or testifying in said cause, which objection the Court overruled, and permitted said witness to testify in chief in said cause, to which ruling of the Court in permitting said witness to testify after the release as aforesaid the Plaintiff by his counsel then and there at the time excepted.

George H. Miers then testified as follows, for Defendant. I know the parties to this suit. I was owing Sawyer, Paige & Co. of Chicago on the 28th day of Dec 1857 about \$500 or more. The Defendant here asked the witness whether or not he informed the Plaintiff ^{that} there was a Mortgage on the goods before his sale to Plaintiff. if yea, what information he gave him, to Sawyer Paige & Co. To the answering of which the Plaintiff by his counsel then & there at the time objected, which objection was overruled by the

12
page 76. Court, and the witness permitted to answer the same, to which ruling of the Court in permitting said witness to testify in said cause, the Plaintiff by his counsel then and there at the time excepted.

I did tell Plaintiff. Plaintiff and myself went to Albert Muller's office. Albert thought the Mortgage good - we had a copy of the Mortgage at the time. Plaintiff thought the Mortgage not good - we could not find that the Mortgage was entered upon any Justice's docket. I sometimes waited upon customers after my sale to Plaintiff, when requested to do so. Plaintiff's Clerk did not understand the business thoroughly - I had no interest in the goods after my sale to Plaintiff. We were some 2 or 3 days in making the invoice or inventory of the goods. They were sold at their cash price. I did not get a deed of the Kansas Land. I went to Kansas to preempt it, but could not get a pre-emption. Plaintiff preempted it. I gave a bill of sale of the goods to Plaintiff.

page 77, at the time I sold out to him.

Cross Examined.

The sale of the goods by me to Plaintiff was on or about the 12th day of February, 1858. we took a full inventory of the goods - Here the inventory offered in evidence & shown to George W. Miers was shown to witness, who testified it was the inventory taken by them at the time of Plaintiffs purchase of him. I recd. in payment from Plaintiff the bond for 160 acres of land in Michigan at the time, and that land Plaintiff at my request afterwards deeded by Warranty deed to Alexander Martin. The Kansas claim of 160 acres I was also to receive in part payment. I afterwards went to Kansas to preempt the same, but on arriving there I learned I could not do so on account of my wife not being there, to make actual settlement. I then returned and the Plaintiff went to Kansas and entered it with the understanding that he should have one half of the Land

page 78.

for so doing. The Plaintiff did then go to Kansas and preempt the land with that understanding. The sale made by me to Plaintiff made to get property whereby I could pay my debts, and immediately after the sale by me to Plaintiff aforesaid I offered the defendant, before his mortgage became due, the land in Michigan in payment of his claim against me, after the sale I had no property in this State to pay my debts. We went to the office of Parks; defendants Sawyer, who advised him to take the land, and said that the Mortgage was not good. I was told by persons residing about the claim of Land in Kansas, while I was there that it was worth \$1000.00. It was a good claim and good land.

Resumed

Plaintiff preempted the claim in Kansas. I afterwards sold and assigned to R. W. Hoyt the quit claim or bill of sale of the Kansas claim.

Did you after Plaintiff preempted the land go to Plaintiff's

get a deed of one half of the Land - objected to by Plaintiff, and the Court overruled the objection, and permitted the witness to answer the question. to which decision of the Court in overruling the objection, and permitting said witness to answer the same - the Plaintiff by his counsel at the time then and there excepted. The witness then testified that he did, and that Plaintiff declined giving a deed but said he would wait until he saw how this trial came out & then he would do what was right. I gave to Plaintiff a bill of sale at the time I sold to him. It provided that if the goods did not invoice at cost prices to \$2000, as I was to make up ^{to Plaintiff} the difference some time, if I ever got able.

J. C. Williams, who testified as follows. I know the parties to this suit - I went into the store soon after the goods were taken by Paige - I know the goods in question it was on the building formerly occupied by Hall & Bros. for a drug store.

page 80. The defendant then asked witness if he heard Plaintiff say anything about the existence of a mortgage on said goods at the time of the purchase by said Plaintiff, and if so, what — objected to by Plaintiff the objection overruled by the court & to the overruling the objection by the court & permitting the witness to answer the question, the Plaintiff by his counsel then and there at the time accepted. The witness answered that he did hear the Plaintiff say he knew there was a Mortgage upon the goods, but that he believed the Mortgage was so drawn that it was not legal in good for anything. This conversation was in the store after the goods were taken.

Thomas Newlan was also called by the defendant as a witness who testified as follows, to wit — I know the parties to this suit. I know where the goods in question were I own the building — It was formerly owned by Hall & Bro. and used for a Drug store. I leased it to Myer &

page 81. Lightcap - did not see any change in the apparent possession after the sale by Miers. Miers was in the shop waiting on customers afterwards as before. Myers was waiting on customers the same day the goods was removed. I saw no particular the business

Cross Examined.

Plaintiff paid me for the rent of the store after the sale by Miers to Plaintiff - Plaintiff paid me for about one and a half months rent.

Riley W. Hoyt was also called and sworn for defendant as a witness. He testified as follows, to wit. I purchased of George W. Miers, and had assigned to me the quit claim or sale of the Kansas land. I went to Plaintiff to get him to deed it to me. Plaintiff refused to deed it, said he had settled with Miers. Miers remained in the store the same after the sale as before.

William W. Walker also

page 82. Called by Defendant, as a witness, who was sworn and testified as follows - I am acquainted with the parties to this suit - I was in the store every day, after the sale of Miers to Plaintiff. Saw no particular change. Saw Miers waiting upon customers. We purchased some of the goods of Fuller after the sale. Plaintiff also purchased goods of us for his store

~~~~~ Williams also called by defendants as a witness, and sworn and testified as follows - I am acquainted with the parties to this suit - I am a Clerk for Sawyer Paige & Co of Chicago - I went out to Aurora and appraised the Goods. I appraised them at about \$1000 - the goods were in the upper story of Woodward's Blacksmith Shop. I got the Key of him once, and at other times from others. the defendant is one of the firm of Sawyer Paige & Company of Chicago, Illinois



Cross Examined.

I have been in the employ of Defendant and Sawyer & Co for six years past. I went out to Aurora at the instance of Defendant alone. I did not inform the Plaintiff of my business. I went to Woodward's shop and examined and appraised the goods alone - about one year after they were taken by defendant - I am still in the employ of Defendant, Sawyer & Co.

Here the defendant by his Counsel read to the Court the following affidavit of the defendant of the loss of the Mortgage and notes from George W. Miers to Sawyer Paige & Co. which affidavit is in the words and figures following, to wit:

State of Illinois }  
 Kane County } Nathaniel Paige  
 being duly sworn upon oath deposes and says that the Mortgage of which the foregoing is a copy, and the notes therein described, were stolen from the overcoat pocket of this affiant while



page 84

the said coat was hanging in the entry of the boarding house of this affiant, at Chicago, Illinois on or about the 10<sup>th</sup> day of March A.D. 1858, and that this affiant has made diligent search and inquiry about the Mortgage and notes mentioned, but has entirely failed to ascertain their whereabouts.

Nathaniel Paige

Subscribed and sworn  
to before me this 17<sup>th</sup> day  
of June, A.D. 1858.  
Charles J Metzner  
J. P. }

And then offered to read in evidence the Record copy of said Chattle Mortgage from George H. Miers to Sawyer Paige & Co. to which reading in evidence the Record copy of said Mortgage the Plaintiff by his counsel at the time then and there objected & the Court overruled the Objection and allowed the defendant to read



Page 85 the Record copy of said Mortgage  
in evidence to the Jury (which  
Mortgage is in the words & figures  
following, to wit:)



page 86.

I know all men by these presents that I George  
W. Myers of the City of Aurora Kane county &  
State of Illinois in consideration of Ten  
Hundred and 7/100 Dollars to me paid  
by Sawyer Paige & Eymay of Chicago Illinois  
the receipt whereof I do hereby acknowledge  
have granted bargained & sold and by  
these presents do grant bargain & sell unto  
the said Nathaniel Sawyer Nathaniel Paige  
& Isaac Eymay and their assigns the  
following goods & chattels to wit: All  
furniture Drugs Dyestuffs Liquors Paints  
oils and Merchandise generally now  
in the Drug store of the said <sup>George W.</sup> Myers  
situate in the west division of the city of  
Aurora Ill in building formerly occupied  
by Hall & brothers as Druggists do hereby  
to hold all and singular the goods & chattels  
unto the said Sawyer Paige & Eymay and  
their assigns forever Provided nevertheless  
that if the said George W. Myers shall call  
and truly pay or cause to be paid unto the  
said Sawyer Paige & Eymay or their assigns  
five promissory notes bearing date Dec. 25<sup>th</sup>  
1857 Two of said notes being for the sum  
Hundred Dollars each payable respectively  
One on the first day of February next One  
on the first day of March next one on the



page 87. first of April next. On for One Hundred &  
seven & 1/2 Dollars payable on the first  
day of June next each of said notes bearing  
ten per cent and payable to Sawyer, Page  
& Co of Chicago Ill. as they severally become  
due. Then this Mortgage to become void  
otherwise to remain in full force & effect  
In presence of }  
A. B. Fuller } George W. Mins (Seal)

State of Illinois }  
Kane County } This Mortgage was  
acknowledged before me  
by George W. Mins the mortgagor this the 28<sup>th</sup>  
day of Dec. 1887  
A. B. Fuller (Seal)  
Justice of the Peace

Filed & Recorded Dec. 1<sup>st</sup>  
1887 at 1 o'clock P.M.  
Paul R. Wright Recorder

State of Illinois }  
Kane County } I Paul R. Wright  
Clerk of the Kane County  
circuit court and ex officio recorder of  
said county in the State of said do hereby  
certify that the foregoing is a true & correct  
copy of a certain chattel Mortgage



Page 88. given by George W. Mins to Sawyer Paige & Co  
as recorded in Book 53 pages 111-112 of the  
records of my office

Witness my hand and the  
seal of said Court - this 2<sup>d</sup>  
day of March A.D. 1888  
P.R. Wright Clerk

Which ruling of the Court in overruling plain-  
tiffs objection & permitting said record copy  
of Montzago being read as evidence to the  
jury the Plaintiff then and then at the  
time accepted

The Defendant then rested his cause  
and the Plaintiff then introduced as a  
witness Mark Goulder who being sworn  
testified as follows I am acquainted  
with the parties to this suit I have been a  
Druggist some 8 years I once owned the  
stock of goods in question they were a  
new stock I sold them to Mins & Light-  
cap about an year previous to the defendants  
taking them of Plaintiff I have examined  
the invoice made by George W. Mins to plain-  
tiff and the cash prices of said goods as  
then carried out I know the same to  
be correct I purchased the goods quoted



page 89. part of the stock myself and I have the inventory made by us at my sale to Mrs O. Lightcap here and the cash price of that invoice corresponds with Mrs's invoice to Plaintiff — ~~which was all the evidence~~

The Plaintiff <sup>admitted</sup> ~~admitted~~ <sup>which was all the evidence</sup> Offered on the part of the Plaintiff & Defendant in the above entitled cause in the hearing of the court & jury except the release to George W. Myers The Plaintiff here asked the court to instruct the jury as follows For the Plaintiff the court is requested to instruct the jury

1<sup>st</sup> The Mortgage from Mrs to George & Co of any Mortgage was ever given is not valid against the rights & interests of any third person or persons unless the actual possession of the property mortgaged was taken by the Mortgagee or unless the Mortgagee provided that the Property should remain with Mrs and was duly acknowledged and recorded

2<sup>d</sup> If the Mortgage which has been read in evidence was executed & delivered by Mrs to Gay & Co yet it is not sufficient to make a lien upon the property therein named as against the rights of third persons



2  
Page 90. unless the actual possession of the property was transferred to Paige & Co. and if Paige and Co. did not take possession of the property they have no right to hold it under said mortgage against Daller if Daller purchased the property of Wins for a valuable consideration and in such case it would make no difference whether Daller knew of the mortgage or not at the time he purchased

3<sup>d</sup> If Wins sold the goods in contravention to Daller for a valuable consideration Paige & Co cannot attack such sale on the ground of fraud unless they are judgment creditors of Wins or subsequent purchasers of the same property

4<sup>th</sup> A Sale of personal property is not complete so as to change the property from the vendor to the purchaser without a delivery of the thing sold

In order to constitute a good consideration for the sale of goods it is not necessary for the Plaintiff to prove he gave the full value for them or that he gave an equivalent. But if from the evidence the jury are satisfied the sale was not



Page 91 corruptly and fraudulently entered into  
The mere fact of inadequacy of price is not  
sufficient evidence to prove the sale a  
fraudulent one

Of the jury believe from the evidence that Mims  
sold the goods in question to the Plaintiff  
and that a portion of the consideration of  
sale of the same consisted in a claim of  
land in Kansas and that such sale  
was for a valuable consideration the  
fact of Mims not entering the same claim  
or of Fuller entering the same afterwards  
under or by virtue of an agreement  
between Mims & Fuller whereby Mims as  
yet has not obtained the land such  
subsequent act would not render void  
the contract between Mims & Fuller of  
the sale of the goods in question

Of the jury believe from the evidence that  
Mims the vendor did remain in or about  
the store after his sale to the Plaintiff  
and that such remaining was done at  
the request of the Plaintiff & bona fide  
such remaining would not be evidence  
of fraud and all inference therefrom  
if this explained should be construed



Page 9 of the jury compatible with the honesty and fairness of the parties

Plaintiffs refused Instructions  
If the defendant undertakes to establish title to the goods in question by a bill of sale or mortgage from Mrs to Sawyer Page & Co it is necessary for the defendant to show that the mortgage itself should provide for the possession necessary remaining with the mortgagor and that the goods mortgaged should have been entered upon the Justice's Docket in the district in which the mortgagor resided and also that a description of the mortgaged property should be also entered upon the Justice's Docket and that unless the defendant if he relies upon his mortgage for his title has not found such facts he cannot by virtue of his mortgage, sustain his title as against the creditors of Mrs purchasing for a valuable consideration

If the jury believe from the evidence that Mrs did give to Sawyer Page & Co a mortgage on a portion of the goods in question and that subsequently Mrs



added additional goods to the Store as well also did Oller after his purchase of Wines such additional goods would not be subject to the Mortgage And if the Jury believe from the evidence that such goods were taken by Paige they should find for the Plaintiff the value of the same and the declarations of the defendant made at the time of such taking to the Plaintiff that if he owned any of the goods he might take them out would not deliver the Plaintiff from the necessity recovery of the same if defendant did take such goods without the authority of the Plaintiff and against his consent.

Possession is necessary in order to transfer and render valid a sale of personal property and in a contest between creditors equally mentions this is the best right who first gets possession of the goods

So the court refusing to give the instructions each of them as asked by the Plaintiff and refused by the court the Plaintiff then and then at the time excepted



page 94 The Court then instructed the Jury as follows  
for the Defendant

Defendants Instructions

If the Jury believe from the evidence that Fuller  
purchased the goods of Minis through fraud  
malice covin ~~or~~ collusion or guile with a  
full knowledge of the Mortgage of Sawyer  
Page & Co and with intent to cheat or defraud  
hinder or delay Sawyer Page & Co & if this  
lien created by said Mortgage then as  
to all property thus mortgaged and taken  
under said Mortgage by Paige the law  
is for the defendant and that too if  
Fuller paid a full price for the goods  
2<sup>d</sup> That the Mortgage is good between  
George W. Minis & Sawyer Page & Co. and  
conveys the title of the property therein described  
to Sawyer Page & Co. as against Minis

If the Jury believe from the evidence that the  
plaintiff Fuller purchased the goods in  
question of George W. Minis with a full  
knowledge of the Mortgage of Sawyer Page  
& Co. with a fraudulent intent to defraud  
Sawyer Page & Co of the benefit of their rights  
they had by virtue of said Mortgage then as  
to all property thus affected the law is for the  
defendant and such is the law if the facts



page 95 J. B. Fuller did not make a memorandum  
as required by the Statute in his docket of  
the property mortgaged

In determining the question of whether or not the  
sale from Miss Jo Fuller was fraudulent  
the jury should take into account all the facts  
in proof. The relationship if any between  
the parties. The consideration paid if any  
thing by whom received. The fact if it exist  
in proof of Miss selling all the property  
he had if proven all the facts and circum-  
stances in proof the jury believe the sale to  
be fraudulent and made with intent to cheat  
defendant to hinder or delay in the collecting  
the debts of Sawyer Paige & Co secured by the  
Mortgages on said property. So sold them  
as to such property the jury should find for  
the defendant.

### Defendants Refused Instructions

That the principal question for the jury to try  
in this case is whether the sale of the goods  
in question from George W. Miss to the plaintiff  
Fuller was made for the purpose of cheating  
and defrauding Sawyer Paige & Co out of their  
lien upon the goods in question which they had  
by virtue of their chattel mortgages in question.



page 96 So this end the jury are instructed that said Chattel Mortgage is and was good as between Minis Sawyer Page & Co. Therefore if the jury believe from the evidence that Diller the plaintiff purchased said goods from Minis with a full knowledge of said Mortgage and without paying any real consideration for said goods and that said purchase was made by said Diller with the real intentions of defeating & defrauding said Sawyer Page & Co. then in law said sale was absolutely void as against Sawyer Page & Co. and he acquired no title to the said goods and the jury should find the defendant not guilty.

Now knowing of the defendant's Mortgage such knowledge is a fraud in law and the jury should find for the defendant.

If the jury believe from the evidence that Diller purchased the goods knowing of the Mortgage of Sawyer Page & Co. and acting upon such knowledge he deliberately planned to avoid said Mortgage & deprive Sawyer Page & Co. of any right they might have under the same such facts would constitute a fraud.



page 97 If the jury believe that the sale from Mires to  
Duller was fraudulent and merely colorable  
with intent to cheat or defraud Mires or delay  
Sawyer Page & company out of their rights  
secured by the Mortgage then as to all purposes  
thus affected the law is for the defendant  
and in determining that Question the fact  
if it is proven that Mires still remained  
store that there was no change in  
possession but Mires still remained in  
store that the clerk did not know of  
the consideration of the sale and all the  
facts in proof

If the jury believe from the evidence that  
Duller purchased the goods of and defrauded  
said Sawyer Page & Co then in  
law said sale was absolutely void as  
against Sawyer Page & Co and that he  
acquired no title to the goods and the  
jury should find the defendant not guilty

If the jury believe that Duller purchased the  
goods of Mires subject to the Mortgage &  
he was simply to take Mires place then  
the Mortgage being good as between Mires  
Sawyer Page & Co. is also good as to Duller  
and that too without any fraud on the part of Duller



Page 98. 9. If the jury believe that Fuller purchased the goods of Mrs subject to the Mortgage and he was simply to take Mrs place then the Mortgage is good and will hold the property as against Fuller

10 If the jury shall find the title to the goods mentioned in the Mortgage in the defendant and that the Plaintiff mixed other goods with them and refused to take them out when requested by defendant that he cannot recover for the goods so mixed

11 If the jury believe from the evidence that the sale from Mrs to Fuller was fraudulent and that Fuller mixed up other goods with these <sup>thus</sup> purchased & mixed them for the purpose of having some of his goods taken and refused to separate them when requested then the law is for the defendant

12 If the jury believe from the evidence that the sale from Mrs to Fuller was fraudulent and that Fuller mixed up other goods with them thus purchased of Mrs and refused to separate them when requested by defendant that he cannot recover for the goods so mixed up



page 99. In the giving of which Instructions reach  
and copy of them the plaintiff by his  
counsel then and there at the time excepted

The jury retired and subsequently  
returned into court with a verdict for  
defendant. Whereupon the Plaintiff makes  
his motion for a new trial for the following  
reasons

Shoak Miller } May Term of Term  
Nathaniel Paige } County Circuit Court A.D. 1889

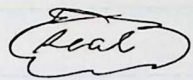
And the said Plaintiff moves  
and moves the Court herein for a new  
trial for the following reasons to wit-

- 1<sup>st</sup> The verdict was contrary to the law and evidence
- 2<sup>d</sup> It was contrary to the evidence
- 3<sup>d</sup> The Court erred in giving the Plaintiff  
instructions and each of them
- 4<sup>th</sup> The Court erred in giving the instructions  
in the part of the defendant reach of them.
- 5<sup>th</sup> The Court misdirected the jury in instructions
- 6<sup>th</sup> The Court erred in admitting incompetent  
evidence and excluding that which was competent
- 7<sup>th</sup> In overruling the motion for a new trial
- 8<sup>th</sup> In allowing defendant to release George H.  
Muns and allowing him to testify on the trial

Day atty for Plff



Page 100. Which Motion for a new trial was overruled  
by the court and judgment thereupon  
rendered for the defendant so the overruling  
of which Motion for a new trial the Plaintiff  
by his counsel then and there at the time  
excepted and prays this his bill of  
exceptions may be signed & sealed by the  
court which is done

Isaac G. Wilson 

State of Illinois }  
Joane County } ss. I, Paul R. Knight, Clerk of  
the Circuit Court in and for  
said County, do hereby certify that the foregoing is a  
complete Transcript of the Record & files of my  
office in the case of Abner Miller, Plaintiff against  
Nathaniel Paige, Defendant, being a true copy of  
the Record from Aurora Court of Common Pleas filed in  
my office, the Summons, Declaration, Pleas, Repli-  
cations, Stipulation and Bill of Exceptions, and  
also of all the orders of Court entered of Record  
in said cause.

Witness my hand and the seal  
of said Court at Genoa, in  
said County, this 4 day of  
April, A. D. 1860.

P. R. Knight  
Clerk



Abraham Miller  
Nathaniel Pargi

Dec 18. 50



And now comes the said Alva Fuller  
by Ad Day & took his oath and says  
that in the record proceedings aforesaid  
and in the rendition of the Judgment  
aforesaid there is manifest error  
in this to wit

- 1<sup>st</sup> The court erred in permitting the witness  
Levy H. Miss to testify in said cause
- 2<sup>d</sup> The court erred in permitting said  
witness to answer as to what he told  
the plaintiff in relation to a mortgage
- 3 The court erred in overruling the objections  
made by Plaintiff to the questions asked  
said witness in permitting said witness  
to answer said questions
- 4 The court erred in allowing the record of the  
chattel mortgage aforesaid to be read in  
evidence.
- 5 The court erred in refusing to admit proper  
evidence offered by the Plaintiff
- 6 The court erred in admitting improper  
evidence offered by defendant



1874  
Hiram Miller  
v  
Nathaniel Paige

Transcript and  
Ass't of Errors

And two copies the said defendant in error by  
Hiram Miller & Lewis his attorney and says that there is  
two towns in the record & no evidence of evidence or in the matter  
of the judgment found & says that the same may be found  
in the Miller & Lewis  
for copy the same

- 7<sup>th</sup> The court erred in refusing to give the instructions asked by the plaintiffs which were refused severally
- 8<sup>th</sup> The court erred in giving the instructions asked by defendant each of them severally
- 9<sup>th</sup> The court erred in annulling the motion for a new trial
- 10 The court erred in rendering the Judgment as aforesaid in manner & form aforesaid

Doz & Cook  
attys for p'tys

Filed April 6. 1880  
L. Leland  
Clerk