

No. 12747

Supreme Court of Illinois

Cranz

vs.

Kroger

152 - 36

George H. Craig

vs

John Kroger

152

12747

859

State of Illinois } In the circuit
Rock Island County } Court of said
county at the Sept Term thereof
A D 1858.

John Stroger }
vs }
Geo H Strong }

Plaintiff of Riplevin

Be it remembered
that at the above mentioned Term
of said Court the above entitled
cause came on to be ~~heard~~^{present} in support
of the issue in behalf of said Plaintiff the
following evidence was introduced
Samuel P. Gordon being sworn testified
that sometime in the early part of
the season of 1858 a quantity of goods
were brought from the Depot of the Rock
Island Rail Road at Rock Island
Illinois to the rear house of J H
Strong & Co at said Rock Island that
said goods consisted of one case of
glass, three Bess Household Goods
four other Bess Goods, one chest one
Trunk, one barrel, three boxes of
fruit and three boxes of Christmas cake
marked "In C. Rogers" witness further
stated that said goods were taken
from the rear house of said Strong & Co

at various times and were receipted for by John Kroger the Plff; that sometime after their arrival at said Ware House and while a portion of said goods yet remained in store the Plff and Deft came together to the Ware House and inquired after the remaining goods, that Deft also came alone on one or two occasions to look after them but who paid the freight and charge on said goods or any portion of them witness could not say -

It was then admitted at the trial that among the goods referred to by the witness Goodale were the articles mentioned and described in the Plff Declaration.

Jasper Fisher being sworn testified that he assisted in moving the articles in controversy in this suit from the Ware House of said Sargely & Co to the Cropper Row opposite Union Square in the City of Rock Island in a house where Deft was then living -

The Plff Kroger paid witness for this service and also for a similar service afterwards when Deft moved

shown below -

Frederick B. Gorton being sworn testified that he knew the parties Jeff & Deft; that while he was Sheriff of Rock Island county Deft was arrested on a capias and was taken by witness ^{at} Deft request before the Probate court of said County in order that Deft might obtain his discharge under the Insolvent Laws of this State. The Deft Cranz was examined under oath before said probate court in regard to his property - Deft said he did not own a piano, that the one he had was leased from Geo. Kroger that the six mahogany chairs, Centre table and sofa were in the same situation - that he (Deft) had given Jeff's wife M. C. Kroger a bill of sale of said articles and that she owned them; that Kroger and his wife were present at said examination and that Kroger's wife at request of Deft testified in his behalf upon that occasion. At this stage of the examination of said witness, he was requested by the Jeff's counsel, to state what the wife of said Kroger swore to upon the occasion aforesaid, to which

4 Enjoining the counsel for Deft then and there
objected. but the objection was overruled by
the court and said witness was permitted
to testify as follows in reply to said request
enjoining that said property namely
the articles mentioned in Plffs Decla-
ration, belonged to her, that she had a
bill of sale of them, and that she
had passed them to the Deft - so
which enjoining of said witness, and
her answer therunto, the Deft &
counsel then and there excepted.

The Plff here introduced the
following schedule made out and
sworn to by Deft before said
Probate court when seeking his
discharge from custody and impris-
onment in the words and figures following
to wit,

State of Illinois } Of the October
Rock Island County } Term A D 1855

I the Rock Island county
Court sitting as a court of Probate

To the Honorable John B. Seal
Judge of the County Court in and
for the County of Rock Island and
State of Illinois (sitting as a court of Probate)

5 Your Petitioner George H. Crang
of the County and State aforesaid
respectfully sheweth unto your
honor, that on or about the 25th
day of August A.D. 1855 a writ
commonly called a writ of Capias
Ad Respondendum was issued out
of the office of the Clerk of the
Circuit Court in & for said County
at the Suit of Edward Hanna Wm
Barretton and Robert Hanna partners
in trade under the name style and
firm of Hanna Barretton & Co of Cleve-
land, in the State of Ohio directed
to the Sheriff of Rock Island County
aforesaid and commanding him
to take the body of your Petitioner
unless your Petitioner should
give bail as required by law; that
on the 28th day of August A.D. 1855
Hanna B. Gorton Sheriff aforesaid
returned said writ executed as
follows: "By virtue of the within writ
I have taken the body of the within
named defendant (meaning your
petitioner) and have admitted him
to bail as above directed (meaning
in the sum of three hundred dollars)
That on the said 28th day of August

5 your petitioner gave bail in the said sum
of three hundred dollars, with J. W. Judd
for security that on the day of the date
hereof your petitioner was arrested by
his said bail and delivered to Ezra
M. Beardsley, Deputy Sheriff &
Jailer of the said County and is now
in the custody of the said Deputy
Sheriff & Jailer.

Your petitioner herewith
presents to the Court his Schedule
of assets and liabilities subscribed
and sworn to according to law and pray
your honor to discharge him from
the said arrest under the insolvent
Debtors act in such case made and
provided.

Dated October 1st 1855
E. W. Crang

6 Schedule of assets and liabilities
of George A. Branz, made this first day
of October A.D. 1855

Assets

- (1) A House and Lot on Lake street in the
city of Cleveland, Ohio appraised \$3000.00
 - (2) A Note - Against Henry Brunning
of Cleveland Ohio - for 800.00
 - (3) A book account against Jagers
Tasman near Detroit Michigan for 200.00
 - (4) Three notes - against Adam Modern
of Berea Ohio for 250.00
 - (5) An account against Adam Reis
of Medina Ohio for 750.00
 - (6) A full account against Henry
Schroeder (a Bankrupt late of
Ohio city for goods money lent and
encumbrances 1400.00
 - (7) A Note against Chas. Gillespie
Wooster Ohio for 2300.00
- 6067.00

These are all the assets I am now able
to remember - I left my books in the hands
of one Mr. Nicholas, of Cleveland Ohio.
for collection and some small accounts
may be on said books beside those inclu-
ded in the above schedule.
I have marked Number (1) above is

7. Incumbered by Mortgage.
 Item (2) is in hands of C. Rice Cleveland
 Ohio
 Item (3) is in hands of J. Nicholas Cleveland
 " (4)
 " (5)
 " (6) note on file in Court of Common Pleas ^{table}
 Cleveland Ohio & accounts in hands
 of said Nicholas. Item (7) is in hands of
 C. Herrick attorney Cleveland
 St. Crany

Liabilities

- To Spilker & Sprecht, Baltimore Md
 Note about \$10,000
 " J. M. Hughes, Cleveland Ohio note
 and accounts about 48,000
 " George Williams endorsement for
 Schedule (aside interest) about 30,000
 " Anna Burston & Co, notes & acct
 (aside interest) about 25,149
 " Hobbs & Robt (near Pittsburgh Pa)
 note aside interest 20,000
 " Dixon & Co Cincinnati ^{Ohio} back acct 30,000
 " Westbury Manufacturing Company Conn 8,400
 " C. H. J. Miller Mortgage on lot 1 line (above) 22,900
 " Lucy Brown " " " " 10,000
 " P. F. Berge " " " " 7,150

8. *James Cleveland* Indorsement for
Schedule No. 50 with cost and int about 222.50
H 377247

G. H. Cranz

State of Illinois }
Rock Island County } ss

I do solemnly swear
that the Schedule now delivered and by
me subscribed contains to the best of
my knowledge and belief a full, true
and perfect account and discovery
of all the Estate belonging and such
Debts as are now due owing or unto
any Person or Persons for me, or in trust
for me and of all Securities and contracts
whereby any money may become due or
payable or any advantage or Benefit
accrue to me or to my use or to any
Person or Persons for me or in trust
for me: That I have not Lands money
or any other Estate, real or personal in
possession, reversion or remainder or have
is not set forth in this Schedule;
nor have I at any day or time directly
or indirectly, sold, conveyed in value or
otherwise disposed of all or any Part
of my Lands money Goods Stock debts
Securities, contracts or Estate whereby to
secure the same or to receive or expect to

I receive, any Profit or advantage that from
to defraud any Creditors, to whom
I am indebted in any wise whatsoever; and
also that this Schedule contains a true and
perfect account of all the Debts, which I
owe to any and every Person.

I have & subscribed to G. A. Orange
before me this Oct 1st 1858

God Bless all

By E. M. Beardsley Sptg

State of Illinois }
Rock Island County }

I, J. H. Beardsley Judge of
County Court in and for said County do
hereby set off and assign to the foregoing
named G. A. Orange that part or portion
of said goods so scheduled herein as
is by ~~statute~~ exempt from execution -

In witness whereof I have
set my hand and caused the
seal of our Court to be affixed
this 21st day of October A D 1858

J. H. Beardsley County Judge

I hereby assign, transfer and set
over to Ezra M. Beardsley, assignee appointed
herein all the property, debts, accounts,

10 hours, movables and hereditaments mentioned
and described in the within schedule and
authorizes and empowers him to take
possession of the same.

Given under my hand and seal
this 21th day of October A.D. 1858

L. A. Brang *(Sgt)*

Robert Pen, a witness in behalf of said
Plf, on oath testified as follows.

at the request of the Plf
witness went with Plf's wife to demand
some furniture of Deft. met Deft on
Orleans Street. Plf's wife said to him
she wanted her property but did not
specify what; Deft replied he had
nothing that belonged to her, and passed
on. Witness said this demand was
made before the commencement of this
suit and after Deft had applied for
his discharge before the probate court.

Hugh Simore, a witness in behalf of
Plf on oath testified as follows.

The Plf's brother called on me and
wanted I should go down with his
(Plf's) wife to the Store of Deft to
witness a demand of furniture. Witness

He went with Reff's wife to the store
of Dept. but found ^{him} absent, came along
back and met Dept in the street.
Mrs Kroger spoke to Dept and demanded
the furniture. She said she had a
list on a paper she held in her
hand, it looked like a list though
I did not read it. Mrs. Kroger was
apparently about to begin to read
when Dept interrupted her and
said he had got no property that
belonged to her and passed on. This
demand was made a short time
before the beginning of this suit. Robert
Darr was present when this demand
was made.

On Cross examination witness
said that Mrs Kroger did not
demand or mention any particular
article of furniture; did not mention
a piano or other articles.

On the part of the Dept the
following testimony was introduced
at the trial:

Dr Rathbun a witness in behalf of
Dept testified as follows.

About two years ago, perhaps
in the month of October, witness was

12 present with Pff and Dft and
witnessed in a settlement of all their
matters. Their settlement was mainly
concerning the business of a store in
which they were interested. Witness con-
siders it a settlement of all matters
of difference between them.

Witness went at Dfts request
to see Pff and get a bill of sale
that Dft had given to Pff's wife
of the property in question. Witness
accordingly went and saw Pff and
made known to him his demand,
to which Pff replied that he wanted
to see his (Pff's) wife about it and ^{could} let
witness know. A day or two afterwards
witness again saw Pff, when Pff in-
formed witness that his (Pff's) wife would
not let the bill of sale go to anyone
but her sister, and that she (Pff's wife)
meant to hold it for her sister so that
no one else could get the furniture.
Pff & Dft were one sister.

On cross examination witness
said that as the settlement between
Pff & Dft, nothing was said about
the property in controversy in this suit.
Witness went at Dfts request to get
the bill of sale a few days after the
settlement occurred.

Robert McSmith, a witness in behalf of Deft being sworn testified as follows, that he was present before the Probate court when Deft sought to be discharged in the insolvent case; Witness examined Deft under oath upon that occasion and was residing in Cincinnati. Deft, ~~but~~ the Probate court testified that he did not own the property in question, that before he left Cincinnati Ohio, where Deft and Deft formerly resided, he gave Deft's wife a bill of sale of said property but that she nor Deft ever took possession of it; that he Deft still kept the property in his house and that he now (then) held it under a lease from Deft's wife. Witness further stated that Deft before said Probate court refused to state what consideration Deft or Deft's wife paid for said property.

Emily Alexander witness produced and sworn on behalf of Deft testified as follows. That she was the step daughter of Deft and that Deft's wife was witness's mother that Deft's wife was the aunt of witness and sister to witness's mother and that she (witness) was

14 now sixteen years of age. Witness
further stated that both Pff and
Dft with their families formerly
resided in Cleveland Ohio that while
residing there they lived separate
and apart from each other, that Dft
kept a Grocery store there and lived
in affluent circumstances until he
was burned out, between four and five
years ago. Witness further stated
that that the pinon in controversy
in this suit was presented and given
to her as a Christmas present by her
step father the Dft, six years ago
last Christmas, that witness used and
possessed it in the family of her
step father ever since with the exception
of a short time when she was away at
boarding school, that she was the only
member of her step father's family that
used or possessed the ~~instrument~~ ^{pinon},
and that the Pff and his wife before
the bringing of this ~~suit~~ ^{suit} spoke
of said Pinon as her property and as
a Christmas present, made witness by
her step father the Dft - witness
further said that the Pff & his family
and the family of Dft, with the
exception of Dft himself or could

15 from Cleveland Ohio to Rock Island Illinois
four years ago last spring and that the
two families, with the exception aforesaid
came west together with the household
goods and furniture (including the property
in question) of both families; that at
Cleveland the boxes containing the house-
hold goods and furniture of Deft was
marked by Deft, "M. E. Kroger, Rock Island
Illinois," and that they were thus marked
for the reason that Deft did not ex-
pect to leave Cleveland until some
weeks after his family left; that some
six or eight weeks after Deft's family
arrived at Rock Island Deft came
on and moved his family into a
house in the Cropper row opposite
Union Square in the city of Rock
Island; that after Deft there moved
into said house the property in
controversy in this suit was brought
from the ware house of Longley & Co
into the house of Deft; that after
the arrival of Deft at Rock Island
the families of Plf and Deft had never
resided together or in the same house.

16 The foregoing was all the evidence
offered upon the trial of said cause
and after argument to the jury
the court asked the counsel to charge
them as follows.

John. Kroger

vs

George H. Brown

The plaintiff asks the court
to instruct the jury as to the law
of this case:

1. That at the time of the commencement
of this suit the plaintiff was the owner
of the property in question (either in
his own right or in right of his wife)
and defendant wrongfully obtained the
same the plaintiff is entitled to recover
in this suit.
2. In case the plaintiff either in his
own right or in right of his wife) was
the owner of the property in question
on or about the month of October
1855 and there be no evidence of a subse-
quent sale or transfer thereof the pre-
sumption is that he continued to be
such owner up to the time of commencing
this suit.
3. A husband is by law entitled to reduce
to his possession the personal property
of his wife and upon so reducing the

17 Deeds to possession he is the absolute owner thereof —

4 — A sale or gift of property by defendant to plaintiff, when consummated by the parties is valid and binding upon them notwithstanding it may have been made & entered into without consideration or with intent to hinder, delay or defraud the creditors of the defendant —

5 Although the defendant may have transferred to plaintiff the property in question by gift or sale without any consideration, yet when consummated to such gift or sale is binding on him and he cannot impeach the same on the ground of fraud or for want of consideration therein —

6 — A sale or gift is consummated by delivery of the property to the vendee — and the acceptance of a lease of property by a party is conclusive evidence against him of the possession of the property in the open —

7 — Admissions by a party are evidence against him and although such admission is to be taken together as a whole, the jury are not bound to regard all parts of it with equal confidence. The fact that it is against

18 This interest or for it, its improbability, inconsistency or contradiction or corroboration by other facts in proof, ~~are~~ circumstances proper to be considered in determining the ~~right~~ ^{right} to begin to it.

8 To constitute a legal demand of property in this case it is not necessary for the demanding party to make use of the word demand, or to specify by name or particular description the property demanded, - but any language which makes known to the party on whom the demand is made that the demandant desires the possession of property, and informs him by reference or otherwise what property he desires the possession of - is sufficient to constitute a demand.

9 It is incumbent on the plaintiff to show a wrongful detention by the Deft against the Plff of the property in question. A demand & refusal are evidence of such wrongful detention, but not the only evidence. Any other facts & circumstances tending to show such detention are proper to be shown & if the jury are satisfied from such other facts and circumstances of the wrongful detention then proof of a

20 witness. then the Jury should return a verdict agreeable to such finding.

3 If from the evidence in this case the Jury believe that at the time this suit was brought the property in controversy was the property of the Plf still the Plf is not entitled to recover in this suit unless he proves a legal demand of Debt of the property mentioned in Plf declaration or ~~circumstances showing an indebtedness~~

4 In order to make a legal demand of articles of personal property by one person from another. Such articles of personal property must be indicated by proper words of description or name so as to apprise the party upon ^{whom the demand is made} what particular property is demanded otherwise such demand is not sufficient to ~~cause~~ bring redress for the detention of personal property.

5 If from the evidence the Jury believe that the Debt in this suit without consideration conveyed by sale or otherwise the property in controversy to the Plf such sale or conveyance is void and the ~~law~~ will not aid the party to whom such sale is made to recover possession of the property under such circumstances.

6 In order to render a sale without consideration, valid between the parties possession of the personal property sold must follow and accompany the sale otherwise such sale is void in law

7 A person has a right to give articles of personal property to his child or step child and such gift followed by possession of the donee, will be valid as against all the world except ~~creditors~~ ^{creditors} existing at the time such gift was made

8 If from the evidence in this case the jury believe that the Deft gave the Plff's wife a bill of sale of the property in question and that the Plff & Deft afterwards and while the Deft had possession of the property negotiated for the surrender of such bill of sale with a view to the release or cancelling of such note, then the non production of such bill of sale at the trial without explanation is testimony tending to show that such bill of sale has been cancelled and may be weighed by the jury

22, 7 If from the evidence the Jury believe that before the commencement of this suit and since the Plf asserted a claim to the property in question and while Deft had possession thereof the parties came together and settled and adjusted all matters of controversy between them ~~in relation~~ then such settlement would recede bar the Plf's right of recovery in this case.

But the court upon his own motion gave to the jury the following instructions as modified by the court.

- 1 If from the evidence in this case the jury believe that the property mentioned in the Plf's declaration at the time this suit was brought was the property of the Deft. Or any then the jury should return a verdict for the Defendant.
- 2 If from the evidence the jury believe that the property mentioned in Plf's declaration or any part thereof was at the time this suit was brought the property of Oneida. ~~It appears~~ the witness then the jury should return a verdict agreeable to such finding.

3

If from the evidence in this case the Jury believe that at the time this suit was brought the property in controversy was the property of the Deft. still the Plf is not entitled to recover in this suit unless he proves a legal demand of the Deft of the property mentioned in Plfs declaration or circumstances showing an unlawful detention.

4

On order to make a legal demand of articles of personal property by one person from another. Such articles of personal property must be indicated by proper words of Description or name so as to apprise the party upon whom such demand is made what particular property is demanded. Otherwise such demand is not sufficient whereon to bring replevin for the detention of personal property.

5

If from the evidence the jury believe that the Deft in this suit without consideration conveyed by sale or otherwise the property in controversy to the Plf such sale or conveyance is void and the law will not aid the party to whom

24. Such sale is made to recover possession of the property under such circumstances the above is the law if the jury further believes from the evidence that there was no delivery under the sale.

6 An order to render a sale without consideration valid between the parties possession of the personal property sold must follow and accompany the sale otherwise such sale is void in law.

7 A person has a right to give articles of personal property to his child or step child, and such gift followed by possession of the donor, will be valid as against all the world except creditors existing at the time such gift was made, given as qualified in Pffs instructions as to infant children.

8 If from the evidence in this case the jury believe that the Deft gave the Pffs wife a bill of sale of the property in question and that the Pff & Deft acted inwards and while the Deft had possession of the property negotiated for the same.

25. of such bill of sale with a view to the release or cancelling of such sale: then the non production of such bill of sale at the trial without explanation ^{now} is testimony tending to show that such bill of sale has been cancelled and may be weighed by the jury.

I Of from the evidence the jury believe that before the commencement of this suit and since the Plf asserted a claim to the property in question and while Deft had possession thereof, the parties came together and settled and adjusted all matters of controversy between them in relation to this property than such settlement would bar the Plf right of recovery in this case provided the jury believe from the evidence that ~~at the~~ time of such settlement the property was to become the property of Defendants.

To which modification ^{of} instructions the said Deft then & there and before the jury retired to consider of their verdict at separate.

Whereupon the jury retired to consider of their verdict and afterwards came into court with the following verdict

We the Jurors find the issues for the Plaintiff

John Rausch Foreman

Whereupon said Deft filed his motion for a new trial in the words & figures following to wit

State of Illinois In the circuit court
Rock Island County J of said County at the
Sept Term thereof A.D. 1858

John Kroger }
vs } Motion for new trial
Geo H. Brown }

And now after verdict comes the said Defendant in the above entitled cause by Beardsley & Smith his attorneys and moves said court to set aside the verdict rendered by the Jury in said cause and grant said Deft a new trial thereof for the following reasons namely

1 Because the court gave the Instructions to the Jury asked for by the Plf numbered from one to ten inclusive.

2 Because the court refused instructions asked by Deft and modified the same, and refused Instructions as asked ~~by~~ by Deft.

- 3 Because the court admitted improper evidence in behalf of Plff. against the objections of Deft. ~~interposed~~ at the time thenor-
- 4 Because the court ~~excluded~~ evidence offered by Deft at the trial of said suit
- 5 Because the verdict of the jury is contrary to law and evidence

Scarsley & Smith
attys for Deft

Which motion of said Deft was overruled by the court to which objection of the Court said Deft. then & there excepted whereupon said Court gave Judgment in favor of said Plff upon the verdict aforesaid.

And for as much as the matters aforesaid do not appear of record in said ~~cause~~ the said Deft prays said Court that this his Bill of Exception be allowed approved and signed & sealed and made part of the records of said ~~cause~~ which in open Court is done.

J Wilson Drury

Hear before the Hon^{ble} J. Wilson Dundy
Judge of the Sixth Judicial Circuit of the
State of Illinois at a term of the circuit
court begun and held at the court house
within and for ~~the county~~ of Rock Island
and state aforesaid on the first Monday
the Sixth day of September 1858

Present Hon^{ble} J. Wilson Dundy Judge
Clerk W. S. Handely Sheriff
Dundy W. M. Clerk

It is remembered that herefor said
on the 8th day of January 1858. John
Kroger by Withiam and Pleasant his attorneys
sued out of the clerk's office of the court
aforesaid a certain writ of Replevin which
is in the words and figures following to wit

State of Illinois
Rock Island County } The People of the State
Illinois. To the Sheriff of Rock Island
County Greeting.

We command you that
if John Kroger shall give you bond
with good and sufficient security
to prosecute his suit to effect and
without delay and to make return
of the following goods and chattels the
property of him the said John Kroger
to wit

one piano and one piano stool six
 chairs one card table and one sofa
 which George M. Cranz wrongfully
 detains against oaths and pledges as he
 saith if return thereof shall be awar-
 ed: and further to serve and keep
 you harmless in ~~replevying~~ said property.
 Then you cause the said goods and chat-
 els to be replevied and delivered to the
 said John Kroger without delay and
 to summon the said George M. Cranz
 personally to be and appear before our
 Circuit Court on the first day of
 the next term thereof to be holden
 at the Court House in Rock Island on the
 third Monday in March next to answer
 the plaint of the said John Kroger
 for wrongfully detaining the goods and
 chattels aforesaid. And make due
 return of the bond to be taken from
 said plaintiff aforesaid to the Clerk
 of our said court, together with this
 writ and an endorsement hereon as to
 the manner in which you execute the
 same.

Witness my hand the said Clerk of the said
 court and the seal thereof affixed this
 eighth day of January in the year of

50. one Lord one thousand eight hundred
and fifty eight
J. M. M. Clerk

PS

And afterwards to wit on the
eighth day of January A.D. 1858

the Sheriff returned to the Clerk's office
aforesaid the said writ with the following
endorsement on the back thereof:

I have executed this writ by taking
the property described in this writ from the
custody of George H. Gray the within named
Def't & delivered said property to
John Kroger the plaintiff in this writ
& by reading this writ in the presence
& hearing of the said George H. Gray
this 8th day of January A.D. 1858

C. McBeardley Sheriff
Rock & West County Ill.
By J. McBeardley Deputy

And afterwards to wit on the 11th day
of March A.D. 1858 the said John Kroger
by his attorneys aforesaid filed his declara-
tion in the Clerk's office on the court
aforesaid the said declaration in words
and figures as follows to wit:

State of Illinois } Do the March Term 1858
 Rock Island County } Of the Rock Island County
 Circuit Court

George H. Loring, defendant in the suit
 was summoned to answer the complaint of John
 Kroger plaintiff in this suit for wrongfully detaining
 certain goods and chattels the property of the
 said Plff described in the writ of replevin in this
 cause and hereinafter set forth And thereupon
 the said Plff by Wilkinson & Pleasant his attor-
 neys complains for that the said defendant
 on the first day of January A.D. 1858 at
 the said County of Rock Island received from
 the said plaintiff one piano, one piano stool, six
 chairs, one card table and all sorts the property
 of him the said plaintiff, of great value to wit
 of the value of two hundred & twenty five dollars
 to be delivered to the said plaintiff when the
 said defendant should be thereunto afterwards
 requested, and the said defendant although after
 requested so to do, he will, on divers days and
 times between the time of ~~his~~ receiving the
 said property and the time of the commencement
 of this suit, to wit, at the county aforesaid
 has not delivered the same to the said
 plaintiff, but refuses so to do & wrongfully
 detains the same property to the damage
 of the said plaintiff of two hundred & twenty
 five dollars & therefore the said plff brings suit
 Wilkinson & Pleasant
 atty for plff

in the 16th day of March 1858

And afterwards to wit, said defendant
by his attorneys Beardsley & Smith filed
his plea in the words & figures as follows
to wit;

State of Illinois }
Rock Island County } S^d Circuit Court of said county
March term A D 1858 —

Geo H Brown }
vs
John Heger }

And now comes the said Def^t
& defend the force and injury whereof
and says that he hath not claimed and
doth not claim the said goods & chattels
in said P^lff declaration ^{mentioned} as he hath ^{them} alleged
and of this the said Def^t swears himself
on the oath of C

By Beardsley and Smith as attys
And for further plea in the behalf the said
Def^t by law of court &c says ad hoc non
because he says that at the time whereof
at the place where the said goods and chattels
the in the declaration of said P^lff mentioned
were the goods & chattels of said Def^t and
his property and not the goods and chattels
of said P^lff as in said declaration is alleged
and the said Def^t is ready to verify

whereupon he pays judgment & c. And a return of said goods & chattels together with damages for the detention thereof.

And for further plea in this behalf said Deft says action non because he says that the said goods & chattels in Pffs said declaration mentioned at the said time when &c were the property of one Emily Alexander and not the property of said Pff as in his said declaration is alleged and this the said Deft is ready to verify wherefore he pays judgment and a return of said goods and chattels together with his damages for the detention thereof.

By Beardsly & Smith
attys for deft

And afterwards to wit on the 25th day of March 1858 said plaintiff by his attys filed his bill of replications in the clerk's office aforesaid in the words & figures as follow to wit:

John Kroger }
" }
George McBratz }

Plaintiffs

And the said plff as to the said
pts of the said debt by him first above pleaded

and whereof he hath put himself upon the
country doth the like.

Wilkinson Pleas to Piffard

And the piffard to the said plea of the said
deft by him secondly above pleaded says perjury
non, because he says that the property of the
said goods and chattels, when it was in
him the said piff. in manner and form
as he by his declaration aforesaid & above thereof
hath alleged; and this he prays may be requir'd
of by the Country

Wilkinson Pleas to

And doth doth the like by

Barrow & Smith

And the said piffard to the said
plea of the said deft by him thirdly above
pleaded says perjury non because
he says that at the time when it was
property of the same goods & chattels was
in him the said piff. in manner & form
as he hath in his declaration aforesaid
alleged; and this he prays may be
requir'd of by the Country.

Wilkinson & Pleas to

and doth doth the same by

Barrow & Smith
his atty.

And afterwards to wit at a term of
the Court aforesaid begun and held at
the Court House within and for the County
aforesaid on the first Monday the fifth
day of September A D 1858 and on the
Eighteenth day of said month the follow-
ing proceedings was had in said cause
to wit

John Rogers)
vs) Reprover
George H. Conroy)

This day came the parties
hereby by their attorneys and issue
being joined came a jury of six men to wit

Banforth Johnson, George Allen
Elijah Carter, Geo B. Brooks, Hyman B. Clark,
Edwin Brewster, Christian Dyer, Wm Hamell
H W Chamberlin, Joseph A. Gray, Robert
Downing, A J Edwards.

Who were sworn and severally sworn
to well and truly try the issue joined
and having heard the evidence return
their verdict which is as follows "to wit"
"We the jury find the issue for the
plaintiff" whereupon a judgment entered

his motion for a new trial and the court having considered of the said motion and being sufficiently advised in the premises overruled the same to which overruling the defendant by his attorneys excepts and on his motion it is ordered by the court that ~~the defendant shall pay the costs of the motion~~ for his bill of exceptions.

It is therefore ordered by the court that plaintiff have and retain the property mentioned in the declaration and that he have and recover of defendant his costs and that he have execution thereon.

State of Illinois
Rock Island County, I Quincy McNeil clerk
of the Circuit Court in and for said county
do hereby certify that the foregoing is a true
copy of the files in in the above entitled cause and
also of the Record there; that I have compared
the same with the originals and find the same
to be a true complete and perfect transcript
of the Records and files in my office belonging to
the said cause.

In Testimony whereof I have
hereunto set my hand and affixed
the Seal of said Court this 12th
day of March 1857
Quincy McNeil clerk

State of Illinois Of the April term
Mild Green Dennis P of the Supreme Court
in and for said Division A.D. 1889,
George H. Crawz Plf in Error }

4
John Kroger Deft in Error }

And now comes the said Geo H.
Crawz Plf in Error in the above entitled
suit by Munday & Smith his attorneys
and says that there is manifest error
in the record and prays him
in this to wit;

- 1 Because the Court below gave instructions to the jury, asked by said Deft in Error and which should have been refused by said Court, said instructions numbered, five, six, nine and ten, respectively in the record herein
- 2 Because the Court below refused the seventh instruction to the jury, as asked by the Plf in Error
- 3 Because the Court below made said Plf (in Error) said seventh instruction and gave the same as so made to the jury,
- 4 Because the Court below refused said Plf's instructions ^{to the jury} numbered three five & nine respectively in the record, and made the same
- 5 Because the Court below gave said Plf's instructions three five & nine, to the jury, as made by the Court below.

6 Because the Court below refused to grant
a new trial here

Beardsley & Smith,
for Pl in error -

And now comes the debt in error say that
in the second proceedings of record and
in the reversal of the Judgment of record
there is no error the prayer that said Judge
be affirmed

B. C. Cook

for deft in error

153 T. 20
George H. Grant
vs
John Kroger
Transcript of Record

Filed April 21 1859
L. Leland
Clerk

BEARDLEY & SMITH, for Plaintiff in Error.

1. The record in this case shows that the plaintiff below [Kroger] never had possession of any of the property sought to be recovered in this action.

The fifth instruction of the Court, asked by the plaintiff below, assumes that the plaintiff at some time before the bringing of this suit, had possession of the property in controversy, under a gift or sale without consideration, from defendant to plaintiff. No state of facts appearing in the record to warrant this instruction, it was calculated to mislead the jury.

But as a naked legal proposition, it is contended the instruction is not good law.

Every sale is open to impeachment on the ground of fraud, not only by creditors, but between the parties.

2. The plaintiff's sixth instruction is as follows:

"A sale or gift is consummated by delivery of the property to the vender; and the acceptance of a lease of property by a party, is conclusive evidence against him, of the possession of the property in the lessor.

It is submitted that the two legal propositions intended to be embraced in this instruction are unsound. The first clause of the instruction is based upon the idea that the possession of the thing sold or given, must pass to the vendee or donee, in order to constitute a valid sale or gift. However true this may be in respect to a gift, it is not essential to the consummation of a sale.

Neither is "the acceptance of a lease of property by a party conclusive evidence against him of the possession of the property in the lessor" if we can give to this branch of the instruction any intelligible meaning.

If we are to gather the meaning of this clause of the instruction by the plain import of the language employed, then it amounts, to this; A accepting a lease of property from B, thereby admits B to be in possession of the property at the time of the lease, and the fact thus manifested or admitted, is conclusive, and A is estopped asserting or proving the contrary.

Absurd as this may seem, it is the apparent meaning of the instruction, and so the jury doubtless understood it.

But if this branch of the instruction was intended only to mean, that the acceptance of a lease, as between the lessor and lessee, is conclusive evidence of possession on the part of the lessor, at the time of the making of the lease, and of his right of possession when the lease is ended, then it is objected that the proposition is unsound. "Conclusive evidence" is evidence that cannot be *contradicted*, and is in the nature of an estoppel; and applying this rule of evidence to the defendant's second plea, he could not prove property in him himself acquired from the plaintiff, while the relation of lessor and lessee existed between them.

From the evidence in this case the jury were warranted in finding the fact that the defendant had been the lessee of the property in question, but this instruction precluded him from showing that while he was the lessee of the property, he acquired title thereto from the lessor. Of course under this instruction, the jury disregarded the proof tending to show this fact. [See testimony of Rathbun in the Abstract.]

It is further objected that said sixth instruction, if susceptible of an interpretation, by which it can be made to declare a correct legal principle, is so equivocal and uncertain in its language, that it was calculated to mislead the jury.

3. The plaintiff's ninth is as follows :

"It is incumbent on the plaintiff to show a wrongful detention by the defendant, as against the plaintiff, of the property in question.

A demand and refusal are evidence of such wrongful detention, but not the only evidence ; other facts and circumstances tending to show such detention, are proper to be shown ; and if the jury are satisfied, from such other facts and circumstances, of the wrongful detention, then proof of a demand and refusal is unnecessary."

It is insisted that this instruction was inapplicable to the case before the jury, and its tendency was to mislead.

All the evidence contained in the record, of defendant's wrongful detention of the property, is the evidence contained therein of demand and refusal ; and though it may be true that a demand and refusal are not the only evidence of a wrongful detention, and "other facts and circumstances, tending to show such detention, are proper to be shown," still in the absence of such proof, it is error to instruct the jury, "that if they are satisfied from such other facts and circumstances, of the wrongful detention, then, proof of a demand and refusal is unnecessary."

The case shows no such "other facts and circumstances."

4. The plaintiff's tenth instruction is as follows :

"Although a person may give articles of personal property to his infant child or step-child, yet he may afterwards take it away, or sell or dispose of it, at his pleasure, and without his consent or approval."

This instruction should be considered in connection with the 7th instruction as given by the Court in behalf of defendant.

"A person has a right to give articles of personal property to his child or step-child : and such gift followed by possession in the donee, will be valid against all the world, except creditors existing at the time such gift was made.

Given as qualified in plaintiff's instructions as to infant children."

We waive all consideration of the absurdity of giving the instruction for defendant as qualified by the Court, and propose to consider the principle contained in the instructions.

We are unable to discover any authority to sustain the instruction given by the Court.

The gift, which called forth these instructions, has reference to the Piano spoken of by the witness, Emelia Alexander, as will be seen by the record.

"A gift *inter vivos* (of which the one under consideration, is an instance,) when completed by delivery, so passes the title to a thing, that it cannot be recovered back by the giver." [Bouvier's Institutes, vol. 1, page 276; 2 Blackstone, page 441; McKane vs. Bonner, 1 Bailey, 113; 2 Kent's Com. 440.]

From the record it will be discovered that no question was made as to the fact and completeness of the delivery of the Piano to the child Emelia. Possession immediately accompanied the gift, and was continued (and this as between donor and donee the law does not require) almost uninterruptedly down to the time of this suit. The instruction of the plaintiff is based upon the single idea that a father can make an executed gift to a minor child, and afterwards reclaim the thing given, at his pleasure.

We submit this never was the law, in regard to any class or condition of persons whatever.

II. As to Defendant's Instructions.

1. Instruction number three as asked by the defendant, should have been given. The qualification given to it by the Court, has substantially been considered in reference to plaintiff's instruction number nine. The case is silent as to "circumstances showing an unlawful detention." All the evidence there is in the case bearing upon the question of unlawful detention, is embraced in the attempt made to prove a demand and refusal. The qualification, tacked to the instruction by the Court, was calculated to mislead the jury, and was not justified by facts in the case.

2. Instruction five, as qualified. We can discover but little force in the Court's addenda to this instruction. It doubtless was calculated to impair its effect, and to that extent the qualification was damaging. We think the instruction as asked, was good law, and applicable to the case.

3. Instruction number three, has already been considered.

4. Instruction number nine. We complain of the qualifications, given by the Court, to this instruction. They were calculated to impart to the jury, the Court's suspicions of the facts, whereon the instruction as asked was based. It is the jury's business to weigh the evidence uninfluenced by the opinion of the Court.

But our chief complaint is, that the defendant derived no benefit from the instruction, for the reason that its effect was wholly nullified, by the giving of plaintiff's sixth instruction.

The Court, by plaintiff's said sixth instruction, ascribes to his evidence respecting the lease, absolute verity, and however satisfactorily defendant might prove his or other person's right to the property, by re-purchase or otherwise, still it would all be overcome, by plaintiff's "conclusive proof," spoken of by the Court.

III. Defendant's Motion for a New Trial.

The Court erred in not granting a new trial, for reasons numbered 1 and 2 in said motion. These motions have already been discussed.

The fifth cause assigned is, that the verdict was contrary to law and evidence.

We think there was no sufficient demand proven to have been made upon the defendant, for a return of the property in question. [See the testimony of the witness Don, page 10, and Gilmore, pages 10 and 11.

Brief 152

Geo. H. Cawg.

4

John Kegan

For the Court

^u
Filed April 22, 1859

L. Leland
Clerk

George H. Cranz }
 vs
 John Kroger }

1st Error The Court erred in giving plffs instructions numbered 5,
 6, 9 & 10

Points under this assignment

1st A gift of personal property accompanied by transfer of
 possession is sufficient to pass the property

2 Kent's Com. 438 -

14th Ill 342 -

1 Md. Ch. 103

14 " Barbour 243

Syr 49 -

7 " John 26

5 " Strath 500

2nd Eng 211

2nd The acceptance of a lease of property is conclusive evidence
 of the right of the lessor to the property as between him
 and the lessee

1st Platt on Leases 26 - 59 *

5 Bac. Abr. 11th "Lease" * The lease is
 estopped and merged
 in him between him
 and lessor -

3rd Wrongful detention of property is a fact which is to be
 found by the jury and may be proved by any legal
 evidence which satisfies the jury of the truth of the fact
 demand and refusal of possession is only one species
 of evidence of such wrongful detention

4th A Parent may give articles of personal property to his minor child and may take them away again and sell them without the consent of the child

The other errors assigned present no other questions than those aforesaid

4th Error Overruling motion for new trial The evidence was conflicting but the great weight of evidence sustains the verdict. This is certainly not a case where the Court can say that the jury acted from bias — misapprehension or want of due consideration

B. L. Cork
Left in Error

Geo A Crang }
or }
John Kroger }

182-36

Prüf g appellee

BEARDSLEY & SMITH, for Plaintiff in Error.

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From the evidence in this case the jury were warranted in finding the fact that the defendant had been the lessee of the property in question, but this instruction precluded him from showing that while he was the lessee of the property, he acquired title thereto from the lessor. Of course under this instruction, the jury disregarded the proof tending to show this fact. [See testimony of Rathbun in the Abstract.]

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Proof 152

Geo. H. Crary
Plf in Error

⁴
John Kroger,
Def in Error

for the Cause

Filed April 20, 1859

L. Leland
Clerk