

12657

No. _____

Supreme Court of Illinois

Van Pelt

vs.

Wilson, et al.

71641  7

Supreme Court of Illinois

Van Pelt

vs

Rights et als.

Argument and

Abstract

United States of America }

STATE OF ILLINOIS, COUNTY OF COOK, S. S. }

Pleas, before the Honorable

Judge of the Seventh Judicial Circuit of the State of Illinois, and Sole Presiding
Judge of the Circuit Court of Cook County, in the State aforesaid, and at a term thereof
begun and held at the Court House in the City of Chicago, in said County, on the
first Monday, (being the day) of

March in the year of our Lord one thousand eight hundred and
Eighty Eight and of the Independence of the said United States the
Eighty Second

Present, Honorable

George Manure

Judge of the 7th Judicial

Circuit of the State of Illinois.

Charles Haven

States Attorney.

John S. Wilson

Sheriff of Cook County.

Attest:

H. L. Church

Clerk.

on the 1st day of June 1857, at the County of Cook, State of Illinois, Isaac Barnhart, of the County of Cook, State of Illinois, his certain affidavit, which is in words and figures following, to wit:—

State of Illinois }
Cook County } ss.

Cook County Circuit
Court of the June (Special
Term A. D. 1857.

Isaac Barnhart, being duly sworn, deposes and saith that he is lawfully entitled to the possession of the following described goods and chattels, to wit:— All and singular, the goods chattels and property contained in the Hotel situated on Clark Street in the City of Chicago, formerly called the "St. Nicholas Hotel," and now known as the Burnett House. That is to say:— Eight Mirras, Five Mahogany Tables, Four Marble Top Tables, Six Mahogany Tete-a-tetes, Two Rosewood Tete-a-tetes, ^{Four Mahogany, Buffs, Two Rosewood Tete-a-tetes} one Rosewood Marble Top Table, Three Rosewood Easy chairs, Six Wood chairs, Three Mahogany Easy chairs, Five Mahogany Wash stands, Four Mahogany ^{Wash stands}, One Mahogany chair, and the furniture and curtains in

Ladies Parlour - Furniture - Two hundred
 forty eight yards of carpet in five parlors - One
 hundred Cottage Bedsteads - One hundred fifty
 six grass mattresses - Fifty Hair Mattresses,
 One hundred Feather Pillows, One hundred hair
 pillows, one hundred and fifty Comforters, Two
 hundred pairs of sheets, Four hundred Pillow slips,
 One hundred fifty white Bed-spreads, seventy
 five Bolsters, Eighty wash stands, Sixty Bed-
 room Stands, One hundred seventy five Bed room
 Chairs, Ninety Crochey Chamber sets, Ninety
 Looking-glasses, Sixteen hundred and twenty
 yards of Carpeting - Twenty-five office chairs,
 Two Mahogany Sofas, Three hundred Napkins,
 Five hundred Towels, Twenty four dozen Knives
 and forks, Twenty four dozen Tea spoons, Twelve
 dozen Table Spoons, One hundred Dining chairs,
 Two office Desks, One Easy chair, Fifteen Stores
 Pipes, One Centre Table, and all the oil-cloth
 in the office, and second story Hall, and Read-
 ing-room - Together with all the Kitchen
 furniture, and Kitchen utensils in Kitchen,
 and all the Household furniture in said Ho-
 tel - And Eighty-five dozen Dishes and Plates -
 Nine silver-plated Crates, and Twelve
 dozen Coffee cups and saucers, and
 One half dozen of each of the following
 Bases, and one and a half dozen
 Pitchers, and one dozen of each of the following
 Salts, Three

Dozen Clocks, Two, and
a half Dozen, Gold
One dozen, Silver
Gin Wailers, Two, and
ers, One Soup Saddle, one and
Four large Choping Dishes, One so
of the value of Four thousand Dollars.

And that the same have not been
taken for any tax, assessment, or fine levied by
virtue of any law of this State, nor seized under
any execution or attachment against the goods
and chattels of the said Van Pelt, plaintiff in
the suit now about to be commenced, liable to
execution or attachment. And the said depo-
nent further saith that John L. Wilson, D.
C. Johnson, Henry Knight, John B. Knox, William
W. Nicoy, Andrew J. Sink, C. J. Hamilton, E. Jenks
unlawfully and wrongfully detain said goods
and chattels, and withhold the possession
thereof from the deponent. Wherefore said
deponent prays that a writ of Replevin may
issue from this Court, directed to the proper officer,
commanding him to put the said deponent in
possession of the aforesaid goods and chattels.

J. Van Pelt

Subscribed and sworn to

before me, this 4th day of June

1857

And say, that, to wit, on the day and
year last aforesaid, there was issued out of the
office of the Clerk of the Court, aforesaid, and
under the seal of said Court, the Peoples writ
of Replevin, directed to the Coroner of Cook
County, to execute, and clothed in the words
and figures following, to wit—

State of Illinois }
Cook County } ss.

The People of the State of Illinois, to the Comers of said County - Greeting -

Whereas Isaac Van Belt, plaintiff, complains that John L. Wilson, D. C. Johnson, Henry Knight, John R. Knox, William C. Nicoy, Andrew J. Sink, C. J. Humbleton, E. Jents, Defendants, unlawfully and wrongfully have taken, and do detain the following described goods and chattels—to wit—

Eight Mirrors, Five Mahogany Tables, Four
Marble Top Tables, Six Mahogany Tete-a-tetes,
Two Rosewood Tete-a-tetes, ^{Four Mahogany Bureaus,} Two Rosewood Tete-a-tetes
one Rosewood Marble
Top Table, Three Rosewood Easy Chairs, Six Wood
chairs, Three Mahogany Easy chairs, ^{Two} Maho-
ogany Wash stands, ^{Two} Maho-
ogany Bedsteads, Twentyone Mahogany chairs,
Five sets of curtains, ^{Two} sets of
Curtains, ^{Two} sets of
in Two pieces, ^{Two} sets of
One hundred ^{Two} sets of
Trunks, Fifty

Hair Matt

One hundred and fifty
Comp
Hundred
Bed-spreads, Sixty Bed-stands, One hundred
stands, Sixty Bed-stands, One hundred
seventy-five Bed-room Chairs, Nine Chamber
Chamber sets, Ninety Bed-room glasses, Sixteen
Hundred and twenty yards of Carpeting, Twen-
ty-five office chairs, Five Mat-gang Sofas, Three
Hundred Napkins, Five hundred Towels, Twenty-
four dozen knives and forks, Twenty-four dozen
Tea-spoons, Twelve dozen Table Spoons, One hun-
dred Dining chairs, Two office Desks, One Easy
chair, Fifteen Stoves and Pipes, One Centre-Table,
and all the Bed-cloth in the Office and Second
Story Hall and Reading-room in the St. Nicolas
Hotel, now known as the Burnett House— together
with all the Kitchen-furniture and Kitchen
utensils in Kitchen, and all the Household
Furniture in said Hotel— and Eighty-five
dozen Dishes and Plates— nine silver-plated
castors, Ten Toilet-sets, Twelve dozen Coffee Cups,
and saucers, Six dozen Tumblers, one half dozen
French Fruit Baskets, Six Colley Bases, Four dozen
Creamers, Two and a half dozen Pitchers, Twelve
dozen Individual Salts, Three dozen Molasses
Cups, Four Five Buckets, Two and a half dozen
Moulds, Fifteen dozen Moulds, one dozen Sugar Bows

One and a half dozen Wine Waiters, Fifteen Spit
coats, Three Feather Dusters, One Soup Ladle, One and
a half dozen Bowls, Four ^{Large} ~~Large~~ Chafing Dishes, One
Soup Tureen—

Of the value of Four thousand Dollars—
Therefore, we command you, That if the said
plaintiff shall give you bond with good and
sufficient security in double the value of the said
goods and chattels, as required by law, to prosecute
his suit in this behalf, to effect, and without
delay, and to make return of the said goods and
chattels, if return thereof shall be awarded, and to
save and keep you harmless, in replevying said goods
and chattels, you cause the said goods and chat-
tels to be replevied and delivered to the said
plaintiff without delay— and also that you summon
the said defendant to be and appear before the
Circuit Court of Cook County on the first day of
the next term thereof, to be holden at the Court
House in the City of Chicago, in said County, on the
fourth Monday of June Inst, to answer said plain-
tiff in the premises— And have you then and
there this writ, with an endorsement thereon,
in what manner you shall have executed the
same, together with the bond of the said defendant
have executed, and delivered to the said
plaintiff at the said Court House, and have you
this writ, with an endorsement thereon, to be
executed by the said Clerk of the said Court,



Received from Geo. P. Hansen, Coroner,
of Cook County, the following goods de-
scribed in the within writ, this 8th day of June 1857. to wit-

1 Mahogany Stand - 1 cane Rocking-chair - 30
drop window curtains - 5 painted do - 1 Brussel Car-
pet - 60 red carpets - 5 three ply carpets - 5 part cotton
carpets - 4 carpets - 3 do - 1 do - 61 dining chairs -
9 pieces oilcloth - 25 Cottage Bedsteads - 12 grass
mattresses - 19 straw mattresses - 1 feather pillow -
8 straw bolsters - 41 comforters - 1 spread - 1 sheet -
1 pillow slip - 21 Bedroom stands, 1 Mahogany do -
1 stove - 27 Bedroom chairs -

J. Van Pelt.

Received from Geo. P. Hansen, Coroner, one
large mirror described in the within writ, (found
in the House of Mr. Mitchell, known as the
Clark Street House -

Chicago June 8, 1857.

J. Van Pelt.

Received Chicago, June 8, 1857. of Geo. P.
Hansen, Coroner, two large mirrors described in
the within writ - (found in the house of Mr.
Tucker, Clark Street -

J. Van Pelt.

Received of George June 10. 1857. of Geo.

P. Hansen, Coroner—2 Rosewood sofas—3 Mahogany
Tete-a-tetes—one Mahogany Rocking chair—six ma-
hogany chairs—two broken do—two mahogany French
Bedsteads—sixteen Hair mattresses—four sea
grass mattresses—eleven Cottage Bedsteads—two
comforters—two mahogany Rocking chairs—one
mahogany Easy chair—two mahogany tete-a-tetes
two mahogany Table frames—one mahogany
French Bedstead—ten Cottage Bedsteads—Eight-
een Hair Mattresses—three sea-grass do—three straw
do—nine Feather pillows—one mirror stand—

J. Van Pelt—

Received of George P. Hansen, Coroner,
this June 13.th 1857. the following goods described
in the within will—to wit— one mahogany Bed-
stead— three do Bureaus— less one marble slab— four
Mahogany Wash stands— two do Table frames—
four do Tables— one Rosewood Easy chair— one
mahogany do— one cottage Bedstead— six Rosewood
chairs (two of them broken) nine Bedroom chairs—
one velvet Brussels carpet about 73 yards— two Brus-
sels carpet, about 30 yards— one carpet (unknown)
10 yards— twenty three Bed spreads— five nine
sheets— four pillow slips— eight towels—
fourteen Hair—
fourty six
stock & Bl.

J. Van Pelt—

A
 of June, in
 was returne
 endorsed

hereto annexed, I have taken
 scribed property, and delivered the same to the
 Plaintiff, as for his receipts hereon endorsed, and
 served this writ on the within-named defendants.
 John L. Wilson, June 4— C. J. Hambleton, June 4—
 D. C. Johnson, June 3— Henry Knight, June 3— An-
 drew J. Slink, June 6— E. Jenks, June 9th 1857.
 William O. McCoy, not found— John R. Knox, not
 found in the country—

	Ass. & services,	3.00
paid by	3 levies,	2.50
Plaintiff—	11 Miles,	33.
	1 return,	10
	1 Bond	30
		<u>\$6.65.</u>

Attached to, and returned with said
 writ, was a bond taken by said Coones, which is
 in the words and figures following to wit—

Know all men by these presents, that
 we, Isaac Van Pelt, and Elias Ayres, of Chicago,
 Cook County, State of Illinois, are held and firmly
 bound unto George R. Hancock, Sheriff, of the

County, of Cook, of the State of Illinois, and to his successors in office, executors, administrators and assigns, in the penal sum of Eight Thousand dollars, lawful money of the United States, for the payment of which sum, we do hereby jointly and severally bind ourselves, our heirs, executors and administrators —

The condition of this obligation is such, that whereas on the fourth day of June, in the year of our Lord, one thousand, eight hundred and fifty seven, the said Isaac Van Pelt, sued out of the Circuit Court of Cook County, a writ of replevin against John L. Wilson, D. C. Johnson, Henry Knight, ^{John P. Kelly} Wm. O. Keock, C. J. Humbleton, Andrew J. Smith & C. Jenks, defendants, for the recovery of the following described property goods and chattels, property, to wit —

All and singular, the goods, chattels and property contained in the Hotel situated on Clark St. in the city of Chicago — formerly called the St. Nicholas Hotel, and now known as the Burnet House, that is to say —

Eight mirrors, Five Mahogany Tables,
Four Marble Top Tables, Six Mahogany ^{a-tete}
Two Rosewood Tete-a-tete, Four ^{seas}
Two Rosewood ^{to} ^{on} ^{ce}
Top Table — ^d
chairs — ^{mahoga}
my Wash St ^{Bed} ^{eads}, Twenty
one Mahoga ^{chair} — ^{Fives}

sets Curtains, two Curtains,
Two hundred bed in Fives
parlours, one hundred
dred fifty
One hundred
pillows, One hundred fifty
dred pairs of sheets, Four hundred Pill
lips,
one hundred fifty white bed-spreads, seventy-five
Bolsters, eighty Wash stands, Sixty Bed-room stands,
one hundred seventy-five Bed-room chairs, Ninety
Crookery Chamber sets, Ninety Looking-glasses, Six-
teen hundred and twenty yards of carpeting, Twenty
five office chairs, Two Mahogany sofas, Three hun-
dred Napkins, Five hundred Towels, Twenty four
dozen knives and forks, Twenty four dozen Tea-spoons,
Twelve dozen Table spoons, one hundred Dining-chairs,
Two office Desks, one Easy chair, Fifteen stoves and
pipes, one Centre Table, and all the oil-cloth in
the office, and second story Hall and Reading room
together with all the Kitchen furniture, and
Kitchen utensils in Kitchen, and all the House-
hold furniture in said Hotel, and eighty-five
dozen Dishes and Plates - Nine silver-plated Casters,
Ten toilet sets, Twelve dozen Coffee Cups and Saucers,
Six dozen Tumblers, one half dozen French Fruit Baskets
Six celug vases, Four dozen Creamers, Two and a half
dozen Pitchers Twelve dozen Individual Salts, Three
dozen Molasses Cups, Four Tin Buckets, Two and
a half dozen jelly moulds, Fifteen dozen Goblets,

One dozen Sugar Bowls, one and a half dozen Tin
Waiters, Fourteen Spillertons, Three Feather Dusters,
one Soup Ladle, one and a half dozen Bowls, Four
large Chafing-dishes, one Soup-tureens—

Now if the said Isaac Van Pelt, Plaintiff,
shall prosecute his said suit to effect, and with-
out delay, and make return of the said property,
if return thereof shall be awarded, and soon, and
keep themselves, the said Coroner in replenishing
the said property, then this obligation to be paid,
otherwise, to remain in full force and effect—

Witness our hands and seals, this 4th
day of June, A D. 1857.

I. Van Pelt 

Ernest Ayres 

And afterwards, to wit, on the 12th day
of June, in the year last aforesaid, the said
Isaac Van Pelt, filed in the Clerk's office aforesaid,
the following declaration, to wit—

State of Illinois }
Cook County } ss.

Clerk of the Court
of the County of Cook,
Illinois.

Henry Knigt

John Johnson,

Andrew J.
Humboldt
ed to answer

Charles J.
were summoned
this

suit, of a ^{part} and
chattels of the de-
tained the same against a ^{large}
until &c. and thereupon the said ^{10 a.} ^{10, by}
D. P. Wilder, his attorney, complains - That at the
said defendant on the fourth day of June A. D.
1857. in Chicago, to wit, in the County aforesaid,
in a certain Hotel situated on Clark street, in
said city of Chicago, formerly known as the "St.
Nicholas," ^{Hotel} and now known and described as the
"Burnet House," took the goods and chattels, of the
said plaintiff, to wit -

Eight mirrors, Five Mahogany Tables,
Four Marble Top Tables, Six Mahogany Tete-a-tetes,
Two Rosewood Tete-a-tetes, Four Mahogany Bureaus,
Two Rosewood Tete-a-tetes, One Rosewood Marble
Top Table, Three Rosewood Easy Chairs, Six Wood
Chairs, Three Mahogany Easy Chairs, Five Mahog-
any Washstands, Four Mahogany Bedsteads, Twen-
ty one Mahogany Chairs, Four Rocking Chairs,
Five sets Curtains in Ladies Parlours, Sixty-two
Curtains, Two hundred forty eight yards of Carpet
in Five Parlours, One hundred Cottage Bedsteads,
One hundred fifty Sea grass Mattresses, Fifty
Hair Mattresses, One hundred Feather Pillows,
one hundred Hair Pillows, one hundred fifty

Comforters, Two hundred Pairs of Sheets, Four
 hundred Pillow-slips, one hundred fifty White
 Bed spreads, seventy-five Bolsters, Eighty Wash-
 stands, Sixty Bed Room Stands, one hundred
 seventy-five Bed Room Chairs, Ninety Crochery
 Chamber Sets, Ninety Looking-glasses, Sixteen
 hundred and twenty yards of carpeting, Twenty
 five office chairs, Two Mahogany Sofas, Three
 hundred Sofas, Napkins, Five hundred Towels,
 Twenty-four dozen knives and forks, Twenty-four
 dozen Tea-spoons, Twelve dozen Table-spoons, One
 hundred Dining-chairs, Two office desks, one
 Easy chair, Fifteen Stoves and Pipes, one Centre
 Table, All the Oil-cloth in the Office, and Second
 Story Hall, and Parlor-room — Together with
 all the Kitchen Furniture, and Kitchen Utensils
 in Kitchen, and all the Household furniture
 in said Hotel Eighty-five dozen Plates and
 Dishes, Nine Silver Plated Casters, Ten Toilet-sets,
 Twelve dozen Coffee cups and Saucers, Six dozen
 Tumblers, one half dozen French Fruit Baskets,
 Six berry Bases, Four dozen Creamers, Two and a half
 dozen Pitchers, Twelve dozen Individual salts,
 Three dozen Molasses cups, Skits,
 Two and a half dozen
 Goblets, One half
 dozen Tea
 or Dusters, no a half doz-
 en Bowls, one soup

Prison, of
Thomas
detained in
until &c.

that he is
damages to the
Dollars, lawful money, and therefore
this suit &c.

ie. of Honor
and unjustly
judges,
the

Whereas also the said Plaintiff, heretofore
to wit, on the fourth day of June, A. D. 1857, at
Chicago, in the County aforesaid, was lawfully
possessed is of his own property, of certain goods
and chattels to wit— Eight Mirrors, Five Ma-
hogany Tables, Four Marble Top Tables, Six Ma-
hogany Set-a-lots, Rosewood Set-a-lots, Four
Mahogany Bureaus, Two Rosewood Set-a-lots,
One Rosewood Marble Top Table, Three Rosewood
Easy Chairs, Six Wood Chairs, Three Mahogany
Easy Chairs, Five Mahogany Wash-stands,
Four Mahogany Bedsteads, Twenty-one Mahog-
any chairs, Four Rocking Chairs, Five sets Curtains
in Ladies Parlour, Sixty-two Curtains, Two hun-
dred forty-eight yards of Carpeting in Five Par-
lours, One hundred Cottage Bedsteads, One hun-
dred fifty sea-gear Mattresses, Fifty Hair Mat-
trasses, One hundred Feather Pillows, One hun-
dred Hair pillows, One hundred fifty Comforts,
Two hundred pairs of sheets, Four hundred
Pillow-slips, One hundred fifty White Bed

Spreads, Seventy-five Bolsters, Eighty Wash-stands,
 Sixty Bed-room Stands, One hundred seventy-
 five Bed-room Chairs, Ninety Crochery Cham-
 ber sets, Ninety Looking-glasses, Sixteen Hun-
 dred and twenty yards of Carpeting, Twenty-five
 Office Chairs, Two Mahogany Sofas, Three Hun-
 dred Napkins, Five Hundred Towels—Twenty-
 four dozen knives and forks, Twenty-four doz-
 en Tea Spoons, Twelve dozen Table Spoons, One
 hundred Dining-Chairs, Two Office Desks,
 One Easy Chair, Fifteen Stoves and Pipes,
 One Centre Table, All the Oil-cloth in
 the Office and Second story Hall and Read-
 ing Room, Together with all the Kitchen
 Furniture, and Kitchen Utensils in Kitchen,
 and all the Household Furniture in said
 Hotel—Eighty-five dozen Dishes and Plates,
 Nine silver-plated Casters, Ten Toilet Sets,
 Twelve dozen Coffee Cups and Saucers, Six
 dozen Tumblers, One half dozen French
 Fruit Baskets, Six Beley Vases, Four dozen
 Creamers, Two and a half dozen Pitchers, Twelve
 dozen Individual Salts, Three dozen Molasses
 Cups, Four Tin Buckets, Five dozen
 Jelly Moulds, Five dozen
 Sugar Bowls, Five dozen
 Waiters, Five dozen
 Trainers, Five half doz-
 en Bowls, Five dozen, One Soup

Queen — of the value
of Hon being so
possessed the goods, to wit,
on the day and year last a-
sally lost casual
out of his possession towards
to wit, on the day and year last a-
said, at Chicago, in the County aforesaid came
to the possession of the said defendant by
finding — Yet the said defendant well know-
ing the said goods and chattels to be the
property of the said plaintiff, and of right to
belong and appertain to him, but contriving
and fraudulently intending craftily and
subtly, to deceive and defraud the said plain-
tiff, in this behalf have not as yet delivered
the said goods and chattels, or any or either
of them, or any part thereof, to the said plain-
tiff, although often requested so to do, and
have hitherto wholly refused so to do, and af-
terwards to wit, on the day and year last a-
foresaid, at Chicago, in the County aforesaid,
converted and disposed of said goods and
chattels, to their own use to the damage
of the said plaintiff, of the sum of Eight
thousand Dollars, and therefore he brings
this suit —

D. P. Wilder

Plff's Atty

And afterwards to wit, on the 23rd day of June, in the year last aforesaid, the said defendants by Seates, Mc Allister, and Jewett, their Attorneys, filed in said court, their demurrer to said plaintiff's declaration, which is in the words and figures following, to wit-

Cook Co Circuit Court
 Henry Knight, John
 L. Wilson, & others
 impleaded with Wm C. Heacock
 ads
 Isaac Van Pelt

The said defendants by Seates, Mc Allister, and Jewett, their attorney, come and defend the wrong and injury, when be. and say that the said declaration in manner and form &c. is insufficient in law, to be answered unto, by said defendants, and as sign the following cause of demurrer-

1st The said declaration improperly joins and unites a count in Replevin, with a count in trover for the conversion of said property.

2nd The said declaration is defective in the

And the

Seates, Mc.

Seates & Jewett

day of
plaintiff

court, his

is in the w.

he 20th

the said

id

which

to

State of Illinois }
Cook County } ss.

Cook Co. Circuit
Court, of the June
Special Term, A.D. 1857.

Isaac Van Pelt

vs

Henry Knight et al

And the said plaintiff
saith that the said declaration, and the
matters therein contained, in manner and
form as the same are stated and set forth,
are sufficient in law for the said plaintiff
to save and maintain his aforesaid action
against the said defendants, and this the
said plaintiff is ready to verify—whereupon
he prays judgment &c.

D. P. Wilder

Plffs Atty—

And afterwards to wit, at the October
term of said Court, to wit, October 24th, in
the year last aforesaid, the following proceed-
ings, among others in said court, were had
and entered of record therein, to wit—

Isaac Van Pelt

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vs

Replevin

John L. Wilson, D. C. Johnson,
 Henry Knight, John R. Knox,
 William C. Heacock, Andrew
 J. Sink, C. J. Hamilton, &
 E. Jenks

This day come the
 said parties, by their Attorneys, and the Court
 having heard Counsel on said defendants de-
 mures to said Plaintiff's declaration, and be-
 ing justly advised in the premises, overrules
 the same—whereupon leave is giving given said
 defendants to stand their demures,
 and plead over on Monday next—

And afterwards to wit, on the 24th
 day of October, in the year last aforesaid, the
 said Defendant by their Attorneys, filed in
 the said Court, their certain Pleas,
 which are in the words and figures follow-
 ing, to wit—

Cook County, Circuit Court

John L. Wils

vs

Daniel C.

J. Sink,

with

R. Kn

I do

impleaded defendants,
Jewett, then 1st, &
wrong and in he
count in said declaration, say that first
not take the said goods and chatte did
count in the aforesaid declaration mentioned,
or any or either of them, or any part thereof, and
to the residue of said declaration that they are
not guilty, of the said grievances, or any of them
or any part thereof, above laid to their charge,
in manner and form. As the said plaintiff hath
above thereof complained against them—
And of this, the said defendants put themselves
upon the country—

And for a further plea in this behalf, as to
the first counts in the aforesaid declaration,
the said defendants impleaded as aforesaid, say
actio non—because they say that the said goods
and chattels in said declaration mentioned, at
the time when &c. were the property of the said
John B. Wilson, and not of the said plaintiff
as by the said declaration is above supposed,
and this they are ready to verify—wherefore they
pray judgment if the said plaintiff ought to
have or maintain his aforesaid action thereof

against them, and also pray return of the said goods and chattels together with their costs, in this behalf according to the form of the statute in such case made and provided to be adjudged to him &c—

And for a further plea to said court, the said defendants say actio non— because they say that the said goods and chattels in said court mentioned, at the said time when &c. were the property of one Thomas Sherr, and not of the said plaintiff, as by said court is above supposed, and this the said defendants are ready to verify, and they pray judgment, if the said plaintiff ought to have or maintain his aforesaid action thereof against them and they also pray return of the said goods and chattels, together with their costs &c—

And for a further plea as to said Court, the said defendants say actio non— because they say that the said goods and chattels in said Court mentioned, at the time when &c. were the property of one Thomas Sherr, and not of the said plaintiff, as by said Court is above supposed, and they are ready to verify— and they pray judgment, if the said plaintiff ought to have or maintain his aforesaid action thereof against them and they also

pray a return

chattels &c

us to said
non— Because
chattels in case
when &c. were the property of the said Henry Knight,
and not of the said plaintiff, as is by the said
Court above supposed, and this the said defend-
ants are ready to verify— wherefore they pray judg-
ment if the said plaintiff ought to have or main-
tain his aforesaid action thereof, against them,
and for a return of the said goods and chattels &c—

And for a further plea on this behalf, the
said defendants to said counts, say action non—
because they say that the goods and chattels
aforesaid, at the time when &c. were the property
of Henry Kuller, and not of the said plaintiff as
is above supposed, and this they are ready to
verify— wherefore they pray judgment, &c. and
the return of the said goods and chattels &c—

And for a further plea on this behalf, as
to said count, the said defendants say action non—
because they say that the aforesaid goods and
chattels at the time when &c. were the property
of one Prentiss Sand, and not of the said plaintiff,
as by said count is above supposed, and this

they are ready to verify—wherefore they pray judgment &c. and for a return of said goods and chattels &c.

And for a further plea in this behalf, as to said first count, the said defendants say, actis non—because they say that the said goods and chattels, at the time &c. were the property of one Enos Ayres, and not of the said plaintiff, as by said count is above supposed, and this they are ready to verify, wherefore they pray judgment &c. and for a return of said goods and chattels &c.

Leates McAllister & Jewell—
Atty for said Defts—

And afterwards, to wit, on the Eleventh day of November, in the year last aforesaid, the said plaintiff by his said Attorney, filed in the Court aforesaid, his certain Replication &c. which is in the words and figures following to wit—

State of
Book

1 Circuit Court
of the

Isaac Van D.

vs

John B. Wilson
William C. Hercock
Henry Knight
John R. Knox
Daniel B. Johnson
Andrew J. Sink
E. Jenks
C. J. Humbleton

And the said plaintiff
as to the said first plea of
said defendants, by them
above pleaded, and whereof
they have put themselves
upon the country, doth the
like —

And the said plaintiff, as
to the second, third, fourth, fifth, sixth and
seventh pleas of the said defendants by them
above pleaded, and wherein the said defendants
allege that at the time when &c. the said
goods and chattels were the property of the said
John B. Wilson, Thomas Sherry, Henry Chapman,
Henry Knight, Henry Huller, Prentiss Sand, and
Enos Ayres severally, says that the said goods and
chattels, and every part thereof, at the time when
&c. were not the property of said Wilson, Sherry,
Chapman, Knight, Huller, Sand, Ayres or either
or any of them, but that the said goods and
chattels, at the time when &c. were the property

of the said plaintiff, and of this he puts himself upon the country—

D. P. Wilson

Plffs Atty—

And afterwards, to wit, at the January Special Term of said Court, to wit, January 13th 1858, the following proceedings among others were had, and entered of record, in said Court, to wit—

Isaac Van Relt

vs

Replevin

John L. Wilson William
O. Keacock, Henry Knight,
John B. Knox, Daniel C.
Johnson, Andrew J. K.,
E. Jenks & H. J. Humbleton

This day come the said parties by their Attorneys, and issue being joined herein, it is ordered that a jury come— Whereupon come the jurors of a jury of good and lawful men, to wit—

H. J. Reynolds

L. H. Harvey

E. P. Moughty

E. Colly

W. A. Ruggles

Castle

Jacob A. Walto

Hay &

George Smith

my

who being

well

and duly

said,

after to

arguments of

counsel, a

retire to

consider of ~~the~~ ~~the~~ towards come
into Court ~~the~~ ~~the~~ ~~the~~
issues here ~~the~~ ~~the~~ ~~the~~

the Court

And after ~~the~~ ~~the~~ ~~the~~ term of
said Court aforesaid, to wit, Janu ~~the~~ ~~the~~ ~~the~~ A.D.
1838. the following proceedings, ~~the~~ ~~the~~ ~~the~~ among
others, were had and entered of record in said
Court, to wit—

Isaac Van Pelt

vs.

Replevin

John L. Wilson, William
O Heacock, Henry ~~the~~ ~~the~~ ~~the~~
John R. Knox,
Johnson, Andrew J. ~~the~~ ~~the~~ ~~the~~,
E. Jenks, & C. J. Humbleton

This day again come the
said parties, by their attorneys, and the court,
upon hearing the arguments of counsel, upon the
motion of the plaintiff, for a new trial of this
cause, and due consideration being thereupon had,
and the premises well understood, doth order the
said motion be, and it is hereby overruled—to which
ruling of the court, the plaintiff now here excepts.

Therefore it is considered by the court,
that the said defendants do have and recover of
the said plaintiff, the property replevied in

this cause, to be held by them inplevisable,
and have a writ of Return Habeas therefore, also
the costs and charges by them in that behalf ex-
pendet, and have execution therefore -

XX

~~So all of which the said plaintiff by his attorney now
wherefor the plaintiff pays an appeal
from excepts
to the Supreme Court, of Illinois which is granted,
yet on condition that he execute and file a bond
within _____ days in the penal sum of
Dollars, with~~

~~as sureties, conditioned
according to law~~ and it is further considered
that he be allowed 20 days, to file his bill of
exceptions -

And after ~~it~~, on the 18th day of Febru-
ary, the said ~~plaintiff~~ filed in the office of the
clerk of said Court, his certain bill of exceptions,
which is in the words and figures following to wit -

State of Illinois

Cook County Circuit Court.

Isaac Van Pelt

vs

John L. Wilson

Henry Knight, Jr

Andrew J. S.

Daniel C. J.

Hecocks, Char

to wit, at the
Cook County _____ the city of

Chicago, in the County of Cook, on
year one thousand eight hundred and fifty six, at a special
term of the Circuit Court of Cook County, Illinois, do hereby certify that
Judge there, according to the case made and provided, the above
between the said parties aforesaid, came on to be
tried by a jury of the County of Cook aforesaid, for
that purpose duly empaneled, good and lawful
men of the said county — And at which day,
came there as well the said plaintiff as the
said defendants, by their respective attorneys
aforesaid — And the jurors of the jury aforesaid
said empaneled to try the said issue, being
called, also came and were then and there in
due manner sworn and sworn to try the same
issue — And upon the trial of that issue, the
counsel for the said plaintiff, to maintain and
prove the said issue on his part, produced, of-
fered and read in evidence, a certain Chattel
mortgage, bearing date February 16th A.D. 1856. and
acknowledged and recorded in due form of law,
on the 17th day of February A.D. 1856. executed by
one Thomas Shurz to one Prentiss Law, together
with an assignment of the said chattel mort-
gage, bearing date the 30th day of May, A.D. 1857.
from the said Prentiss Law, to the plaintiff in
this cause — Which said mortgage and assign-

Mahogany Case - 5 Setts Cur-
 tains in 2 - 348 yards
 Carpet in 3 - 150
 sea grass 7 - 100
 Feather Bed - 100
 300 pairs of sh. - 100
 Bed spreads - 75 Bolsters - 50 - 60 Bed
 Room Stands - 175 Bed Room Chairs - 90 Crookers
 Chamber Setts - 90 Looking Glasses - 1620 yards of
 Carpeting - 25 Office Chairs - 2 Mahogany Sofas -
 300 Napkins - 500 Towels - 24 dozen knives and
 forks - 24 dozen Tea spoons - 12 dozen Table spoons -
 100 Dining chairs - 2 office desks - 1 Easy chair - 15
 Stoves for heating, and pipes - 1 Centre Table, and
 all the oil cloth in the office and second story
 Hall and Reception room, together with all the
 Kitchen furniture and Kitchen Utensils in
 Kitchen - and all the Household furniture in
 said Hotel - and 85 dozen Dishes and Plates - 9
 Silver-plated Casters, 10 Toilet Setts, 12 Coffee Cups
 and Saucers - 6 Dozen Tumblers - $\frac{1}{2}$ dozen French
 Fruit Baskets - 6 Beer Glasses - 4 dozen Creamers -
 2 $\frac{1}{2}$ dozen Pitchers - 12 dozen Individual Salts - 3
 dozen Molasses Cups - 4 Tin Buckets 2 $\frac{1}{2}$ dozen
 Jelly Moulds - 15 dozen Goblets - 1 dozen Sugar
 Bowls - 1 $\frac{1}{2}$ dozen Tin Waiters - 14 Spittoons - 3
 Feather Dusters - 1 Soup Ladle 1 $\frac{1}{2}$ dozen Bowls -
 4 Large Chafing Dishes - 1 Soup Tureen - together
 with all and singular, the other personal property

of every name, nature and description - contained in said House, with the appurtenances thereunto belonging - To Have and to Hold the same unto the said party of the second part, and his assigns forever -

And the said party of the first part of the first part, for himself, his heirs, executors, and administrators, doth covenant and grant agree to and with the said party of the second part, his heirs, executors and administrators and assigns -

4

First - That he, the said party of the first part, is lawfully possessed of the said goods and chattels, as mentioned, and set forth as of his own property, that the same are free from all incumbrances, and that he will, and his heirs, executors and administrators, shall warrant and defend the same unto the said party of the second part, his heirs, executors and administrators, and assigns against the lawful claims and demands of all persons -

Second - That he, the said party of the first part, at or before the unsealing and delivery of these charges, will herein make benefit of said party in some manner or manner of ance Con and fire Insur and hatters, benefit his assigns, re fire Insur

Third. That the said party of the
first part, his heirs, executors and
the said party of the second part, and his
assigns, shall well and truly pay, or cause to be paid, unto the said party of the
first part, his heirs, executors, administrators, or assigns, the sum of
five hundred Dollars, with interest at the rate of ten per
cent. per annum, Six months after the date
hereof, and the further sum of Five hundred
Dollars, with interest as aforesaid, Twelve months
after the date hereof.

Provided however,

That if the said
party of the first part, his heirs, executors and
administrators, or assigns, shall well and truly
pay, or cause to be paid, unto the said party of the
second part, his heirs, executors, administrators,
or assigns, the sum of one Thousand Dollars,
with interest thereon, according to the tenor and
effect of two several promissory judgment notes,
of even date herewith, made in manner follow-
ing, that is to say, one promissory note for the
sum of Five hundred dollars, made by the
said Thomas Sherry, and payable to the said
Prentiss Law on order, six months after the date
thereof, with interest at the rate of ten per cent
per annum, and the other for the further
sum of Five hundred Dollars, made by the
said Thomas Sherry, and payable to the said
Prentiss Law on order, Twelve months after the

date thereof, with interest as aforesaid — and shall further do, keep and perform, all and singular, the covenants and agreements herein by the said party of the first part covenanted and agreed to be done, kept and performed, then and from thenceforth, these presents, and everything therein contained, shall cease and be null and void —

And provided also —

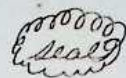
That it shall be lawful for the said party of the first part, his heirs, executors and administrators, to retain possession of the property granted property, and at his own expense keep, use, and enjoy the same, until he, or his heirs, executors, administrators, shall make default in the payment of the said sum of money, or some part thereof, either in principal or interest, at the time or times, and in the manner hereinbefore provided, or shall make default in the performance of any of the covenants herein contained, to be kept and performed by the said party of the first part — or unless the said party of the first part shall, for fear diminution of the value of the said property, or for want of sufficient security, or for any other cause, assign or sell or convey any part thereof, or if any will, shall be

land, or all the said land, and chattels, and the said goods and chattels, and the said sum of ~~One~~ ^{the} Principal and Interest, and the said ^{able,} his heirs, executors, administrators and assigns, agents or attorneys, or any of them, may elect therefore to the possession of the said goods and chattels, herein granted, with force, if necessary, wheresoever they can be found, and sell and dispose of the same, or any part thereof at public auction, to the highest bidder for cash, after giving three days notice of time, place, and terms of sale, together with a description of the property to be sold, by publication in a newspaper printed in the City of Chicago, out of the money arising from such sale, to retain first all costs and charges for pursuing, searching, taking, removing, keeping, storing, advertising and selling of said property, goods and chattels, and effects, and all prior liens, together with the amount or amounts unpaid ~~or unpaid~~ upon said notes or either of them, either in principal or interest, rendering the over plus of the money arising from such sale (if ^{any} there shall be) unto the said party of the first part, or his legal representatives—

In witness whereof, I have hereunto set my hand and seal, the day and year

first above written.

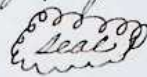
Thomas Sherry



State of Illinois
Cook County ss.

I, Calvin D'Wolf, a Justice of the Peace, in and for said county and town of South Chicago, do hereby certify that said mortgage was duly acknowledge before me, by the above named Thomas Sherry, this 17th day of February, in the year of our Lord, one thousand _____ hundred, and fifty seven—

C. Wolf. J. P.



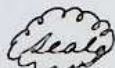
I know all men by these presents, that I, Isaac Van Belt, of Chicago, Cook County, State of Illinois, the assignee of the within mortgage, under the assignment made and executed by Prentiss Law, May thirteenth A.D. 1857. in consideration of one Dollar, to me in hand paid, receipt whereof is hereby acknowledged, have assigned, set over and transferred to Enos Ayres, of Chicago, of _____ and interest in _____, and the property _____

et _____

Witness

this 21st

I, Prentiss Law, presents, that
ago, party of the
second part, mortgage, for
and in coin seven hundred
Dollars, to Van Pelt, of
the same place signed,
set over and transferred to said Van Pelt, my
right, title and interest in and to the within
Mortgage, and the articles therein described—
And I do hereby authorize said Van Pelt, in my
name, or in his own, to enforce said mortgage, ac-
cording to the terms of said mortgage, at his,
said Van Pelt's costs and charges, and I do hereby
covenant that there is now due to me, on said
Mortgage, from the within-named Thomas
Shurz, the full sum of seven hundred Dollars—
Witness my hand and seal, this thirti-
eth day of May A. D. 1857.

Prentiss Law 

State of Illinois }
Cook County }

Filed for Record February 7th
1857. and recorded in Book 6. of Chattel Mort-
gages. Page 477.

William L. Church

Clerk—

The Council for the Plaintiff further do
 maintain and have the said issue on his
 part, produced, and offered in evidence, certain
 promissory notes issued by the said Chatter
 and others and of even date therewith, executed
 by the said Thomas Henry, to the said Ontario
 Bank, and endorsed by the said Ontario Bank
 to said Plaintiff, which said promissory notes
 are in the words, terms and figures following
 to wit:-

005. ~~1~~

Chicago January 16th 1857

Value received of the sale of the stock

Don't let the
of the hundred

with me

longer than the other

Shower all over by their power

that reflects the philosophy of Darwin

Many are freely indebted to themselves

after a certain journey with having

Carroll's Journal for the month of June

Reminded of the man in the

Small number seen on other side of mountain

month after

[Faint handwritten notes at the bottom of the page]

or have

111

any all of Record
to be my my unrecalled
from me and you and stand
to appear be there
or in any in any
or vacation of the
of the United after the
date hereof. To wain service of process and
and confer a judgment in favor of the
said ~~Presher~~ Law or his or their assignee
or assignee upon the said note for the above
Sum or for as much as appears to be due
according to the tenor and effect of said
note with interest thereon. Together with
costs: also for twenty five Dollars attorney
fess. to be added to the amount due in
entering up of such judgment: also to file a
cognovit for the amount that may be so
due with an agreement therein. that no
writ of error or appeal shall be prosecuted
upon the judgment entered by virtue hereof
nor any bill in equity filed to interfere in
any manner with the operation of such
judgment and to release all errors that
may intervene in the entering up of such
judgment or refusing the execution thereon
and also to ^{compel} immediate execution upon
such judgment. Humbly ratifying and
confirming all that my said attorney

may do by virtue hereof

Witness my Hand and Seal
this Sixteenth day of February A D 1857
In Presence of

Thos Sherry Seal
Seal

\$500

Chicago, February 16th 1857;
I promise to pay to Justice
Law or to order of Five Hundred
Dollars on demand at the rate of ten per
cent per annum for money loaned

Thos Sherry

Know all men by these presents
That whereas the subscriber T. Thomas
Sherry am pretty indebted to Justice
Law upon a certain promissory note
bearing even date herewith for the Sum
of Five Hundred Dollars made payable
to the said Justice Law or order and
due Six

some
I do hereby make good and approve
Thomas Sherry my attorney in and
court of the said State of Illinois and

lawful attorney for me and in
my name to appear
before any judge of the law or in any
court of the law or in vacation
in any of the courts of the
United States to do and
hereof to waive service of process and certify
a judgment in favour of the said Prudica
Law or his or their assignee or assignees up
the said note for the above sum or for as
much as appears to be due according to
the tenor and effect of said note with
interest thereon together with costs also for
Twenty Five Dollars Attorneys fees to be
added to the amount due on entering up
judgment: also to file a cognovit for
the amount due and to be so due with
an agreement therein, that no writ of error
or appeal shall be prosecuted upon the
judgment entered by virtue hereof, nor any
bill in equity filed to interfere in any
manner with the operation of such judgment
and to release all errors that may intervene
in the entering up of such judgment and giving
the execution thereon also to consent to
immediate execution upon such judgment.
Truly ratifying and confirming all that
my said attorney may do by virtue hereof
Witness my hand and Seal

this Sixteenth day of February A D 1857

In Presence of

Thos Sheng

Seal
Seal
Seal

Which said promissory notes were admitted
by defendants and duly execu-
ted, but to which said promissory notes in evidence,
the said court did not allow to be read then and there
the said promissory notes in evidence, and the assignment of
the said promissory notes in evidence to the said plaintiff, had not been made. But the
said Judge presiding at the said trial, declared
and delivered his opinion that the said object-
ion so taken by said counsel for the said defend-
ant as aforesaid, ought not to be allowed, but
that the said promissory notes ought to be ad-
mitted in evidence, and did accordingly decide that
the same should be read in evidence, on the part
of the said plaintiff, to which said opinion and
decision of the said Judge, the said counsel for
the said defendant then and there excepted.

The said counsel for the plaintiff further
to maintain and prove the said issue, on his
part produced, offered and read in evidence a
certain execution in favor of one Henry Fuller,
and against Thomas Sherry, issued in a suit
between the said parties, on the 31st day of May,
A. D. 1837. from the office of the clerk of the
Cook County Court of Common Pleas, and under
the seal of said court, which said execution
was put into the sheriff's hands the same day,
and which said execution is in the words, terms
and figures following, to wit—

State of Illinois }
County of Cook }

The People of the State of Illinois, to the Sheriff of said County— Greeting—
We command you that you ~~possess~~ of the lands and tenements, goods and chattels of Thomas Shenz, Defendant in your County, you cause to be made the sum of Four hundred and thirty Dollars, and Forty four cents, which Henry Fuller, plaintiff lately in the Cook County Court of Common Pleas of said County, on the 21st day of May instant in Session last past, recovered against the said Defendant, and which by the said Court was adjudged to the said plaintiff, for his damages—

And also the further sum of Four Dollars and Seventy Cents, which were adjudged to the said plaintiff, for his costs and charges in that behalf expended, whereof the said Defendant was convicted, as appears to us of Record— And have you these moneys ready to render to the said plaintiff, for his damages and costs aforesaid, and make return of said writ with an endorsement thereon in what manner you may deem proper, and return the same, in manner and form aforesaid, on the



of said County, Clerk of our Court, at
said
this 21st day
of May D. 1

attn. Kimball

Clerk

By ^{myself} ~~me~~ with ~~the~~ mention, I did
 on this 23rd ~~May~~ ^{June} 1877. I ~~took~~ the goods and
 chattels mentioned in the sched-
 ule, hereto a ~~copy~~ ^{copy} a certain
 chattel ~~made~~ ^{made} ~~by~~ ^{by} ~~the~~ ^{the} ~~sheriff~~ ^{sheriff},
 And on the 4th day June 1877, ~~George P. Hansen,~~
 Coroner of Cook County, took the goods and chattels
 mentioned in the schedule hereto annexed, from
 my possession, by virtue of a writ of Replevin, issu-
 ed from the Circuit Court, in favor of Isaac Van
 Pelt, and against John L. Wilson et al. - I there-
 fore return the writ - No part satisfied -

John L. Wilson Sheriff.

3 chairs - 2 Stands - 3 Chairs - 1 Bedstead - 2
 Mattresses & 1 W. Stand - 1 Bedstead &
 2. mattresses - 1 Broken chair - 2 Stands
 2. chairs - 1 Pitcher - 2 Bedsteads & Mattresses - 1 W.
 Stand - 1 Bedstead - 2 mattresses - 1 chair - 1 Quilted
 2 Mattresses, and 1 Bedstead - 1 W. Stand - 1 chair -
 2. W. Stand - 3 Hair Pillows - 3 Feather Pillows - 2
 Stands - 19 Bolsters - 1 Comforter - 3 Jacquenard Spread
 2 chairs - 20 Carpets - 1 Brussels Carpet - 3 Hall Car-
 pets - 12 Dinner Stands - 1 Damaged Bedstead -
 2 Mattresses - 2 Pillows - 2 Quilted - 4 W. Stands -
 1 Brussels Carpet - 1 Breadstand, & Safe - 1 Mahog-
 any Sofa - 3 Comforters - 1 sheet - 1 Blue enameled
 set furniture - 1 sheet - 3 Marble Top Tables - 2 Quar-

tetter- 5 Mahogany chairs- 3 Cottage chairs- 1
 Chairs- 3 Stands- 1 Cottage Chair- 2 Stands &
 chair- 1 W. Stand- 1 Bedstead, and Bedding-
 1 Cottage Chair- 1 Stand- 1 Mirror- 1 Basin- 1
 Lamp- 1 Bedstead- 1 Cottage Chair- 2 Table Cloth
 3 Sheets and window Curtains- 9 Towels. 13 Pillows
 Slip- Bedstead & Bedding- 74 Plated Forks
 9 $\frac{4}{6}$ set Table Spoons- 5 Butter Knives- 5 doz
 Tea Spoons- 5 $\frac{3}{4}$ dozen knives- 1 Mirror- 2 Lamps
 Bedstead and Bedding- Chair & Stand- 5 Stoves
 & Pipes- 1 chair, bed, and bedding- Chair & Stoves
 Pitcher & Ewer- Looking-glass- 2 chairs-
 9 Glass Bowls- 4 fruit Dishes- 5 Castles,
 imperfect- 5 - 21 goblets- 1 Soup
 Tureen- 13 Britannia heaters- 3 coffee boilers- Knife
 box- 2 large mirrors- 1 Wash Stand- 2 Drawers-
 Stand- 2 Pitchers- 1 Side. Lamp- 3 mattresses- 3
 Broken Teas- 2 Hair pillows- 2 Stands- 1 Bedstead
 & Bedding- 1 chair- 1 quartette- 2 Stands & chair-
 2 Broken mirrors- 1 W. Stand & glass- 1 Looking
 glass- 4 chairs-
 1 Bedstead- 1 Mattress- 4 Pr. Bedsteads- 1 Wash
 Stand- 1 chair- 1 Bedstead- 3 Mattresses- 1 Wash
 Stand- Broken Wash Stand-
 2 Mattresses- "
 1 W. Stand- Broken Stand-
 1 Bedstead- 3 Carpets- 2
 chairs- 1 stand- 4 Hair-pillow- 2
 mattresses- 1 Bedstead- 1 W. Stand-

3 chairs - 1 W. Stand - 1 W. Stand - 12 Drawer Stands
 Bedstead & 1 " - 1 " - 4 chairs - 1 W.
 Stands - 13 - 4 Pillows - chamber mug
 looking glass - 2 Stands -
 1 B. Blanket - 2 Mattresses
 1 Wash Stand - & Bedding -
 2 Wash-stands - 1 Bolsters - 2 Pillows - 3 Mattresses
 1 Bedstead - 2 Mattresses (Damaged) - 1 W. Stand -
 1 chair - 1 Bedstead - 1 Mattress - 1 Hair Pillow - 1
 Bedstead & Mattress - 4 W. Stands - 1 chair - 1 Bes-
 ken Bedstead - 1 W. Stand - 1 straw bolster - 1
 Bedstead - 4 Jines - 2 chairs - stove & Pipe - 2 stoves
 (imperfect) - 1 W. Stand - 1 Hair pillow - 2 Mattresses
 Feather & Hair pillow - 1 Hair pillow - 4 pillow-slips -
 1 sheet - 3 Comforters - 1 Bedstead - 2 Quartettes 1
 W. Stand - 1 Bedstead - 2 Mattresses - 1 chair - 4
 W. Stands - 1 Comforter - 1 Bedstead &
 mattress - 1 Stands - 1 spread - 1 Com-
 forter - 1 Bedstead & mattress - 1 chair - 1 R. Carpet -
 1 Broken Bedstead - 3 Mattresses - 1 stand - 1 Ta-
 ble - 1 arm chair - 1 W. Stand - 1 Bedstead & 2 Mat-
 tresses - 1 chair - 1 Stove - 1 Drawer stand - 1 W. Stand
 1 Bedstead - 2 mattresses - 4 chairs - 1 Bookcase - 2
 Bedsteads - 4 mattresses - 1 Broken W. Stand - 1 chair
 1 Bedstead & 2 mattresses - 2 chairs - 2 Hair mat-
 tresses - 1 Stove & zinc - 1 Looking-glass - 1 W. Stand
 1 Quartette - 1 Broken chair - 1 Bedstead and
 Bedding - 1 Carpet - 3 W. Stands - 1 Bedding and
 Bedstead - 1 Quartette - 1 Mirror - 1 Arm chair - 26

small mirrors— 2 Office desks— 1 Bay chair— 1
 clock— 62 Day chairs— 1 mirror— 2 Looking-glasses—
 21 mugs— 2 Broken Decanters— 4 Cut Decanters—
 15 Bottles Bitters— 1 Copper Boiler— 2 Mantle Orna-
 ments— 9 Bottles Capers— Lot of glass-ware— 2
 Keys— 2 Tables— 4 arm-chairs— 16 Chairs— 3 Boxes—
 soap— 1 Rosewood chair & 1 wash-stand—

The counsel for the plaintiff further to
 maintain and prove the said issue on his
 part, called Alexander C. Coventry, who being
 sworn, testified as follows—

I live in New York— I am an attorney— The
 assignment of the notes and mortgage were exe-
 cuted at my office at the same time— I saw
 Prentiss Law endorse his name upon the notes,
 and execute the assignment of the mortgage,
 and the signature shown me, on the notes and
 mortgage, is his— The notes and mortgage were there
 at the time of the assignment—

The counsel for the plaintiff further
 to maintain and prove the said issue, on his
 part called James Ryan, who being sworn, testified
 as follows— I am a porter at the Burnet House,
 formerly known as the ... Hotel—
 I was there a ... of May,
 and early ... of the furni-
 ture of that ... it sometime
 in June, A. ... take part
 of it— Thomas ... at the time

45
the goods were taken— He became proprietor of
the house at 104th day of January—
A.D. 1857. and remained proprietor until the
2nd day of February. I believe, when he closed the
house— The goods remained a few days
before Sherry came, taking
away the goods— I don't recollect that I saw
the defendant Knights there at, the time,
except on the sidewalk— I saw some goods af-
terwards brought back, and they were some of
the same that I had seen taken away—

I was a porter in the house before
Sherry became proprietor, and am still— Some
of the articles taken away at the time above
referred to, have never been returned to the
house— among others a sitting-room brussels
carpet, also bedroom carpets— I don't recol-
lect how large, nor how large the
rooms were— The bedrooms were all nearly the
same size— The brussels carpet belonging to room
No 90. was not brought back, nor was the carpet
to the bedroom adjoining it— There were in all,
carpets for two sitting-rooms, and three bedrooms,
that were not returned— These are all that I
remember— all the carpets taken away were
brussels carpets, except one bedroom carpet— I don't
recollect what kind of a carpet that was—
They were pretty good carpets, and not much
worn— Three parlour window curtains were taken

away, and never returned. - I think there were cornices to them. - I also recollect one large gilt mirror, was taken and not brought back. - I am sure there was one, and I think there were two. - I don't recollect that any marble tops for tables or bureaus were taken. - I saw some there in the parlour, before the goods were taken, and have not seen them since. - I saw chamber crockery taken away. - I do not recollect for certain that it was brought back. - There was in the house, dining-room crockery enough for three tables, enough to accommodate a hundred guests. - I don't recollect seeing the crockery there after the articles spoken of before, were removed.

The counsel for the said defendants to maintain and prove the said issue, on their part then cross examined the said James Ryan, and on such cross examination, he testified as follows -

I went to the Burnett House, (then St. Nicholas) as porter, a year ago, last November 10th. - Sink was then the proprietor of the house, and continued to be till about the 10th of January. - The furniture was in the house at the time of his proprietorship, and I understood him to be the owner of it. - He claimed to be the owner. - The goods taken away from the house were the same

that were in the house, when Sink was there -

The counsel for the plaintiff then resumed the direct examination of said witness, who thereupon testified as follows -

I don't know whose property it was while Sink remained in the house as proprietor, but I always supposed it to be his. He claimed to be the owner -

The counsel for the plaintiff further to maintain and prove the said issue, on their part called William Lefferts, who, being sworn, testified as follows -

I am clerk at the Burnett House - I have resided in Chicago since a year ago last July - I went to the Burnett House, on the 2nd of June, at the request of the plaintiff, and found things in a great deal of confusion. I found things in Hoot there in charge of goods remaining in the house - He gave me the custody charge of these goods, and as my authority for retaining them in my possession, he handed me a chattel mortgage, and told me to show it if anyone offered to disturb me - (Here the chattel mortgage read in evidence, and herein before inserted, was shown the witness) - The chattel mortgage shown me is the same that was handed me by Hoot - The goods were taken away, to my knowledge, after I went there - I received

many of the goods that were returned - Many of
 them, I know, were the same that had been
 there before - I had been in the house before,
 and was familiar with them - I found a mirror
 at the Black Street house, and two mirrors
 at the house of Mrs. Tucker, which I recognized
 as the same that I had seen at the Burnett
 House - I received back from the Corner, various
 kinds of furniture - I found the mirrors
 about the 10th of June - I had a conversation
 with the Defendant Knight about the mirrors -
 Knight told me that he had been there in
 getting the mirrors that he had just
 sent two of the mirrors of the Burnett House
 store, and had set them travelling - He told me
 he had sold those mirrors which I afterwards
 found, and deposited the money - This was a
 day or two before I found them - The same
 evening he told me that he had sold them,
 before the replies writ was issued - He also
 told me the same evening that he had
 shipped the mirrors on the cars, and that
 they were then travelling - In talking to Knight
 one time about the damages to the goods,
 he said they were not to be moved,
 because he had prohibited the loading
 of them there - He told me he did not
 hide, or take any thing away until after the
 replies writ was issued - He was also at that

time, that he supposed they would come
and compromise the matter. I went to the
Calumet station after some of the goods. I
demanded that station which had
been been stopped at the junction by Henry
Knights. I found there all sorts of
beds, bureaus, &c. I should know the goods
found at Calumet station, if a list of them
was read to me. The plaintiff's counsel read
from a list appended to the writ by the Com-
oner, as a part of his return. I recognize the
list read me, as a list of the goods found there.
I don't recollect the numbers, but those were
the kind of goods. I recognized much of the
furniture found at Calumet, and of that
brought back by the Comoner and otherwise,
as the same had been in the hotel
before. I remember there were curtains, but
I do not recollect the kind, nor whether all
the mirrors that had been there, were brought
back. I remember seeing the mirrors that
were in the parlour. They were probably eight feet
long, and three feet wide. I had noticed the
carpets in the Burnett House, and had a good
knowledge of the carpets. One carpet was mis-
sing from one of the large rooms. I remem-
bered the carpet for I had noticed it before.
I think when new it was worth from \$1.30
to \$1.50 or \$1.60 per yard. The Brussels carpets

were somewhat worn - I think it was worth
 sixty cents per yard in the condition it was -
 I did not notice the carpet in No 90. The car-
 pets in the Bedrooms were the same as in
 the parlours - they were Brussels, and were worth
 the same - There were about fifty fifty yards
 of carpeting in the ~~large~~ parlour - It would
 take about fifteen yards to cover the bedroom
 in No 90, and about twenty or twenty five
 yards to cover No 90. The other two bed-rooms
 were smaller than No 90. It would take
 about ten yards for each of them -

There was about enough crockery
 after it was removed, to set out one table -
 The tables accommodate forty eight persons
 each - I don't know the value of the dining
 room crockery - Its color was white - The rem-
 nant of the crockery, casters, glass &c. returned,
 were of good quality -

The counsel for the defendant
 then cross examined the said witness, who
 testified as follows -

I arrived in Chicago on the 17th of
 July, 1856. I came from New York
 city - I came from New York city,
 where I had a club - I have never been
 in the employ of any person as the owner of the
 Burnett House - I have now keeping
 the house - Ayres was it - At that time, Holmes

had taken a box from ~~the~~ I identified much of the ~~property~~ ^{things} ~~as~~ ^{being} the same ~~that~~ in the house before. - I was sent to the ~~house~~ on the second day of June by the plaintiff. I had known him for five or six months - I made his acquaintance the winter previous - He was clerk of the plaintiff -

This is a paper of notes of conversations held with him - I was not told to take memoranda of them, but I expected to be a witness, and had no other object ⁱⁿ taking them - I am acquainted with Holmes - I went into his employ about the 18th or 19th of July, last past, about the time he opened house - I have been in his employ since - I have talked with Ayres, and ~~reference~~ ^{reference} to what I knew about this ~~case~~

When I went to the house, I did not know that Knights claimed the property, I heard the night before that he had taken away some - I had one conversation with him on the sidewalk in front of the store, and another at the office of the Burnell House - He came in alone - others were present at the time - I knew some of them, but do not now recollect who they were - after I went there, no property was taken from the house - Hoot had been there a day and a night

before I came -

The counsel for the plaintiff further to maintain and prove the said issue, on his part then called George E. Hansen, who being sworn, testified as follows -

I am coroner of this county, and in the month of June last, I executed the writ of replevin in this suit - my return is on the back of the writ - I found the things in different places - some few articles were broken - no mirrors were broken - I saw the mirrors brought from [illegible] street House, and Mrs. Tucke [illegible] rocking-chair broken -

The counsel for the defendants then cross-examined the said witness, who thereupon testified as follows -

It was second-hand furniture - I could ^{not} tell when it was broken -

The counsel for the plaintiff then recalled William Sefferts, who thereupon testified as follows -

I wish to explain - when Sherry went out of the house, he took some of his own private things, away with him -

The [illegible] was principally stone china - there were a few sets - it was all of good quality - [illegible] to Calumet after some of the things - [illegible] was paid for freight to get them back - [illegible] spent four dollars travelling

there and back. I also paid four dollars for
drayage. I think the sum was the sum
I paid out.

I never saw any of the furniture stored.
There was a great deal of trouble had in the
premises, at least forty or fifty dollars worth,
besides what was paid out.

The counsel for the plaintiff further
to maintain and prove the said issue, on his
part then called Henry Chapman, who being
sworn, thereupon testified as follows—

I have lived in Chicago four or ^{or} five years.
I knew about removing the goods from the
Buenet House— It was about the first of June
last past— I saw Knights on the sidewalk in
front, and Mr. [unclear] and the sheriff, together
with a person called Johnson, inside of the
house, at the time the goods were removed—
Johnson was [unclear] the goods out— He had a
book or account in his hand— He seemed to
keep account of what was taken— I did not
see Knights there— He was attending to the goods
on the sidewalk— There were others present who
seemed to be in their employ— The goods were taken
away upon drays— I saw the micas there— Some
of them were of large size— I don't think I saw
any micas eight feet in length— I should
think those I saw were about fifty inches in
length— the average width of micas of that

length, would be about two feet.

A mirror three feet by six in size would be worth seventy-five dollars, and might be worth one hundred and twenty-five Dollars. The mirrors I saw taken from the Burnett House, were worth I should think seventy or eighty Dollars.

Before - The curtains probably were ten or twelve feet long - and worth perhaps \$15. to \$20. for window, and possibly more -

The for the Defendants then cross-examined the witness, who thereupon testified as follows -

I received the latter part of May 1857. an order for three Hundred Dollars - It was given by Thomas Shenz on Prentiss Saw - I am not positive how the order read - It strikes me that it was drawn on P. Saw - I got the money of Mr. Hamilton - I did not know that he was a partner of Mr. Ayres - now do I know it now - I think he gave me a check for the money on the Marine Bank - I don't know that it was a check of Ayres & Hamilton -

The counsel for the said plaintiff further to examine him and put the issue on his part called Henry Muller, who being duly sworn thereupon testified as follows -

I was up at the Burnett House about

the last of May, or first of June, 1837. and they were removing the property, and appeared to be delivering it to the carrier to carry down stairs. Knights was putting the property away - I had noticed the curtains and covers in the parlours - did not notice particularly of what material they were, but think they were damask - I had seen the same before - The curtains probably were ten or twelve feet long, and worth perhaps \$15.00 or \$20.00 per window, and possibly more - They were not a great deal worn - The three sets of curtains were worth from \$45.00 to \$60.00 -

I have seen the dining room crockery at the Burnett House, the crockery was all of about the same character - I have seen the tables set before the crockery was removed - the casters &c. were of plate - I saw the furniture while it was going - I should think it was handled pretty roughly - I saw the man taking up the oil plates - they handled them pretty sharp - I should not like to have mine handled in that way -

The counsel for the plaintiff there put to the witness, the following interrogatory -

What was the extent of the injury done to the property, so far as you know?

Answer - The injury to that of which I took notice may have been from ten to fifteen dollars - perhaps more -

The counsel for the plaintiff further to maintain and prove his case, called William Holmes, who being duly sworn, testified as follows.

I am a gilder, and a picture-frame dealer. I ~~repaired~~^{repaired} two mirrors brought to me from the Burnet House. They were two gilt mirrors. This was some time last summer. my bill for the repairs was \$31.50. The mirrors I repaired were seventy-two inches by twenty six. These mirrors before being broken, were worth \$60% each. They were not new. They would have been worth \$75% each after they were repaired.

The counsel for the plaintiff further to maintain and prove the issue, on his part here introduced and read in evidence the Bill for repairs, to the said mirrors, which is as follows—

The counsel for the said plaintiff further to maintain the issue, on his part then called Ambrose Adams, who being sworn, testified as follows:-

I am in the furniture-repairing business. Last summer, some furniture was brought to me from the Burnett House for repairs. There was one easy chair, one sofa, and other property brought for repair. This bill contains a list of the furniture which I repaired. The cost of the repairs amounted to \$177.70. I received payment for these repairs. Ayres engaged me to make them, and he paid me for them. The Bill is dated in the first of July.

The counsel for the said plaintiff further to maintain the issue, on his part then called George ~~Adams~~, who being duly sworn, thereupon testified as follows:-

I have known Ayres about two years. I was acquainted with the former firm of Ayres and Hamilton. It was dissolved some time last spring. There is a man by the name of ^(Hamilton) ~~Hamilton~~ now in Ayres office. He has never been a partner of Mr. Ayres. I should have known it if he had. He has never had any business connexion with Ayres as partner. The old firm of Ayres & Hamilton was dissolved earlier than May. ^{Hamilton} had a seat in their office before their dissolution, and continued to occupy the office with Ayres, after.

the dissolution -

The counsel for said plaintiff further to maintain and prove said issue, on his part then called William Humes, who being sworn, testified as follows -

I have lived in Chicago since the year - I was a machinist last May, and did business on South Water street in this city - About that time Knights came there, and asked one William S. Rowland, if he could store some goods there - Rowland said he could - The goods were brought there on the 4th of May and four o'clock in the morning - In the morning when I went there, I found the store full of goods, and they were taken up stairs - The coroner came there with Ayres and took the goods away - They were brought from the Burnet House - The goods were in a damaged condition - Some of the bedsteads and chairs were broken - The store was that of Smetland, Pratt & Co. Rowland was in their employ - The storage paid by the plaintiff was about \$10.00 -

The counsel for the defendants then cross-examined the said witness, who thereupon testified as follows -

Ayres was not there when the money was paid - The coroner came and pointed out the goods to the coroner -

The counsel for the plaintiff further

to maintain and prove the issue, on his part then called B. Sloat, who being sworn, testified as follows—

I am Constable— I was requested during the last summer, to take custody of some goods— I recognize this chattel mortgage shewn me, and this other paper also— This chattel mortgage was put into my hands— my instructions were to take possession of the furniture at the Burnett House, and see that nothing was removed. I found Sink, Knights and Johnson there— I notified Johnson, who was then acting as officer or agent for these parties, that he must not remove any of the goods— I also shewed him these papers, and he shewed me what papers he had— It was the first or second day of June when I was there—

It was then the defendants then cross-examined the witnesses, who thereupon testified as follows—

I think it was the first of the month I went there— when I got there some of the goods were being removed, and some were on drags— Sink had a book in his hand, and was making memoranda of such goods as were taken out— They were exercising acts of ownership over the goods— Johnson shewed me an indemnifying bond— I staid there until discharged by the clerk— I saw oil-cloth, crockery, chairs, tables and

carpets - The mattresses were taken before I got there - The goods ^{that} were removed to the sidewalk, or were partly out, were carried off, but I think no other goods were taken from the rooms, while I was there - I staid there two days and nights -

The Counsel for the plaintiff here rested his cause -

And the Counsel for the said defendants to maintain the said issue, on their part then called I Boyell, who being sworn, thereupon testified as follows -

I am acquainted with Sink - The Burnet House was formerly called the St. Nicholas Sink and Watkins first opened the house, and Sink became the successor of Sink and Watkins. It was opened in September or August 1855. It was carried on by Sink and Watkins two or three months before Sink got the sole charge of it - I know the furniture that was in the house, when I was acquainted with the house - Sink and Watkins furnished the house originally -

The Counsel for plaintiff then cross examined said witness, who thereupon testified as follows -

I don't know anything about the furniture of the house as it was last May -

The counsel for the Defendants then called O. Van Patten, who being sworn testified as follows:

I am acquainted with the furniture of the Burnett House, late the St. Nicholas Hotel. I am acquainted with the furniture that was in it when Sink kept it. The same furniture remained in the house in May and June last. I had bought some himself while he was proprietor. I assisted in making a schedule of the property that was taken away by Sink, and Knights, and I have a schedule of it. Both papers are of property taken from the house. I was there all the time, and acted as clerk. It was all delivered to me at the warehouse where we stored it, on the corner of Wells and Water Street. I went with the first lot to the warehouse. I kept an account of the things in the house where I received them, and kept an account at the Hotel as the things were taken away. Both accounts were afterwards compared by me.

I had him in the house as Knights agent from the time Shenz took the house. I had charge of the furniture, and was seeing that none was taken away. Such were my instructions. Knights claimed to be the owner of the furniture at that time. I acted in the capacity of agent from the 10th of January 1857.

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until Sheng left the house. Sink and Knights
made a settlement, and Sink delivered the
furniture over to Mr. Knights. This was before
Sheng took possession. I had been in Knights
employ before this time, and was acquainted
with all their transactions. Sink was indebted
to Knights for encumbrances, and for helping
him to get the furniture. I understood that
indebtedness to amount to about \$1600, 75c. The
acceptance appears on the face of the draft shown
me is in Knights handwriting. Some parties
in New York have claims against Sink,
and Knights is responsible by this ac-
ceptance. It is in reference to this indebt-
edness, that this property was turned over to
Knights by Sink. The property taken out of
the house by Knights, was some brought there
by Sink.

The counsel for the plaintiffs then cross-
examined the said witness, who thereupon testi-
fied as follows—

What I have testified to, I know of my
own knowledge. I was at the ware-house. I was
as much at the ware-house as at the hotel. I
was not there when the goods were sent to
the junction.

Sink did not sell out to Sheng. He had
a lease of the house from Sheng at that time.
Sheng had the control of the house so far as

the use of the furniture was concerned - I was
in the store under the house, and boarding
at the house - I delivered up the furniture
to Knight, in his presence - This was in March
/37. and said he wished Knight would remove
the stuff out of the house, as he could not pay
for it, and he could replace the goods on a credit
of six, twelve, and eighteen months - Sherry
was proprietor of the house, and was keeping it -
I went in and out as the other boarders did -
I was there more than the other boarders, be-
cause I had other business to transact for him
besides this - I had charge of the clothing-store
of Knight under the Burnet House - Knight
told me he wanted me to keep watch of the
furniture and things - Sherry was not told
my instructions

When the notes which he had given
for the furniture to Knight, came due, I went
up there to Sherry, and dunned him for
the amount - I talked with Sherry several
times about it, He said on one occasion that
he had bought the furniture, and could not
make the payments as he ^{had} agreed - I knew
that to be a fact - I went several times to get
three hundred dollars that had fallen due -
At length he said that he would deliver the
furniture over to Knight, and that, as fast
as Knight chose to remove it, he would replace

it by new articles in the stead of those taken away - I thought there had been a regular bill of sale of each article to Sherry - Sherry delivered the goods up to Knights sometime in March - I believe Knights had a mortgage for the goods, and sold them to Sherry subject to mortgage -

Knights took possession under a mortgage a mortgage from Sink to Knights - I continued to Board at the Burnet House, until after Sherry left -

The court then ^{the} counsel for Defendants then resumed the direct examination of said witness, who thereupon testified as follows -

Some of the mirrors were taken to the warehouse - I have some definite knowledge about the sale - Sherry was to have the furniture of Knights when the mortgage was paid up - I continued in possession of the property until it was removed from the house - Sink agreed to deliver up the furniture to Knights, provided Knights would pay the balance of the mortgage - Sink wished ~~would~~ Knights to take possession - Sherry had knowledge that Knights claimed the furniture, from the time he went there -

The court then for the plaintiff then again cross examined the said witness, who thereupon testified as follows -

05 This delivery was before the sale to
Sheng - I don't know whether the mortgage
from Sink to Sheng was given to secure
the draft -

The counsel for the Defendants then
called Prentiss Law, who, being sworn, testified
as follows -

I am the person mentioned as mort-
gagee in the mortgage from Thomas Sheng to
Prentiss Law - I executed an assignment of the
said mortgage to the Plaintiff Van Pelt - I nego-
tiated the transfer with Agnes - I think the as-
signment was made about the thirtieth day
of May 1857. These notes shown me are the
notes given to me and accompanying the mort-
gage - I had been to Sheng at the time
the mortgage was given to the amount of
only Seven hundred dollars (\$700.00). These advan-
ces were partly in cash and partly in groceries
At one time I advanced in money Two Hundred
and fifty Dollars - Part of the money was given
advanced before the mortgage was given - The
sum of \$250.00 was advanced in February or
March Sink was with me at the time - It
was before giving the mortgage - I received a note
as collateral security at the time, and that I
afterwards gave back to him - On receiving the
mortgage, I gave him \$250.00 more - I received

an order of Henry on me, for \$300.75 from Henry Chapman, and I declined paying it - I did not pay it, but made an arrangement with Ayres to pay it, at the time I executed the assignment of the mortgage to Van Pelt - The payment of the order was made at that time - I can't say whether the writing shewn me is a copy of the original order - I cannot say exactly when the order was made - Sink wanted a copy of the goods embraced in the mortgage - I don't know whether it is a correct copy - I sold the mortgage of \$1000.00 to J. D. Dollars, Seven Hundred Dollars to be paid to me, and Three Hundred Dollars to Chapman -

The counsel for the Defendants further to maintain and prove the issue, on their part, then produced and offered in evidence, a certain chattel mortgage, executed on the 17th day of March, A.D. 1856. from one Andrew J. Sink to Henry Knight, one of the said defendants, together with the schedule property embraced in said mortgage, but to the reading of the same in evidence, the counsel for the said plaintiff, did then and there object, because the representative of the mortgage had retained the possession of the property, beyond the time stipulated in said mortgage for the payment of the money due thereon, and the mortgage had become fraudulent and void

as to creditors and purchasers - But the said Judge
presiding at said trial, declared and delivered his
opinion that the said objection so taken, as afore-
said ought not to be allowed, but that the said
mortgage ought to be ^{admitted} in evidence, and did according-
ly decide that the same should be read in evi-
dence, on the part of the said defendants, to
which said opinion and decision of the said Judge,
the said counsel for the said plaintiffs did then
and there except - Which said mortgage and
the schedule including the property in question,
made on the 17th day of March, 1856. and to
secure said draft for \$1560 and dated the 15th
March 1856 and payable in one year, duly acknow-
ledged and recorded on the 22nd March, 1856.
together with said draft accepted by Knight were
read in evidence - The said mortgage is as follows.

I, _____ made and entered
into this _____ of March, in the year
of our Lord, _____, eight hundred and
fifty six, between Andrew J. Link, City of Chicago,
of the county of Cook, of the ^{and} State of Illinois - party of the first part, and Henry Knight
of the same place - party of the second part -
Witnesseth, that the said party of the first
part, for and in consideration of the sum of
fifteen hundred and sixty eight and ⁸⁹/₁₀₀ Dols.
law, in hand paid, the receipt whereof is hereby ac-
knowledge, doth hereby grant, sell, convey and

confirm unto the said party of the second part, his heirs and assigns, forever, all and singular, the following described goods and chattels, to wit, all the furniture now in the public House situate upon Clark street, in said city, known as the St Nicholas Hotel, and particularly mentioned in the Schedule, hereto annexed, Marked "A." B-

Together with all and singular the appurtenances thereto belonging, or in any wise appertaining. To have and to hold the above described goods and chattels unto the said party of the second part, his heirs and assigns forever.

Provided that these Presents are upon this express condition, that if the said Andrew J. Sisk, his heirs, executors, administrators or assigns, shall, on or before the fifteenth day of March, A. D. eighteen hundred and fifty seven, pay or cause to be paid the sum of fifteen hundred and sixty eight ^{50/100} dollars, together with the interest that may accrue thereon, until paid, according to the tenor of a certain bill dated the 15th day of March, 1856. for the above amount payable at the office of Higgins, Beekwith, & Shalther, one year after date; accepted by the party of second part, and also two other promissory notes, payable at R. H. Smith's Bank, one of which is for the sum of eight hundred and nine dollars payable in April next; the other for same amount payable in August next both given to Phelps and Bunyan, and endorsed

by the party of the second part, - also another note
for seven hundred and seventy five dollars, payable
to Sampson, George, - eight months from date,
endorsed by said - that then, and from
thereafter, these Presents, and everything herein
contained, shall cease and be null and void, any-
thing herein contained to the contrary notwithstanding.

Provided also, that the said Andrew J. Sink,
is to keep said property insured in some good and
reponsible Company, and shall assign the policy
or policies of Insurance, to the party of the second
part, and the said Sink is also to retain possession
of, and have the use of said goods and chattels,
until the day of payment as aforesaid - and also, at
his own expense, to keep said goods and chattels -
and also at the expiration of said time of payment,
if said sum of money together with interest as a-
foresaid, shall be paid, to deliver up said goods
and chattels to said Knight,
or his heirs, administrators, or assigns. And
provided also, that in default of payment as aforesaid,
shall be made, then the said Henry Knight,
or his attorney, agent, or assigns, or heirs, executors, or
administrators shall have the right to take possession
of said goods and chattels, wherever the same
may or can be found, and sell the same at Pub-
lic or Private sale, to the highest bidder, for cash
in hand, after giving notice of the time,
place and terms of said sale, together with a

description of the goods and chattels to be sold,
by at least three advertisements, posted up in
public places in the city, whither said sale
is to take place - to make the sum of money
and interest promised as aforesaid, together
with his reasonable costs, charges and expenses in
so doing - and if there shall be any surplus, shall
pay the same to the said Andrew J. Sink, or
his legal representatives -

I, _____, whereof, the said party
of the first part, unto set his hand, and
affixed his seal, and gave first herein
written -

A. J. Sink 

Signed, sealed and delivered }
in presence of }

The words "promissory note"
erased, and bill substituted
and the word "endorsed", and
"accepted" substituted, done before execution

W. B. McAllister

State of Illinois }
Cook County } ss.

J. J. A. Hinington, a Justice of
the Peace, in and for said county, do hereby certify
that this Note was duly acknowledged before
me, by the above named Andrew J. Sink - this
twentieth day of March - A.D. 1856.

J. J. A. Hinington J.P. 

It is hereby stipulated and agreed by and between the counsel on both sides, in the above entitled cause, that the Schedule marked B. attached to the above Mortgage, need not be copied into the transcript of said cause. It is also further agreed that a part of the property mentioned in said Schedule, B. is the property in controversy in said cause.

W. H. McAllister, Atty. for Def.
D. P. Wilder, Atty. for Plff.

Erasmus B. Van Pelt was recalled by defendants, and who thereupon testified as follows—
The property described in Schedule to Knight's mortgage, just introduced in evidence, is the same that was in the Saint Nicholas Hotel.

The counsel for the said defendants then recalled J. Voyell, who thereupon testified as follows— I got up the schedule referred to— It was of all the property in the St. Nicholas Hotel— Sink was then proprietor of the house—

The counsel for the said plaintiff then cross examined said witness, who thereupon testified as follows—

Sink took away quite a large proportion of furniture from the House, when he left— I knew nothing of what Sherry may have afterwards put in—

The counsel for the defendants here rested their case.

And the counsel for the plaintiff further to maintain and prove the issue, on his part, recalled James Ryan, who thereupon testified as follows—

I knew of no one about the house who had or claimed control over the furniture while Sherry was proprietor— So far as I knew, Sherry had complete control— Van Patten slept in the store just below the house was closed— I should think he slept there one or two months— He

was not much in the hotel, except when he came to get his meals. I should have seen him if he had claimed or exercised any control over the goods. He did not seem to have any more control over them than any other boarder.

The counsel for the defendants then cross-examined said witness, who thereupon testified as follows— He slept in the store under the Hotel—

The counsel for the plaintiff then called H. [name] being sworn, testified as follows—

I boarded the Burnet House from the first of March till Sherry left— this was nearly two months— I roomed there— I was there a good share of the time during the day— I am acquainted with Van Patten— he boarded there during the time I speak of— He may have been there all the time— my impression is that he left a week or two before the house was closed— which was from the first to the middle of May— If Mr. Van Patten had any control in the house, or had charge of the furniture in it, I did not know it— He never let anyone know it that I am aware of— He was not about the house any more than the other boarders— I never saw or heard anything from or about him that led me to suspect that he had any charge of the furniture as

agent-

The counsel for the defendants here cross-examined said witness, who thereupon testified as follows-

I went to the Burnett House to board, about the first of March. I was not acquainted with Sherry until after I went there - I remained till the house was closed. I knew nothing about Sink or Sherry delivering up property to Knights. I understood Knights had more or less claim thereon, but I knew nothing about it - my impression is that Van Patten was not about there for a week or ten days before the house closed, but I am not positive on this point.

The counsel for the plaintiff then called H. T. Barlow, who being sworn, testified as follows - I commenced my employment with Sherry as clerk in the Burnett House April /37. and continued with him until the house closed - about the first of June 1857. I knew Van Patten - he boarded there when I first came to the house - he had a room in the house - His room was afterwards changed to No. 24. He boarded there all the time except for the last eight or ten days before the house closed - My impression is he did not board there during those days, and that he was not in the house at all - I don't know whether he slept in the store under the hotel

12
Shenz was proprietor until the house closed -
Van Patten never had any control in the house
that I ever heard of - I was clerk, and was there
all the while - I heard nothing that led me
to suppose, or have any suspicion that he had
any control there -

The counsel for the defendants then
cross-examined said witness, who thereupon
testified as follows -

I am a clerk - I am employ - a considerable
number of people there when I first
came to the house - I am not sure that Van
Patten was not there - but such is my impression -
I don't remember making any bill against
Van Patten - He was boarding there on Knight's
account, and I paid no attention to his ac-
count - Shenz rented the house of Azes - I first
went there about the first of April /87. I under-
stood within two weeks after I went there, that
Knight had a claim on the furniture - Van
Patten was boarding on Knight's account, and
for that reason, no account was made out a-
gainst him - I don't recollect that a man
named Johnson came to the house before I left -
I don't recollect that any officers were about there
until the furniture was removed - I don't recol-
lect the circumstances of a levy being made on
the 21st of May /87. Knight and I had some
conversation about the sale of the furniture to me

He talked with me about my buying his claim
against the furniture - This was two or three weeks
before the house was closed -

The counsel for the plaintiff here
called as a witness in ~~behalf~~ behalf of said plaintiff,
Thomas Shery -

But to the admission of the said
Thomas Shery as a witness, the said counsel for
the said defendants did then and there object
because the said Shery was interested in behalf
of the said plaintiff - But the said Judge did
then and there deliver his opinion, that the said
objection so taken by said counsel for defendants
ought not to be allowed, but that the said Thom-
as Shery ought to be admitted to testify as a wit-
ness, and did accordingly decide that the said
Thomas Shery be admitted and sworn
as a witness. And the said opinion and decision
of said Judge was made by the counsel for the said
defendants, and there, in behalf of
the said defendants except -

And the said Thomas Shery, being sworn,
thereupon testified as follows - I bought the fur-
niture of Link, and I assumed the payments
of the debts due from him to Knights - I assum-
ed the payment of the entire debt, but did
not make all the payments according to the
contract - I made the first and the second, but
like the third I did not - I owe Link \$400.76

74
and also the Knights mortgage of \$1500. To
I never delivered the goods in the Burnett
House to Knights, or to Mr. Van Patten at any
time - no arrangement was ever made, by which
Van Patten was to have possession for Knights -
I did not know that Van Patten was the agent
for Knights, in regard to this furniture -

The counsel for the defendants then
cross-examined the said witness, who thereupon
testified as

I told Knights that he might
take the goods any day - I recollect that I
never told her any lies while keeping the
house, I got drunk - on one occasion I jumped
out of the 2nd story window when intoxicated -
This was early in May - But for a long time
~~before~~ before, I had not been in the habit of
drinking - occasionally I would get into the habit,
and then leave it off entirely, and drink noth-
ing - These spells would last two or three days -

I have been to Kansas and Nebraska, since
I left the Burnett House - I have been engaged
of late in the commission business, in con-
nexion with another party - I supposed that
Knights had a claim - I assumed one - Knights
told me that Van Patten was a partner of his,
in the clothing business -

The counsel then resumed the di-
rect examination, whereupon the witness

further testified as follows-

I traded Van Patten's board out for clothing. I settled with him after the house was closed. He was not charged with full board up to the time the house closed-

The counsel for the plaintiff here rested his case and the counsel for the defendants recalled Orasmus B. Van Patten - who testified as follows-

I remained as a boarder at the Burnett House, until the furniture was taken away-

The counsel for the defendants here rested their case, and no further evidence being offered by either party, and the aforesaid evidence being all that was offered by either party, or in behalf of either party in said cause, the counsel for the said plaintiff then requested the court to charge the jury as follows-

1st If you believe from the evidence that the property in question is the property conveyed by the chattel mortgage executed by Thomas Sherry to Prentiss Law, Feb. 16th /57. and if the jury further believe that said mortgage was executed to secure the payment of a bona fide debt, and assigned by said Law to the Plaintiff in good faith, for a valuable consideration, they should find for the plaintiff, if they believe from the evidence that any of the conditions

Refused

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had happened upon which the mortgagor, or his assigns were authorized by said mortgage to take possession of the mortgaged property-

2nd If the jury believe from the evidence that the property in question was broken, injured or lessened in value by the Defendants, or any of them, or their agents, while the property was in their hands, the jury should include the amount of such injury or deterioration in the plaintiff's damages should they find for the plaintiff.

3rd If the jury believe from the evidence that the plaintiff incurred an expenditure of time and money in searching for and recovering back the goods said property, they should include such expenditure in the Plaintiff's damages, should they find for him - so far as it was the reasonable and necessary consequence of the wrongful acts of the Defendants in secreting and conveying away the said property-

4th If the jury believe from the evidence that the Defendants, or any of them, took and converted any of the said property, they should include the value of the property so converted in their verdict for the plaintiff, should they find for him.

5th If the jury believe from the evidence that the taking or conversion of said property or any of it, was the act of a party, and not all

Refused

Refused

Refused

of the Defendants, named in this action, the jury may find a verdict against those Defendants only, who are found to the satisfaction of the jury, to have taken or converted said property or a part of it.

6th The possession and control of personal property are the strongest proofs of ownership - and if the jury believe from the evidence, that the Defendant Knights allowed Thomas Shenz, to exercise those badges of ownership over personal property mortgaged to said Knights after default made in the payment of the money at the time it was secured to be paid by his mortgage, said mortgage became void and of no effect, as the subsequent credits and third parties -

7th If the jury believe from the evidence of the witness ~~Ben~~ ^{Ben} ~~Bottom~~, that the Defendant Knights made such possession of the goods and ~~as is claimed~~ ^{as is claimed} by him, the ~~agency~~ ^{agency} of said witness, such possession ~~is~~ ^{is} fraud upon third parties, those dealing with and trusting said Shenz, upon the credit of the personal property which he seemed to possess - and such claim of possession by said Knight, should be disregarded by the jury.

8th If the jury believe from the evidence, that the chattel mortgage purporting to be executed by Thomas Shenz, & Prentiss Saw, and

Refused

assigned by the latter to Page Bell, the plaintiff in this suit, was executed and assigned as it purports to be, said mortgage shows the legal title to have been in the Plaintiff at the time this suit was commenced, and the legal title to the property in question, is sufficient for the purposes of maintaining this suit, though the jury may believe that parties other than the plaintiff had an equitable claim upon said property.

Ith I find from the evidence that King did take possession of the property covered by said mortgage, until two months or more after the last note mentioned in said mortgage matured, and that there was no provision in the mortgage for possession reverting in the mortgagor after the maturity of the last note, then if the jury believe the Law mortgage bona fide, and that the assignment to the plaintiff, was made for a valuable consideration on 30th May 1887. The plaintiff is entitled to recover, as against any title derived through the Sink mortgage—

Refused

which instructions, and each and every of them, the Court refused to give, to which decision of the Court, in refusing to give the said instructions, and each and every of them respectively, the counsel for the said plaintiff

did then and there, in behalf of the said plaintiff, except-

And the court thereupon gave the following instructions, in behalf of said plaintiff, to the jury-

1st If the jury shall find from the evidence, that Knight did not ~~did~~ take possession under his mortgage, of the property in question, after the notes secured by it, had fallen due, and that before Knight took possession under his mortgage, the plaintiff claiming to hold the title to the goods, took possession thereof, under the Sherris mortgage assigned to him, then the plaintiff is entitled to a verdict, if it is shown that the contingency had happened upon which plaintiff was entitled to possession under his mortgage-

2nd If the jury shall find for the plaintiff, then the jury shall assess the value of that part of the goods not returned to the plaintiff, under the replevin in this suit (if any are proved by the evidence) as damages-

3rd If the jury shall find for the plaintiff and that he has sustained any damages, or expenses of time and money, by reason of the detention or deterioration of the goods in question,

or in pursuit thereof, then the jury will assess the same separately for each item of damage so found - and state in their verdict, how much plaintiff is entitled for each -

Given

4th If the Jury shall believe find for the plaintiff under the instructions and evidence that the taking or conversion of said property, or any part thereof, was not the act of all the defendant, but that some of them had nothing to do with the matter, the Jury may find a verdict against those defendants only, who are shown to have participated in the act -

Given

5th If the Jury believe from the evidence that that the legal title to the goods in question was in the plaintiff, and that he was entitled to the possession of them at the time this suit was commenced, the plaintiff is entitled to recover, notwithstanding the equitable title might have been in Mrs. Ayres, or anyone else -

Given

6th If the Jury shall find that the Defendant Plough's mortgage is entitled to preference, over the plaintiff's mortgage - but if the Jury shall also find that any portion of the goods in question were included in plaintiff's mortgage, which were not included

in Knight's mortgage, then the plaintiff is entitled to recover as to such part, and his damages, if any he has shown in respect thereto, — specifying the part of the goods so found in their verdict —

To each, and every of which said instructions so given by said Judge, and to the giving the same to the jury, the counsel for the said plaintiff, did then and there, in behalf of the said plaintiff, except —

At the request of the counsel for the said defendants, the Court then instructed the jury as follows —

1st That in this action the plaintiff must show, in order to recover, that at the time of commencing the suit, he was in possession of the property in question.

2nd That if it is from the evidence, that the title to the property in question was at the time of commencing this suit, in any person besides the plaintiff, the law is for the defendants.

3rd If the jury believe from the evidence that at the time of making the mortgage to Prentiss Law, read in evidence, ~~James~~ Shurz, the mortgage was indebted to said Law, in the sum of

Given
the time of the assignment and sale, yet
if at the time of, and before, the assignment,
and sale executed by Law to the plaintiff, the
defendant Knight had taken possession, by
himself, or his agent, of the property in question,
and held the same adversely under his
mortgage, Prentiss Law could not transfer the
property to the plaintiff, so held adversely, so as
to give him a title to maintain a suit to the
same - And the law is for the Defendants -

To each and every of which said instructions
and to the giving the same to the jury, the coun-
sel for the said plaintiff did then and there
except -

And the Court thereupon gave the follow-
ing additional instructions to the jury, in be-
half of said ~~plaintiff~~ defendants -

Given
If the jury find from the evidence,
that Knight had a valid mortgage on the
goods in question, that the debt secured
thereby was not due at the time ~~at the time~~
plaintiff's mortgage was given, then the jury
will find for the defendants, if they shall also
find from the evidence that Knight took pos-
session under his mortgage before the plaintiff
obtained his assignment, and proceeded to
obtain possession under his -

Given
If the jury find the evidence that
at the time the mortgage under which plain-
tiff claims, was given, the mortgage under which
the defendant Knight claims, was not due, and
that by the terms thereof, Knight was not entitled
to the possession until some time after the mor-
tgage assigned to the plaintiff was given, and
that both mortgages covered some goods - then
the Knight was not void as to credi-
tors and sub-judices of them - And if
the jury find the evidence that
Knight took possession under his mortgage, and
commenced to remove the property in question,
before the plaintiff had taken possession under
his mortgage, then the jury will find for the
defendants -

To each, and every of which said instructions,
and to the giving the same to the jury, the
counsel for the said plaintiff did then and
there except -

And the said judge, with the instructions
aforesaid, left the said issue, and the evidence
so given on the trial thereof as aforesaid, to the
said jury - and the jury aforesaid then and
there gave their verdict for the said defendants.

And the counsel for the said plaintiffs
thereupon moved the court to grant a new trial

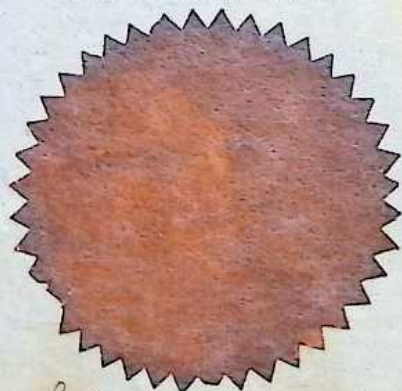
in the said cause, because the instructions so given by the said court to said jury as aforesaid, were wrongfully given, and the said instructions, so requested by said plaintiff, as aforesaid, and refused by said court, were wrongfully refused, and ought to have been given to the jury by said court. But the Court overruled the said motion of the said counsel for said plaintiff, whereupon the counsel for the said plaintiff, to the said ruling of the court, did then and there except.

And because none of the said exceptions so offered, and made by said counsel for said plaintiff, to the opinion, decisions, and rulings of the said Judge, do appear upon the record of the said trial, therefore on the prayer of the said plaintiff, by his counsel, the said circuit Judge, hath to this Bill of exceptions, put his seal, according to the statute in such case made, provided.

This Bill of exceptions, is the year one thousand, eight hundred and forty eight.

George Manime *(Seal)*
Judge of 7th Judicial Circuit
Illinois.

State of Illinois, }
COUNTY OF COOK. } S. S.



I, WILLIAM L. CHURCH, Clerk of the Circuit
Court of Cook County, in the State aforesaid, do hereby
certify the above and foregoing, to be a true, perfect and complete
copy of all the papers filed & proceedings had & entered of Record
in a certain cause late pending in said Court on the
Law side thereof, wherein Daue
Van Pelt was Plaintiff — and
John & Nelson Etal were — defendants

IN WITNESS WHEREOF, I have hereunto set my hand, and affixed the seal of our
said Court at Chicago, this Fifth day of April A. D. 1858

Seen for Record & 21, 85

Wm L Church

Clerk.

State of Illinois
Cook County ss

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

Isaac Van Pelt

Plf. in error

Henry ^{vs.} Knights

Andrew J. Link et als.

defts in error

} Afterwards to wit on the
third Monday of April A.D. 1858
comes the said Isaac Van Pelt, by D.P. Kildner
his atty, and says that in the record & proceedings
aforesaid, and also in giving the judgment aforesaid
there is manifest error in this, to wit,

1st In admitting in evidence on the trial of
said cause a certain Chattel Mortgage execu-
ted on the 17th of March 1856 by Andrew J. Link
to Henry Knights

2^d In refusing the instructions asked on be-
half of the said plaintiff, & in giving those which
were given on behalf of said plaintiff by the
Court.

3^d In giving the instructions which were given
on behalf of said defendants.

4th In overruling the motion for a new trial.

D.P. Kildner
Atty for Isaac Van Pelt.

And hereupon
Suprem Court
Henry Knight
et al Defendants

vs
Isaac Van Belt
Plff in law

And hereupon the said Court do wit on the 21st
day of April the said Defendants
by W K M Allister their attorney come
here into Court and say that there is no error
either in the record and proceedings aforesaid or
in giving the judgment aforesaid; And pray
that the said Supreme Court of Judicature before
the aforesaid Justice thereof may proceed
to examine as well the record and proceedings
aforesaid as the matters aforesaid above of record
for ever And that the judgment aforesaid in
favor aforesaid given, may be in all things
affirmed &c

W K M Allister
Atty for Defs in
law

Supreme Court

Henry, Knight et al
vs
Isaac Van Pelt

Deft in error
Plff in error

II

The instructions refused, on part of Plff, are each of them, incorrect as propositions of law, because they seek to withdraw legitimate questions raised on the trial, from the consideration of the Jury, and improper, as mere facts, and were properly refused.

There is no error in the instructions given by the Court.

1st Knight's Mortgage had a month to run when the Plaintiff's Land Mortgage was given and was duly executed & recorded, now as against that Mortgage, Knight would not be void if he failed to take possession when it became due. The Land Mortgage was taken with notice of and subject to the Knight Mortgage. It is impossible, that permitting Sherry who had purchased of Sink, subject to Knight's Mortgage and who was Land debt, to retain the property ~~then~~ can be assigned to him, upon Sherry's Creditors Land. It was obviously for his benefit.

The same rule of policy, cannot be applied
to this case as to one when, the subsequent
mortgage is taken after the former is due.
The reason why, it is fraudulent & void, ^{in such a case} is
the tendency to deceive & mislead. See
2 Kent Com page 516 * (note & B)

How could Pritchard have been deceived
misled & defrauded by this indulgence to
his debtor?

The law must, be limited to a case of purchase
or mortgage after the former has become due,
or in other words, to the state at the time the subsequently
right attaches,

2nd But it is to be contended that the plff
was deceived & misled by purchasing of
Pritchard's Land. The instruction concedes that
provided he purchased without notice,
But if Knight had taken possession in
a full & notorious manner before he purchased
that is notice to him,

II

There was a question of fraud raised as to the Said Mortgage which was properly submitted to the Jury, by the Court,

Said Advances to Sherry only Seven hundred dollars and the Mortgage recites the indebtedness, and purports to be for one thousand dollars

Poir vs White 12 Ill 263

2 Wend 596

Enos Ayres acted as agent of Sherry in buying of Said the Mortgage and the circumstances are such that he knew about the origin of the mortgage.

If he was paying full market value at the time of the assignment Van Pelt could not be a bona fide assignee. Enos Ayres owned and rented the house kept by Sherry to Sherry. The property in question was furniture of that house.

III

If Knight had taken possession of the property before the transfer from Land to Van Pelt and held it adversely as his own property, Van Pelt could acquire no legal title to the property sufficient to maintain Replevin

Gardner vs Williams 12 Wend 829

Chapman vs Kellum 13 Ill 347

And it matters not, who had the legal title
to the property, if the P^l did not have it,
he must recover upon the strength of his own
title.

W K McAllister
for Depts in Error

See Nash v Uly 19 Wend R 523
a case in point

Large Van Pelt

vs.

308.

Wilson et al.

Record &

Rec'd. of Enos

Filed April 21

1854

1854

Deep Count
Henry Knight
ads et al
Isaac Van Pelt
Depts Points

H. H. Wallister
per Depts

Supreme Court.

Henry Knight et al
vs
Isaac Van Pelt

Debtors

Peppindun

Argument of
Depts in error

The natural order of the facts appearing in this case, is, that on the 17th day of March 1856, Andrew J. Sink, being the owner in possession of the property in question, and Henry Knight having, on the 16th March aforesaid, accepted a bill of exchange for Sink's accommodation bearing that date for the sum of one thousand and five hundred and eighty eight dollars and eighty cents, payable in one year from that date and being liable on certain promissory notes for said Sink, took a Chattel Mortgage of Sink bearing date the 17th March aforesaid to secure said bill & the said notes all of which are described therein, which Mortgage covers the property in question and was duly acknowledged and recorded, This Mortgage gives Sink the right to retain possession of the property until said bill of exchange became due.

Sink afterwards, but at what time, did not appear, made a conditional ^{sale} of said property, to Thomas Sherry.

Knight's Mortgage did not come due until the 15th day of March 1857, up to which time by the terms of the Mortgage Sink had a right to retain possession of the property. And said Mortgage being regularly made and recorded, ^{on the 16th February 1857} the said Sherry the purchaser of the property, executed a Chattel Mortgage on the same property to one Prentiss Law to secure two notes of \$500. each payable in six & twelve months, but containing a provision that if the property should be levied upon the whole money & interest was to become due.

An Execution was issued upon a judgment in favor of Henry Fuller against Sherry and on the 21st May 1857, the property was levied upon. (This evidence was given to show that the Mortgage to Prentiss Law had become due)

On the 30th May 1857 Prentiss Law executed to Van Pelt the plaintiff an assignment of his Mortgage and a sale of the property. And Van Pelt brought this action of Replevin against Knight & others who had taken possession of the property.

under the Knight Mortgage, previous
to the assignment & sale by said to the
Plffs. See Rec page 45 testimony of Ryan
Page 59 Bradford Sloot, in Page 61 Van Patten
20

Prior
White
12 M 263 The Plff claimed the property under the Pri-
ent's said Mortgage, The depts, founded their
defense of property, not in Plff, under the
Knight Mortgage, It appearing that he became
liable on the bill of exchange he produced at the trial,
There was evidence tending to show that the
mortgage to Prient's said was tainted with
fraud as being ~~intended~~ for a larger
sum than was owing (see Rec page 65)

The jury found for the depts.
Now it is claimed by plff in error, that
although Knight's Mortgage had a month
to run, before the Prient's said Mortgage
was given, and was duly on record at the time,
yet if Knight did not take the actual ^{possession}
possession of the property when the mortgage
became due, it is absolutely void as to Pri-
ent's said ~~assignee~~ ~~assignee~~. Who in legal con-
templation must have taken his mortgage
with notice of and subject to the Knight mort-
-gage, Such a case is not within the reason
or principle of the rule rendering mortgages void
because the second mortgage could not have been

taken on the faith of the said mortgage
being paid, or discharged; besides, the propos-
er could do no harm,

2 Kents Com * 516 (Note D)

When Land sold to the plaintiff, the sale
was negotiated by Eric Rye, on part
of plaintiff, who it is claimed paid the balance
of the thousand dollars, which at 10%
deemed by the mortgage, which was sufficient
to ascribe him of the origin of that mortgage
& put plaintiff on inquiry as to whether it was fraud-
ulent or not,

Then if Knight had actually taken possession
of the property, which the evidence tends to show,
and claimed it as his own exercising
rights of ownership over it, Plaintiff Land
could not sell the property so held adversely,

O Keepe v Kellogg, 15 Ill 347

McLean v Ackerly, 11 Ill 558

Gardner v Adams, 12 Wend 297 which
is directly in point,

This Case is in Reich

Supreme Court

Henry Knight et al
Defendants in Error

Plaintiffs in Error

Isaac Van Pelt Plaintiff in Error

This case is not within the rule extended for by
plaintiff in error, because the property did not remain
in the possession of Andrew J. Sick. Knight's mortgage
but was in the possession of Thos Sherry a third person
- son to whom it had been delivered, and who had
a right to retain it as against Sick. The case
is therefore not within the reason or mischief
of the rule of constructive fraud

Nash vs Ely 19 Wend 523

decides that point fully.

Sup Court
Henry Knight

ads
Isaac Van Relt
Point, for Dept

Then it cannot be claimed that the Plff was
a bona fide purchaser of this property
because if Knight had already taken
possession of the property as his own, the
Plff was thereby notified of all his rights

Although the title in the property was in
Prentiss Lane or in any other person
than the ~~plff~~ ^{defendant} ~~the plff~~,
He could ~~rely~~ ^{rely} upon the strength of
his own title

Attest W^m Allister
for Depts in Court

Supreme Court
Henry Knight
ad,
Isaac van Pelt
Depts Brief

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The argument of
appellant not yet
filed

Filed Apr 29, 1858

L. S. Cloud

Clerk

W. H. McAllister
for Depts

Saprun Court

Henry Knight at
ad. Defendant
Isaac Van Pelt
Plff in error

Poult & Defts
in error

II

The Instructions refused on part of plff are each of them, incorrect as propositions of law because they seek to withdraw legitimate questions raised on the trial from the consideration of the jury and improperly assume facts and were therefore properly refused

III

There is no error in the instructions given by the court

1st Knight mortgage had a month to run when the Plaintiff said mortgage was given, now as against that mortgage Knight's would not be void if he failed to take possession when it became due,

The said mortgage was taken with notice and subject to the Knight mortgage - with notice because it was duly recorded, and subject to it because it already existed and Sherry was bound to pay it

Sherry was said's debtor and permitting the property to remain in his possession, instead

of being an injury to said was directly and obviously for his benefit.

The reason for holding that possession in the Mortgage after Mortgage becomes due is shall be a ground for constructive fraud & render it void, is because such possession misleads, deceives, and defrauds those dealing in the ~~purchase~~ with the possessor,

2 Kents Com page 516* note b
How could have Puntiss said have been misled or deceived, by a possession for his benefit? He is not a subsequent Mortgagee in a sense to be within the rule, because he did nothing and acquired no right in the faith of that possession,

2 But it will be contended that the plaintiff was deceived & misled by purchasing of Puntiss said. The Instructions concede that provided he purchased without notice. But if Knight had taken possession before he purchased, openly & notoriously, that was notice to him,

II

There was a question of fraud raised as to the said mortgage which was properly submitted to the jury by the court.

Said advanced to Sherry only \$700. and the mortgage purports to be for a thousand dollars.

Prin vs White 12 Ill 263

2 Wend 596

III

If Knight had taken possession of the property before the transfer from said to Peff and held it adversely at the time, no legal title would pass by the transfer.

Lyidner vs Adams 12 Wend 297

O'Keefe vs Kellogg 15 Ill 347

11 Ill 558

M. W. McAllister
for Deft

See Nash & Ely 19 Wend R 523
a case in point

Sup Canal
Henry Knighted
ad,
Isaac Van Pelt
Depts Point

H. H. McAllister
for Deft

Van Relt, plf. in error

Henry Knight and others
defendants in error.

Supreme Court of the
State of Illinois of the
May Term A.D. 1858

The judgment of the Court below should
be reversed, & a new trial ordered, because,
1st The chattel mortgage of Link to Knight
under which the defendant Knight claims
the property in question, was *functus officio*
and void as to creditors & bona fide purchasers
of the mortgagor, or of his vendor, Perry, two
months & a half before defendant Knight got
possession of said property.

2 Kent. Com. 665 (* 515) - 668. id 670 (* &
521-525) & note a on the latter page. 1 Smiths Ld. Cas.
(Twyns Case) p. 40.

According to these authorities, an absolute
bill of sale of chattels, vesting the title immedi-
ately in the vendor by its terms, is void as to cred-
itors & purchasers if the vendor remains in
possession of the chattels.

This is the doctrine established in the
United States Courts, & in most of the state
Courts, & as Chancellor Kent remarks in the
note above cited, was laid down with precision
in this Court in the case of *Sharpton v Dean*
Part 1 Scam. 296.

2 Our Statute of Chattel Mortgages provides that the mortgaged property may remain with the mortgagor for a limited time if certain conditions are strictly complied with, & not otherwise.

Rev. Stat. of Illinois p 186 (Comp. Cod. 1881, 2, 83.

This Statute is in derogation of common law, as we have seen, & must be construed strictly; and our Supreme Court have so construed it.

Rinus v. Phelps 3^d Hil. 462. Cook v. Thayer 11 Ill. 618. Prior v. White, 12 Ill. 268

In Rinus v. Phelps it is decided that when a chattel mortgage fixes a time for the payment of the money, and stipulates that the mortgagor may retain the possession of the property until that time, if he retains it beyond the time so stipulated, the mortgage becomes fraudulent & void as to creditors & purchasers.

Such is the rule of law on this subject as it stood at the Com. Law, as it stood in this State before our Statute on Chattel Mortgages, and as it stands now according to the decisions of this Court under the Statute. Is there any thing in the facts

3 or circumstances of this case that save it from the effect of this rule?

Let us look at the facts in the case, as they appear from the abstract, & more fully from the bill of exceptions.

The Chattel Mortgage under which the See page 1 of Plf. in error claims the property in question the Abstract was executed by Thomas Perry to Plaintiff Law Feb'y, 16th 57, & acknowledged & recorded Feb'y, 17th, to secure the payment of two promissory judgment notes of \$500, each, with interest, payable to the Mortgagee, P. Law, or order, bearing even date with the mortgage, & payable ^{from date} in six & twelve months, respectively. The mortgage contained the usual provisions for the possession of the property to remain ⁱⁿ the mortgagee till default of payment, or unless mortgagee should fear removal or waste, &c. or if any writ issued from any court should be levied or attempted to be levied upon said mortgaged property, then, in either of said cases, the whole \$1000, ^{with} interest was to become due, and the mortgagee, his assigns &c. were authorized to take immediate possession of the property & dispose of it as therein provided.

These notes were endorsed & delivered to the plaintiff by the mortgagee P. Law, & the ~~the~~ mortgage assigned & delivered to the plaintiff on the 30th of May, 57.

Abstr. p. 1

An execution was issued from the Cook Co. Court of Com. Pleas May 21st 57. for \$439.44 against

4 Thomas Sherry, the mortgagee, & placed in the hands of the Sheriff of Cook Co. the same day, and, as appears by his return, leased upon the property in question, May 23^d, 57.

From the evidence then it appears that three of the conditions had happened, upon the happening of either of which the mortgagee, or his assigns were authorized to take possession of the mortgaged property.

First, the seeing and laying of the execution upon the mortgaged property.

Second, the mortgagee or his assignee, the plaintiff, might of course fear removal when the defendants in error were actually engaged in removing the mortgaged property.

Third, ~~he~~ might reasonably fear waste from the removal.

Notth p. 2
by the plf. Bradford Slout, who seems to have been the first man sent to the Burnt House to look after the goods in question, testifies that he found Link, Knight & Johnson there, & that they were removing the goods.

This mortgage was perfectly regular & legal on its face as will appear by inspection. It was made & executed in good faith & for a valuable consideration; and the notes or mortgage assigned bona fide & for full value, as was proved at the trial by the defendants' own witness, Renties Law

Ab't p. 4

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There then is a perfectly valid chattel mortgage, complying with all the Statute requirements as to acknowledging ~~abstracting~~ & recording, assigned to the plf. for full value before either of the notes had matured, and a happening of three of the conditions upon the happening of ~~either~~ ^{any one} of which the conveyance was to become absolute, & the Mortgagee or his assigns authorized to take possession.

This is the foundation of the Plaintiff's title to the property in question briefly stated.

The defence made at the trial, and shadowed forth in the defendant's instructions, was ~~three fold~~.

1st That the chattel mortgage of Sherry to Law was fraudulent in its origin; that the assignment ^{of it} was fraudulent, & that it was fraudulently kept on foot by Enos Ayres who was in complicity with the Plaintiff, Van Relt.

2^d That Thomas Sherry was never, in fact, in possession of the property in question, but that the deft. Knight was in possession of it during the whole time that Sherry kept the Burnet House, through the agency of the witness Van Patten.

3^d That the mortgage of Link to Knight was not, under the circumstances, void on the first of June, 57 when Knight took forcible possession of the property in question.

4th. That the property in question was in adverse possession to the time the Sherry mortgage & notes were assigned, & therefore the plaintiff could take no title by the assignment.

As to the first defence - that of fraud - an
 see the testi examination of the evidence will show that
 money of P. it is not only without foundation, but that
 Law. Abet. p. 4 the defendants proved by their own witness the
 utmost fairness & good faith both in the origin
 of the Sherry mortgage, and its assignment by
 the mortgage, Bent's Law, to the plaintiff.

The fact that Renos Ayres took an inter-
 est in the property in question, & was engaged in
 some of the transactions concerning it, was seized
 upon as showing that the plaintiff might be
 a participant in a fraudulent attempt to hinder
 & delay other mortgages or purchasers of the same prop-
 erty. In this also the defence signally failed:
 and the only fact that was brought out on this
 point, not only failed to show any fraud, or any
 motive for fraud, but explained Mr. Ayres'
 interest in the matter, viz. that he was lease-
 holder, ex. Abet. or owner, of the Burnet House, & hence felt an
 interest in preventing it from being stripped of
 its furniture, & closed.

There was no evidence of fraud in the
 case, then - on the contrary there was positive
 evidence in making the abstract, as it
 was thought not
 material -

7

and direct evidence of good faith & honorable dealing in the entire transaction, as we have seen from the testimony of one who knew the whole transaction from beginning to end, & who was put upon the stand by defendants themselves.

P. Linn. test.

Abst. p. 4

Abst. p. 6
to 2. of Dept's
instructions

The 2^d instruction given to the jury on behalf of the defendants was therefore erroneous, & should have been withheld. No evidence of fraud had been adduced; and therefore the instruction, tho' it might have been correct under a different state of the case, was not applicable to the case and the evidence as it stood, & was calculated to mislead the jury. The jury might well suppose, after all the talk they had heard about fraud, during a trial of several days, that if the Court would give them such an instruction as that, the judge at least believed there was fraud; and we all know what an influence such an impression as this would have upon a jury —

Test. of 2^d

Van Patten

Abst. p. 3.

The defendants on the trial, endeavored to show by the witness Van Patten, that the deft. Knights had possession of the property in question through the agency of said witness, during the time that Sherry was the proprietor of the Burnett House.

I feel convinced that but little time need be spent on this point: for were the witness so reliable, & deserving of implicit belief in all his statements as to his being in possession

of the furniture of the Burnett House from the 10th of Jan'y, 57 till the House was closed about the 1st of June, 57. Still I am satisfied that this Court would not regard any such covert & secret possession of personal property. Such a possession, were it allowed, would be a virtual violation of the law of ownership & possession of chattels, & a fraudulent evasion of our Statute of Chattel Mortgages, & would open the door for fraud & imposition without limit. But the character of the witness' testimony,

Van Patten's
testimony.

West, p. 2

puts the question beyond a doubt. — His statements are inconsistent with them selves. He was contradicted by the facts as they came out at the trial. He was contradicted by numerous other witnesses. — He first stated that he was at the Hotel all the time during the removal of the property in question, and then almost in the next breath he states that he went with the first load, & received all the goods at the ware house on the corner of Wells & South Water Streets, which warehouse, as the Court will see by a map of Chicago, is more than a half mile from the Burnett House.

received

West, p. 2

Again the witness Wm. Horner testified that a large amount of the furniture was stored in the store of Wm. J. Rowland, which is near the corner of Mich Avenue & So. Water, nearly a half mile from the warehouse designated by Van Patten. He was also contradicted by the four witnesses

9

James Ryan, H. L. Seward, H. J. Barlow,
 & Jos. Sherry, who testified ^{that} ~~that~~ ^{they} were in & about
 the Hotel constantly during the last months of Sherry's
 proprietorship, that Van Patten had no possession
 of the furniture in the Burnet House, that he ex-
cised no control over it, that they saw nothing
which led them to suspect even, that he had any
thing to do with the furniture, more than any
other boarder in the house; and all four of
 these witnesses agreed that according to their best
 recollection Van Patten did not board at the house
 & was not about there during the last week
or two before it was closed.

Considering, then, the extraordinary character
 of the possession here attempted to be set up, and
 the cordantly false testimony by which it is
 sought to establish that possession, I think
 this branch of the defence falls to the ground.

Abst, p. 5 and since the third instruction given to the
 jury on behalf of the defendants is erroneous,

In that instruction it was left with the jury
 to find a verdict for the defendants if they be-
 lieved from the evidence that Knight had taken
 possession of the property in question "either by him-
 self or his agents," & held the same adversely under
 his mortgage before the assignment by Bent's
 Law to the plaintiff. Now no other possession,
 by Knight, of the property in question, previous
 to the assignment of the mortgage & notes by Bent's

Law to the plaintiff, Van Relt, ^{attempted to be} was, proved at the trial, by any kind of evidence whatever, except this secret & fraudulent possession attempted to be set up through the agency of the first witness Van Patten. The only other item of evidence that bears upon the point is found in the testimony Bealford Sloat when he says he went to the Burned House the first, or second day of June, he thinks the first, when he found two of the defendants engaged with their agents in removing the furniture & exercising acts of ownership. It will be remembered that the assignment of the notes & mortgage by Prentiss Law was made on the 30th of May, which was on Saturday - The next Monday was the first of June - this, allowing that Sloat was correct in his impression that he first went to the Burned House on the first of June, instead of the second, is the earliest possession shown by the defendant Knights. Hence it appears that the notes & mortgage were assigned & delivered to the plaintiff several days before Knights had got possession, therefore, that there was no foundation in the evidence for the third instruction, before referred to, in relation to adverse possession, whether we regard the testimony of Van Patten, or Sloat.

Abst. p. 2

Abst. p. 1.

3^d The third defence is that the mortgage of Link to Knight was not under the circumstances, void on the first of June, 57 when the latter took forcible possession of the property in question.

We have already taken a view of the law upon this subject. Let us now look at the mortgage from Link to Knight, & then apply the rule of law to it.

Abot. p. 3.

The mortgage was executed on the 17th of March, 56 to secure ^{the part of} acceptances falling due at different times thereafter, the one having the longest time to run falling due the 15th of March, 57. It provided that the possession of the mortgaged property might remain with the mortgagor till the time of payment, & contained the other usual provisions in chattel mortgages. Link remained in possession of the property till sometime in January, 57.

Van Pattens when it appears that Thomas Sherry took a two. Abot. lease of the Burnett House and bought the furniture in question of Link, or Knight, or both, subject, of course, to Knight's mortgage if the acceptances it was executed to secure had not then been paid. Sherry executed the mortgage under which the plaintiff claims, on the 17th of July, 57, about a month before the life of the Knight's mortgage had expired: and hence, during its life, Knight's mortgage

took precedence of the Sherry mortgage. But Knights stood by and allowed Sherry to retain possession of the mortgaged property for two months & a half after the time specified in his (Knights') mortgage for the possession to remain in the mortgagor. After the 15th of March 57, together with days of grace, perhaps, the holder of the Sherry notes & mortgage had a right to suppose that the encumbrance of the Knights mortgage had been lifted, and that the property covered by the Sherry mortgage stood pledged first & solely for the payment of the debt there in mentioned. Prentiss Law doubtless had abundant opportunities to secure his debt against Sherry during this two months & a half, but leaving him in possession of the property in question all this time, after he knew the Knights mortgage had expired, he deemed his security complete, & left the matter rest as he supposed, securely. The issuing of the ^{execution} Fulfil on the 21st of May, 57, & its levy on the 23^d seems to have been the occurrence which alarmed Knights: for in a few days thereafter, as soon, we presume, as it transpired that such an execution was out, Knights & his employees entered the hotel & took forcible possession of the furniture. Now allowing that Knights had taken possession thus, before Prentiss Law assigned ~~the~~ notes & mort-

13 gaze (and we have before shown that it is prob-
able that he did not; at all events it was not
proved that he did) was this such a pos-
session, under ~~some~~ color of legal title as to
avail Knight as against subsequent bona
fide encumbrances for value? He submit
that it was not. He say that it was a trespass,
a wrongful act which Knight cannot be allow-
ed to take advantage of for his own benefit. To
hold differently would be to encourage distur-
bance & riot, to establish the rule of barbar-
ous times, that "might makes right".

The notes endorsed over by Prentiss
Law to the plaintiff were the principal debt
and the mortgage was collateral & passed with
the notes of necessity & of course, even if it had
not been assigned. — see *Parmater v. Dunn*
23 Barb. 461, & 9 Wend. 80. The endorsement

P. Laws test, & delivery were bona fide, and for full value, (as
Abst. p 3 defendants proved by their own witness) and long
before either of the notes had matured. — This
vested in the endorser, or assignee, all the rights
of the payer, Prentiss Law, & even more, for the
notes thus assigned would not be subject to
equitable defenses as they would have been in
the hands of the payer.

Now the foundation and reason of the rule
of law which prohibits one man from selling
chattels which at the time of the sale are in the

14 adverse possession of another, is to prevent litigation. The law says in effect, - you shall not sell a mere lawsuit. But an exception to this rule is made in the case of negotiable paper, and this case comes under this exception; for as we have seen, the notes were the principal & the mortgage only collateral.

The rule respecting adverse possession, then does not apply to the case at bar for three reasons, viz.

B. Shortsted. First it was not proved at the trial, that
Ab. t. 22 - Knight was in possession of the property in ques-
also J. Ryan tion on the 30th May 57 when the notes & mortgage
p. 1. were assigned to the plaintiff by P. Law - on the contrary the tendency of the evidence, & the probabilities are against that presumption.

Second, to be adverse possession under the provision of this rule of law the possession must be open color of legal title, and not a mere forcible and secret possession, as was Knight's possession in this case.

Third, negotiable paper forms an exception to this rule, & the case at bar comes under this exception, the notes being the principal & the mortgage only collateral.

Since the authorities cited by the coun-

15 on the trial below, and in his argument in the case in this Court, to wit, Gardner v Adams, 12 Wend. 297, McGoan v. McKney 11 Ill. 558, O'Keefe v Kellogg 15 Ill. 347, do not apply. In the first, the cases above cited the property in controversy was levied upon by a constable & sold by him a long time before it was attempted to be transferred to the Plaintiff - of course he could not recover under that state of the facts. And in the case of McGoan vs McKney the property in controversy was replevied the 20th of May, (to say nothing of ^{the} long continued possession of the defendant before that time) and the Plaintiff did not purchase it till the first of June following, and while the replevin suit was pending. A mere statement of these cases is sufficient to show the distinction between them & the case at bar. So also in the case of O'Keefe v Kellogg, the distinction is equally apparent. - In that case Kellogg sold to one Myers a farm, a span of horses, & some grain - Kellogg was to retain possession of the house for some time after the sale, to have the right to use the horses occasionally, and he also reserved for himself some of the grain, all of which was in the barn purchased by Myers. The grain was not measured or divided; and Myers resided with Kellogg for some time after the sale - During this

time a disagreement & difficulty arose between Kellogg & Myers in reference to the grain, and in the course of the conversations between them Myers admitted that he had no right to take the grain away or sell it till it was paid for. Shortly afterwards Myers executed a bill of sale of the grain to O'Keefe who repurchased it; and it was decided by this Court that under these circumstances Myers could not convey a title to the grain. But how different that case is from the one at bar. In the

* 15 Ill. p 349 case Kellogg had possession* of the grain, for he had nailed it up, & Myers admitted that he had no right under their agreement to remove or sell it till it was paid for. It is true that some of the language used by the Court in giving the opinion is general. It was there said "That the real owner of personal property cannot ~~can~~ sell his right or title in it to another while it is in the actual adverse possession of another who claims title to it." But it is a well known principle that the language of a judge in any case must be taken ~~with~~ with reference to the facts of the case he is deciding. Judges in deciding cases do not profess to lay down abstract propositions of law which are to be applied without qualification to any combination of facts & circumstances which may arise

17 The language used all tends to one point, viz. the deciding of the case in hand; and if the language happens to fall in to general propositions, it is still to be considered with reference to the case in hand. Moreover, the Court there uses the expression - "absence possession of one who claims title to it" - Legal title is of course ^{not a mere pretensions or unperfected claims;} intended; and, understood in this sense, as we have before seen, the proposition is undoubtedly good law.

* But it is said that Link, the mortgagor in the Knight's mortgage did not remain in possession of the property therein mentioned after the mortgage had expired, but that the possession was changed ^{in sup-} before that time, & that Cherry was then in possession. With all due deference, I must say that this seems to me a shallow subterfuge to be resorted to by a lawyer. As our Statute of Mort. is before us, Link, the mortgagor in the Knight's mortgage was Cherry's vendor, and, of course Cherry's possession was Link's possession. Link could convey no greater title than he himself possessed. The Statute of Whittell Mort. goes might as well, ^{as,} much better, be stricken strictly; and even from the Statute Book, if by so transparent a trick as this, a mortgage which by its express terms expires at a certain time can be kept on foot for months afterwards. But say our opponents Bentley's Law took his mort-

* The case of Ash v. Ely 19 Wend. 529 is cited by the Court as authority for the proposition that the mortgage had expired, but that the possession was changed before that time, & that Cherry was then in possession. With all due deference, I must say that this seems to me a shallow subterfuge to be resorted to by a lawyer. As our Statute of Mort. is before us, Link, the mortgagor in the Knight's mortgage was Cherry's vendor, and, of course Cherry's possession was Link's possession. Link could convey no greater title than he himself possessed. The Statute of Whittell Mort. goes might as well, ^{as,} much better, be stricken strictly; and even from the Statute Book, if by so transparent a trick as this, a mortgage which by its express terms expires at a certain time can be kept on foot for months afterwards. But say our opponents Bentley's Law took his mort-

gave with notice, in as much as Knight's mortgage had a month to run when the Cherry mortgage was executed. Admitted, but he did not take with notice that the Knight's mortgage was to be kept on foot two months & a half after it expired by its own terms. When Plentiss Law took his mortgage from Cherry to secure the payment of his debt he knew the property pledged was also pledged for the payment of the debts mentioned in Knight's mortgage first, if those debts were not paid at maturity; and he of course calculated the probabilities whether or not the property would be sufficient to pay the debts due Knight & himself both. But when the debts to Knight matured, & the time had passed when he should have taken possession, Law had a right to presume the Knight's debts were paid, & that he, Law, had the first lien upon the mortgaged property - this is what the records in the Registrar's Office showed, & beyond these he was not bound to look.

Van Patten's
test. Abert, p. 2

Moreover there was some evidence to show that Knight himself was a party to this sale of the property in question ^{to Cherry} which fact directs him (Knight) of any equitable claim he might otherwise have had, arising from a breach of confidence in Link.

19 He think therefore that there is nothing in the facts or circumstances of this case which could keep life in Knight's mortgage after it has to expire by its terms, and nothing which could revive it after it had once expired.

This Court has uniformly adopted the strict rule of construction in passing upon chattel mortgages, as public policy and the rules of law require - the late case of Davis v Ransom, 18 Ill. 396, shows that this rule is still enforced. The defendant Knight was guilty of gross laches, while the plaintiff proceeded to assert his rights as soon as he learned the condition had happened authorizing him to take possession of the mortgaged property. Non dormientibus, sed vigilantibus, &c. is still a valid rule of law.

Abst. p 5

We submit, therefore, that the fourth & fifth instructions - in the abstract - given to the jury on behalf of the defendants, are erroneous & should not have been given.

We concide, also, with due deference to the Court which originated the instruction, that the fourth instruction above mentioned is erroneous for another reason. The Court say in that instruction. "If the Jury shall find from the evidence that Knight held a prior valid mortgage." Thus leaving to the jury to decide a question of law which it is peculiarly the

province of the Court to determine.

The Fourth defence, set up by the defendants on the trial, has been already considered sufficiently, perhaps, in examining the third; as the former constituted one of the "circumstances" which it was contended preserved the validity of the Knight's mortgage so long after its life had run.

I have thus considered the main features of this case, and while setting forth & insisting upon the Plaintiff's Superior & better founded title to the property in question have endeavored to state & answer fairly & candidly the grounds of the defendant's claim. I trust this has been done with sufficient fullness & clearness to afford the Court all necessary aid in arriving at a clear & just decision of the points at issue.

All of which is respectfully submitted.

L. P. Wilder
Counsel for Plf. in error.