

14525

No. _____

Supreme Court of Illinois

Halliday, et al

vs.

Burgess

71641  7

STATE OF ILLINOIS,
SUPREME COURT,
THIRD GRAND DIVISION.

Halliday v. Gurnea
No. 55.

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

Halliday
W
Gurnea

11864

11875

Supreme Court of Illinois.

THIRD GRAND DIVISION.

APRIL TERM, A. D. 1864.

JOHN C. HOLLIDAY, AND
HIRAM REED,

vs.

HENRIETTA BURGESS, Ex-
ecutrix of JAMES BURGESS.

} APPEAL FROM KANKAKEE.

POINTS.

I.

This is an action of replevin, brought by Holliday and Reed vs. James Burgess, Sheriff of Kankakee, to recover the possession of some 1,200 bushels of corn, in a crib on the Ingham farm, which corn they claimed to be the owners of.

Defendant plead—

1st. The General Issue.

2d. That the corn belonged to Geo. H. Ingham.

3d. That it belonged to Augustus Ingham.

4th. That it belonged to Thomas P. Bonfield.

5th. That 'twas not the property of plaintiff's.

6th. That debt, as Sheriff, took it on Execution *vs.* Samuel S. and Geo. H. Ingham, issued on a judgment recovered against them, &c., in favor of Wm. Butler.

7th Plea avows the taking by debt, as Sheriff, *fic.*, upon the execution, *fic.*, without pleading the recovery specifically.

The replications to 2d, 3d, 4th and 5th pleas traverse the pleas.

There is but one replication to 6th plea, and that is, that the corn was at the time the property of plaintiff's, and not of Geo. H. Ingham. [See Record, pages 10 and 11.]

So that under that plea the judgment in favor of Butler *vs.* S. S. and Geo. H. Ingham is admitted; also the execution and the taking, and only the question of previous property at issue.

The Abstract states that the replication to the 6th plea traverses the facts of it, but this is only correct so far as the fact of the previous previous property is concerned, it does not deny the fact of the recovery of the judgment, or the issuing and levying of the execution.

Replications to 7th plea deny both the judgment and execution, and deny that the corn belonged to Geo. H. Ingham.

Under the issues then, the only question that can come upon the facts is, were the jury warranted in finding from the evidence that the corn was not the property of the plaintiff's, or that it was the property of Geo. H. Ingham.

We say they were fully warranted in their finding, and in the light of all the evidence could not have reasonably found otherwise.

But appellants, by their brief, seem to insist that the defendants are bound to make out a good title to the property, to take the burden of proof upon himself, although the plaintiff may not have made a *prima facie* case, simply because the defendant was Sheriff of Kankakee.

And in support of this position, the *assume* one of the very points in controversy, i. e., that the plaintiff was in possession of the property when the Sheriff took it.

We fully admit that possession of personal property is *prima facie* proof of ownership, but insist that no such possession has been shown by plaintiffs in this case.

All of the authorities cited by appellants are in cases where plaintiff had been in possession of the property levied upon by the Sheriff, and have no bearing upon this case, where such is not the fact, or at any rate where the fact was in controversy, and the jury have found in favor of defendant.

By reference to the Record, page 2, it will appear that the affidavit of plaintiff's sets out that the corn was, at the time of suing out the writ, in a crib upon the farm of the Inghams.

This was March 13th, 1861.

The chattel mortgage set out, on pages 56 and 57 of Record, executed by Geo. H. Ingham, (the debt in execution,) and Augustus T. Ingham, (plff's only witness,) under seal, shows that the corn then (May 21, 1860,) growing on the George H. Ingham farm, was owned by them, and that they were both (George H. and Augustus T.) to have possession of it, &c.

The testimony of complainant's own and only witness, Augustus Ingham, shows (if it can be relied upon at all) that the 1,200 bushels of corn remained in a crib by the barn until June or July, 1861, and that then Geo. H. Ingham hauled most of it to the warehouse of plaintiff. See Record, page 42.

And the testimony of Williamson shows that George H. Ingham sold the balance of the 1,200 bushels to one Huling. See Record, page 59.

So that Geo. H. Ingham is the person in the *actual* possession of the 1,200 bushels of corn in controversy, from May 21st, 1860, to June, 1861, long after the replevin suit was brought.

And if any inference is to be drawn from the fact of possession, it must be that George H. Ingham was the owner of the corn.

The only proof in the case, on the part of plaintiff's, is, the evidence of Augustus T. Ingham, contained in his deposition, and on this evidence they base their case.

I freely admit that this witness has done swearing enough and has sworn strong enough in his effort to make out a case for plffs, but I submit that a careful perusal of his examination and cross-examination will show conclusively that he lied wilfully and knowingly, both by perverting and suppressing the truth, and stating what he knew to be false, so that the jury were fully warranted if they chose to reject all of his testimony that was not supported by other evidence. This I presume they did, and I have no doubt this Court will sustain them in it.

I do not care to argue this question, and indeed could not present an argument so convincing as the simple perusal of the deposition of said witness, which I think shows conclusively that all of the Inghams were sharpers, and were endeavoring to defraud their creditors by a show of transfers and sales, which had no foundation in fact, and that in truth and fact Geo. H. Ingham owned this corn, either wholly or in part.

The Abstract only sets out those parts of the deposition favorable to the plaintiff, and I request the Court to examine the record itself.

I insist that the plaintiff did not show even a *prima facie* case, and under all of the authorities the burden of proof is upon him.

Anderson v. Talcote, 1 Gilm., 371.
Vose v. Hart, 12 Ill., 378.

II.

It is insisted by appellant that the defendant was not entitled to recover because he did put in evidence the judgment mentioned in the 6th plea.

The conclusive answer to this point is that the existence of the judgment, the execution under it and the levy of the same upon the corn in question is admitted by the pleadings, so that 'twas not necessary to prove it.

The only replication to the 6th plea being that the corn was the property of plaintiffs, and not of Geo. H. Ingham.

Dana v. Bryant, 1 Gilm. 107.

15 Ill. 336.

III.

The remaining errors assigned are to the instructions given on the part of defendant below.

We insist that all of the instructions were proper.

The 2d is objected to on account of the omission of mere formal words, but the jury evidently did not mistake the legal import of the instruction and were not misled thereby.

The 3d Instruction is the law, for although A. T. Ingham may have agreed to sell to Holliday and Reed all the corn raised on on Ingham's farm in 1860, and this corn in controversy was raised there, that did not make the corn the property of H. & R., especially when the evidence shows as in this case that the corn was not A. T. Ingham's to sell, but on the contrary was the property of Geo. H. Ingham; and when 'tis admitted by the pleadings that the Sheriff held an execution against him under which he had seized the corn.

The 4th and 5th instructions are law. There was no evidence tending to show that A. T. Ingham sold plffs more than 2900 bushels in all, so that the jury could not have been misled.

Plaintiffs say the 6th instruction was wrong because the whole crop of corn was sold, &c. The evidence of A. T. Ingham, plffs only witness, shows that he only agreed to sell *what he could spare of the crop*, so that there did remain something to be done before title could pass to plffs. And if as we say the corn belonged to Geo. H. Ingham, (the debt in execution,) it could not be corn to be spared by Augustus T. Ingham, and if it really belonged to A. T. Ingham, the very fact that it had not been hauled to warehouse of plffs and delivered to them would tend to show that he could'nt spare it especially in the entire absence of proof. We say the principle of the instruction is fully sustained in

Jennings v. Gage, 13 Ill. 611.

Low v. Freeman, 12 Ill. 496.

Chitty on Cont 375.

Okeefe Kellogg, 15 Ill. 352.

Updike v. Hunry, 14 Ill. 372.

The 7th instruction does not come within the case cited by plffs, there the property was taken by the Sheriff from the possession of the plaintiff without show of authority under execution, &c.

Here the corn is taken from a 3d person, one Geo. H. Ingham, under due execution, &c., and these facts are admitted by the pleadings. (See ante.)

The objection raised by plff to the 1st and 8th is, that there is no proof that Geo. H. Ingham and Augustus T. Ingham owned the corn together. We say there is.

The chattel mortgage shows it.

The possession of George H. shows it.

The hauling of it by George H. shows it.

And we insist that a thorough sifting of the deposition of plffs' witness, Augustus T. Ingham, will satisfy any one that such was the fact.

At any rate there was sufficient proof tending to show it, so that it became proper to submit it to the jury.

The 10th and 11th instructions are said not to be applicable because Butler was not a creditor.

The fact that Butler was a judgment creditor of Geo. H. Ingham was fully asserted by defts 6th plea, and not denied by plaintiff, and thus became an admitted fact. [See argument ante.]

IV.

This court has repeatedly decided that it will not disturb a verdict by which substantial justice has been done, on account of instructions having been incorrectly given or refused, nor because the jury have disregarded them.

Elam v. Badger, 23 Ill. 498.

Schwartz v. Schwarz, 26 Ill. 81.

And in this case we submit that full and complete justice has been done, and the craftily contrived scheme of a set of sharpers, frustrated.

GLOVER, COOK & CAMPBELL:

For Appellants

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Holliday day

As

Ho. Burgess ex. tix

Appl. Es. 2000

Justice May 9, 1824

L. L. L. L. L.

GEORGE COOK & COMPANY

For 1824

Supreme Court of Illinois,

THIRD GRAND DIVISION.

APRIL TERM, A. D. 1863.

JOHN C. HOLLIDAY AND
HIRAM REED,

vs.

HENRIETTA BURGESS,
EXECUTORS OF JAMES BURGESS,

APPEAL FROM KANKAKEE.

POINTS AND AUTHORITIES

FOR

APPELLANT.

This was an action of replevin by appellants against James W. Burgess, Sheriff of Kankakee county; the appellants claimed the corn in controversy, as the vendees of Augustus T. Ingham. The Sheriff claimed it by virtue of a judgment in favor of William Butler against George H. Ingham and Samuel T. Ingham, an execution issued on the judgment, and a levy upon the property as that of George H. Ingham; the pleas justifying the taking allege that it was the property of George H. Ingham, and that the Sheriff thereupon took it as he lawfully might.

The replications to these pleas of justification deny that it was the property of George H. Ingham, and also deny that there was any such judgment and

execution. The execution was introduced in evidence on the trial. The theory of the defence, as near as we can judge of it, from the instructions, and from the cross examination of the witness Ingham, appears to have been an inconsistent one. First, that the vendor of the plaintiffs was the fraudulent grantee of the defendants in execution, or of one of them, for the purpose of hindering or defrauding the creditors of the defendants in execution, and that plaintiffs had notice of the fraud, and, secondly, that George H. Ingham and Augustus T. Ingham were the owners of the corn, as partners, and that the lien of the execution attached to the interest of George H. Ingham before the sale of the corn by Augustus T. Ingham, to the plaintiffs below.

We claim that in any point of view that may be taken of this case, it was necessary for the defendant below to have introduced the judgment in evidence, although, generally, in trespass against a sheriff an execution alone, without proof of a judgment, will protect him, yet in replevin, when the Sheriff claims title to the property; or, as stated in the books, when he is an actor, claiming a return of the property replevied, he must show, in an action by a stranger, from whose possession he has taken the property by virtue of his process; 1st. Title in the defendant in execution. 2d. A judgment against him. 3d. An execution and levy. The possession of the plaintiffs below, therefore, is enough for them till the Sheriff has shown a better right to the property, and the judgment is we claim a necessary link in the chain of title to maintain the position that the plaintiffs are fraudulent grantees, to hinder and delay creditors. The judgment should have been introduced, otherwise Butler has not shown himself a creditor so that he can question the bona fide character of the conveyance, if any from defendants in execution to plaintiff's vendor, as to this branch of the subject the Sheriff is merely a nominal party, the real party in interest being Butler. Even in trespass against the Sheriff the judgment should be produced where there is a supposed fraudulent conveyance by defendants in execution to the plaintiff who sues the officer.

Martyn v. Podgen, et al., 4 Burrows, 29. 5 Bar 2681

But at any rate the Sheriff must produce his judgment, in order to show title as against one in possession, suing him in replevin, who does not claim under the defendant in execution.

Heath v. Westervelt, 2 Sandf., 110.

In support of the foregoing views see, also.

Brown v. Bissett, 1 Zabriskie, (N. J.), 46.

Goodman v. Aylin, Yelverton, 52.

Mathews v. Caren, 1 Salkelds, 107.

Starbridge v. Unislow, 21 Pick., 86.

Stephens v. Houghton, 2d Strange, 847.

1 Saund R. 347, note 3.

The case of *Wheeler v. McCorristen*, 24 Ill., 40, and the case next following it, are authority to the effect that unless the Sheriff has shown a right to disturb the plaintiff below in their possession of the corn, the finding should have been for them, although they were not really the owners of the corn.

It seems, therefore, clear that the defendants below should, in order to have justified the taking the corn from the plaintiffs below, have shown title in some one other than the plaintiffs in possession of the corn, and have connected himself with such other title. In short the possession of the corn delivered to him by their vendor, is prima facie enough for plaintiffs below, and a good title till a better right in some one else is shown. If there is any evidence that George H. Ingham, or George H. Ingham and plaintiffs' vendor, as partners, were the owners of the corn at the time the execution went into the Sheriff's, we do not see it in the record. We insist, therefore, that the prima facie case of possession by the grantees of the witness, Ingham, is not at all interfered with. There does not seem to be any thing in the case to charge the plaintiffs below even with a suspicion that they did not purchase the corn in good faith, and the evidence is too vague, uncertain, and insufficient to create a belief that there was any covering up of the property of defendant in execution, by the vendor of the plaintiffs below. It is absurd to insist that the plaintiff's vendor was a fraudulent grantee of George H. Ingham, and that he was also a partner and tenant, in common with him. The witness, Ingham, says distinctly that he raised the corn as a tenant, for a cash rent, that it was solely his, that he and George were not partners, and that he sold and delivered the corn to the plaintiffs before the levy by the Sheriff. We think, therefore, that the plaintiffs below made a clear case by the evidence entitling them to a record, *McCorristen* and that the defendant below has entirely failed to rebut it.

Let us briefly examine the instructions given for the defendants below. The first objection to the first instruction is that there is no evidence at all that George H. Ingham and Augustus T. Ingham were partners, owning the corn as tenants in common, when the execution went into the hands of the officers, the witness, Ingham, says they were not, and no one says they were.

The fact that George H. Ingham and the witness, Augustus T. Ingham, joined in a chattle mortgage to Bonfield, is as explained, not at all inconsistent with ownership of the corn by Augustus, and all the acts of George in relation to the corn, do not seem to be inconsistent with the fact that Augustus alone raised and owned it as stated by him. Another objection to this instruction is that it is not alleged that the Sheriff levied upon the partnership interest of George H. Ingham, in the corn, nor that George and Augustus owned it as partners. The evidence, if offered, would not, we insist, have been admissible, under the issues.

The second instruction should have contained the words: "from the evidence," after the word believe, and there is the same objection to the 6th instruction.

We think, also, that it should have contained the word material before the word particular. The evidence, though knowingly untrue, about a collateral immaterial matter, ought not to authorize the jury to wholly disregard his testimony.

The third instruction was calculated to mislead the jury. If the defendant meant that these facts, without a delivery, were not enough, it should have been so stated clearly. The jury may have thought that a sale of all the corn raised, more or less, for a stipulated price, was not enough, without an ascertaining of the quality. Such a sale would be good, as between the parties; one may sell his whole crop of corn in Deer Park, for instance, being unharvested, part in a crib and part in a warehouse, and a verbal delivery, without an actual handling or manucaption by the vendee, would change the property between the parties. Indeed, as between the parties the title to a chattle passes by the bargain without an actual delivery. If A should receive the price for a horse, then in another county or State the vendee would obtain title as between him and his vendor, without seeing the horse at all, as to third persons claiming through the same vendor, a delivery is necessary. The jury must have understood that the corn did not become Holliday & Reed's till hauled to the warehouse.

The fourth instruction should have been, if Holliday & Reed purchased only 2,900 bushels. The 2,900 may have been the supposed amount, and yet the real amount may have been more. If they purchased only 2,900, any that was left after that was delivered would belong to the vendor of the 2,900; but suppose the 1,200 bushels in the crib was not sold by the witness to the plaintiff, that is no reason why the verdict should be for the defendant. The case in the 20th Illinois cited alone would seem to settle it, that it does not follow that the verdict should be for defendants, because the witness, Ingham, owned the corn. These objections to the 4th apply with equal, if not more, force to the fifth instructions.

The sixth instruction is wrong. If the whole corn raised was actually sold, and the measurement was merely a means of ascertaining how much was to be paid, the title would pass before the amount to be paid was thus ascertained. If the corn was not to become vendee's till the measuring was done, of course it was not a complete sale till it was done.

But there may have been a complete sale of the crop, so as to change the title, though there was afterwards to be measurement in order to ascertain how much was to be paid.

The 7th instruction, we think, conflicts with the case cited from the 20th unless the Sheriff has shown some right to deprive the plaintiffs of their corn in their possession, again the instruction requires the plaintiffs to show that the corn sold and delivered to them was theirs, that it requires them to show that these grantees had a title to it; the fact that it was sold to them, and in their possession, was enough till the Sheriff proved his lawful authority to take it away.

The 8th instruction is substantially like the first, the expression, as a partner, or otherwise, is too loose. George H. Ingham may have had some interest which could not be taken on execution at all. The objections made to the first instruction apply also to this.

The 10th is not applicable because there is no proof that Butler was a creditor, and the Sheriff was a nominal party and the relation of debtor and creditor, should have been established by proof of the judgment. See this case cited from Burrows alone.

The same objection applies to the 11th. Other objections applicable to this have heretofore been pointed out to other similar instructions.

LORRAINE & BONFIELD, AND
LELAND & BLANCHARD,

For Appellants.

~~172~~ 53

Holliday & Kne

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Burgess

Appls. brief

Filed May 5, 1863,
Leland
Ch.

State of Illinois

Wenckebach County & Harrison
Lorrey of said County being duly sworn
deposes and says that he was one of the
attorneys of John C. Holliday &
Kiram Reed, in a certain cause now
pending in the Supreme Court of the State
of Illinois now holden at Ottawa in said
State, in which cause said John C. Holliday
& Kiram Reed are Plaintiffs and
James W. Burgess is Dft, when said
cause was pending in the Circuit Court
of said County, that this Deponent
examined the bill of exceptions ~~in this~~
filed in said cause, with said Bonfield, before
the expiration of the time fixed by the order
of said Circuit Court for filing said
bill of exceptions, and that said
Bonfield, ^{at said last named time} left the office of this Deponent
for the avowed intention of tendering to
Hon. C. C. Starr Judge of said Circuit,
Court said Bill of exceptions, which time
according to the best recollection of
this Deponent was on the 15th day of February
A.D. 1863. That on the same day this Deponent
saw Stephen R. Moor one of the attorneys
and said Dft and he ^{said Moor} stated to this Deponent
that he said Moor had sent bill of exceptions

to 4 o'clock and that this Deponent understood, said Moor that he said Moor had received said bill of exceptions of said judge. And said Moor several times thereafter, asked of this Deponent to file upon some day, upon which to meet with him said Moor before said judge to settle said bill of exceptions. And that ~~said~~ the day on which said bill of exceptions were marked filed, was filed upon, by said Moor this Deponent and said J P Bonfield, and in pursuance of said agreement did so meet, when said bill of exceptions were settled by said judge ^{on said last named} and said judge directed on that day, last aforesaid, this Deponent to ~~have~~ deliver said bill of exceptions to the Clerk of said, Circuit Court to file which this Deponent did do. And Deponent further says said judge informed this Deponent during the present month that said bill of exceptions was tendered to him by said Bonfield within the time allowed by said order for filing the same. Deponent further says that it is the practice of said judge, when bills of exception are tendered ^{to him} within the time limited, by him for that purpose to allow ~~said~~ the opposite Atty or Atty, to take said such bills of

from his office and examine
the same, and then to after such
examination, and to listen to such sugges=
tions that either of the parties may make
as to the correctness or incorrectness of
such bills so tendered & further payments
with or without

Subscribed & sworn to
before me this 28th

day of April A.D. 1863

E. Harrison Soring

Elon Curtis Clerk of of the Circuit Court
of said County, do witness that I
have read at my house and seal
of said Court this day and year
above written

Elon Curtis Clerk
by J. B. Welch deputy

172 55
Holiday stat
s
Jas. W. Burgess
affd.

Fid Apl. 29, 1863
Suland
Ch.

Overland

John C. Holliday &
Hiram Reed.
Partners under the
name, firm, & style of
Holliday & Reed
vs
James W. Burgess
County -

Supreme Court
& Grand Jurisdiction
April Term A.D.
1863.
Replew
Appeal from Hancock
County -

State of Illinois }
Hancock County } S.S.

Stephen R. Moore
being duly sworn deposes and says that he has
been the Attorney for the defendant in the
above entitled Cause from the time of the
institutions of the suit in the Hancock County
Circuit Court. And that R. M. Murray was
employed as an Attorney in said at the
trial of said Cause, at the January term
A.D. 1863 of said Court, and that the
Appellant made no agreement of any
kind to extend the time of filing the
Appeal Bond in said Cause, or
change the time as fixed by the
Circuit Court. Nor to extend the
time of filing the bill of exceptions
or change the time of filing the
bill of exceptions in said Cause
as fixed by the Circuit Court nor
was any request ever made to me
by the Plaintiff, or by the Attorneys of the
Plaintiffs, or either of them, to extend.

to change the time for giving ^{the} Appeal
Bond and filing the Bill of
Exceptions in said Court -

Stephen K. Moore

Seen to and Subscribed by me. Elton
Curtis, Clerk of the Hamilton County Circuit
Court, this 25th day of April A.D. 1863,
Elton Curtis Clerk
by J B Welch septy

State of Illinois } Supreme Court
Third Grand Division } ss. April Term, A. D.
1868 -

John C. Holliday & Hiram Reed. }
vs. } Appeal from
James W. Burgers. } Kansas County,

State of Illinois }
Kansas County } ss.

Stephen R. Moore of said County being duly sworn deposes and says, that sometime during the month of February A.D. one thousand eight hundred and sixty-three, Morris P. Benfield, who was one of the Plaintiffs Counsel - informed this affiant that he had left the bill of exceptions ~~out~~ in the case caused with Judge Staro. and requested me to examine them. And that thereupon this affiant went to Judge Staro's Chamber, and there ~~saw~~ a scroll of paper purporting to be a bill of exceptions in said case. And ~~this~~ affiant thereupon took and examined said scroll of paper - and found that the same was no bill of exceptions, that there was no Chattel Mortgage, that was used by the defendant upon said trial, nor did said paper contain any execution or copy of execution under which the defendant justified in said Replevin suit, nor did said paper contain all the instructions of the Court given upon the trial of said case nor did they contain all the evidence that was given upon the trial of said case -

and that therefore this deponent returned
said papers to Judge Starr - with the
remark that a judge should not
entertain such papers, that they did not
contain a fourth part of the case -

Not at the April Term of the Hamilton County
Circuit Court, Harrison Loring, who was one
of the plaintiffs Attorneys in said Cause, moved
the Circuit Court to docket said Cause
and order the Clerk of said Court to file
~~within~~ said Bill of Exceptions as of within
the time as fixed by the order of the Court
upon the trial of said Cause, and that
the Court refused so to docket said
Cause - or to make record of said
motion - but said Loring remarked
then that the question might be raised
in the Supreme Court in regard to
the time of filing said Bill of Exceptions,
and he wished the record to show that
it was filed within the rule -

Subscribed & sworn to before
me this 29th of April 1863

Stephen R. Moore

C. Court's Clerk
by J. S. Welch sely

172⁵⁵

Holliday & Reed

vs

James W. Burgess,

Affidavit of
J. R. Moore.

Filed May 1st 1883
L. Leland
clerk

State of Illinois

Third Grand Division $\frac{3}{2}$ ss. ~~Supreme Court~~ April Term 1863.

John C. Holliday & Herman Reed vs. Appeal

JAMES W. BURGESS.

State of Illinois

Kankakee County $\frac{3}{2}$ ss. Thomas P. Confield, of said County being duly sworn deposes and says, that he was one of the plaintiffs attorneys in the trial of said cause in the Circuit Court. That this deponent with the assistance of Mr. Loring the other atty for plffs, prepared a bill of exceptions in said cause and presented the same to the Honorable Charles R. Starr Judge of the 2nd Judicial Circuit, on the 15th day of February A.D. 1863. Stephen R. Moore, one of the attorneys for the defendant, was present, and requested that he might take said Bill of Exceptions and examine it, and upon some other day afterwards he and the attorneys for the plff. would come before Judge Starr and settle the same. ^{deponent & said Judge} This, agreed to such an arrangement, and Mr. Moore took away with him said Bill of Exceptions, and did not return it to the Judge for several days or upwards. By agreement a time was afterwards fixed when the attorneys for the plaintiff and said Moore, appeared before the said Judge. (and this deponent believes it was upon the day the Bill was marked filed by the Clerk)

and settled the Bill of Exceptions. The Bill of Exceptions in the Record of said cause is the same made out and presented by this deponent to the Judge as aforesaid, with certain additions and alterations made therein, to comport with the facts in the case. The Judge did not settle the Bill of Exceptions on the 15th day of February AD 1863, because he as well as this deponent was willing that Mr Moore, should have ample time to examine the Bill, and suggest any alterations and additions that might comport with the facts, and as far as this deponent is concerned he was governed by courtesy to Mr Moore.

Thomas P. Bonfield

Sworn & subscribed before
me this 25th day of
April AD 1863
E. Courtis Clerk
By J. B. Melch. Deputy.

172-53

John C. Holladay
and Francis Reed

vs
James W. Bonfield

Applicant on his
to suppress Bill
of exceptions

Filed Apr. 29. 1863.
H. C. Leland
Clerk.

~~44~~

John B. Holliday
Hiram Reed

^{vs}
James M. Burgess

} Appeal from Inquisition

Now Comes the said
Appellant James M. Burgess by Glover
Cook Campbell and enters his
motion to strike from the Record the
Supposed Bill of Exceptions con-
tained therein and set out on
pages 17 to 66 inclusive

And assigns the following reasons

Said Supposed Bill of Exceptions
was not filed within the time al-
lowed by the order of the Court in
said Cause

The Order page 16 of Record allowed
the said appellants until the 15th
day of February AD 1863 to file
said Bill

The Record page 17 shows that
said Bill was not filed until
the 12th day of March 1863

Glover Cook Campbell
for Appellant

Holladay

172

Burgess

Wagon to
Strike the River
for captives
from Risco

Filed April 24, 1863,
L. Leland
Clerk.

Supreme Court of Illinois,

THIRD GRAND DIVISION.

APRIL TERM, A. D. 1863.

JOHN C. HOLLEDAY. AND

HIRAM REED,

vs.

JAMES W. BURGESS.

ABSTRACT OF RECORD.

- 3 Action of Replevin, brought by Appellants *vs.* Appellees, March 13, 1861, to recover a quantity of corn, containing about 1200 bushels, more or less, in crib upon the Ingham farm, in said County.
- 4 Complaint in usual form.
- 5 Pleas:—
1st, General issue.
2d. Property in George H. Ingham.
- 6 3d. “ “ Augustus Ingham.
4th. “ “ Thomas P. Bonfield.
- 7 5th. Not property of the Plaintiffs.
- 7 A Justification. That, at April term of Kankakee Circuit Court, 1859, William Batten recovered judgment *vs.* Samuel S. Ingham and Geo. H. Ingham, for \$197.00 and costs of suit. A writ of *feri facias*, issued upon said judgment on the 14th day of January, A. D. 1861, directed to sheriff of Kankakee County. That the defendant, as such sheriff, levied upon said corn as the property of said George H. Ingham.
- 9 7th Justification similar to 6th plea.

10 Replications to 1st, 2d, 3d, 4th, 5th and 6th pleas simply traverse the facts therein alleged.

that property was Inghams

11 Replication to 7th plea denies the existence of such judgment and execution. Issues joined upon all the replications, and conclude to the County.

13 January term, 1863, trial by jury.

18 Bill of exceptions.

Plaintiff read in evidence deposition of Augustus T. Ingham, of Kankakee City.

19 In the fall and winter of 1860 and 1861, he owned 5 or 6000 bushels of corn, which he had raised on the Ingham farm. Sold 2900 bushels to plaintiff, in December, 1860, and January or February, 1861.

When sold, a part of the corn was in plaintiffs' warehouse, part in crib by the barn, a part unharvested. About 1200 bushels was in crib, upon which defendant levied an execution, after he sold it to Holliday & Reed.

20 The Ingham farm is in Kankakee County. He delivered part of the corn to plaintiffs, at their warehouse, and part of in the crib.

20 *Cross Examined.* George H. Ingham was not a partner in raising the corn. He and Truman Huling owned the land, from whom he leased it; he paid, as rent, \$650 in money

20-21 He made a chattel mortgage of about 80 acres of the corn during the year 1861, to Thomas P. Bonfield, for the consideration of \$600; it was that part belonging to Ingham.

21 I made the mortgage to accommodate George, who wanted to secure Mr. Bonfield for a certain amount of money. Don't know what George Ingham was owing Mr. Bonfield for.

Mr. Bonfield was doing some law business with George Ingham.

22 George Ingham united with me in the execution of the mortgage, and was present and consented to it. Saw no money pass between Bonfield and George. I think the date of this mortgage was sometime in the Spring of 1860.

My contract with Holliday & Reed was made the first days of December, and was verbal, and made at Holliday & Reed's warehouse. I had sold some before.

23, 51 Holliday & Reed did not pay any money at that time, but paid me \$312.50 on the first day of March, 1861, and were to pay me the market price on the first of June, 1861. I sold them all I would have to spare; delivered them the first in December, about 2300 bushels, delivered the last the first of March, 1861; I think it was as late as the 8th day of March. They paid me more than the \$312.50 for the corn; they paid some subsequent to December, 1860.

25 During the year 1860, I raised 5 or 6000 bushels of corn. George H. Ingham raised about 250 bushels, the most of which he fed. Never

26 sold Huling & Matteson any corn. I fed my stock out of the crib in 1860
and 1861. I traded George H. Ingham about 350 bushels of corn for
oats in the latter part of winter, or early in the Spring of 1861. It was
corn raised on that place, but not out of that crib. The plaintiffs did not
26 give their consent. The corn, when husked, was put in rail pens west of
the house; some in barn, and in crib between barn and river, which is the
crib before mentioned; some in log house, known as Selvy house. Holliday
27 day & Reed had several hundred bushels out of that house; about three
28 hundred bushels out of barn. Holliday received corn when delivered at
warehouse. I delivered them the corn as soon as husked, at the warehouse,
between the 1st and 15th of March, 1861.

I lived in one of the houses on the farm, and George Ingham in the
other, in 1860 and 1861. In 1860 and 1861 George Ingham had, in his
possession, one span of horses. After March, 1861, there was a span of
gray horses on that place. I owned them. In January, George traded a
28 piece of land at twelve mile grove for a stud horse. George said if I
would take care of the horse for a year, I might have the use of him. I
agreed to it. I did not like the horse, and found that, by investing a little
I could trade him for a team, that I had rather have than to have the stud
horse. I kept the horses until last December. I had the privilege of
29 paying \$300, or returning the stud horse to George. I sold the horses
and turned the pay over to George. Up to April, 1861, I had on the
place a span of large sorrel horses, two cows and one yearling. There
was other stock on the place, belonging to Trueman Huling. I took care
of the stock, and was to have \$5 per month; never received any money;
had use of the stock. Huling bought it from an execution or mortgage
sale vs. George H. Ingham. Cobb got it when he purchased the farm.
30 A part of the stock, and sometimes all, for a portion of the time, were
kept in a barn by George Ingham, which is less than one-half mile from
my house. The boys who took care of the horses boarded with me.

31 I don't think George Ingham had any business in April or May,
1860; he was living on the place. I saw him often in the months of
April, May, and June, 1860. Eugene Bell was driving his team most of
the time while with me. The team helped do the work on the Ingham
32 farm during that year. George Ingham did not direct, but assisted some
in planting the crop. He dropped corn in April and May; he helped in
33 threshing in July; helped harvest once in a while. Clark and George
Ingham purchased the machine that done the harvesting. C. B. & A. T.
Ingham formerly owned the plows, harness and wagons used on the place.
George Ingham afterwards owned a part of them. I owned one wagon,
and two plows, which I got of Sam. Ingham. The wagon was sold to
Cobb after he purchased the farm, about the last days of March. Sold
34 articles to Cobb amounting to \$500.00. Put check in Harwood's bank;
had no deposit account with Adsit, or any Chicago bankers. George
Ingham had no account with any Chicago banker, in his own or my name,
that I know of. I have no written contract in relation to the purchase of
property by Cobb.

35 I have been told by George H. Ingham that Cobb retained from him
 35 sufficient to pay the amount of an execution that was levied on the prop-
 erty now in dispute. Holliday & Reed retained nothing to indemnify
 them against the execution. I never had any interest in the event of this
 Suit.

36, 51 Since the commencement of this suit, Holliday & Reed delivered to
 me a release; don't know why they done it; it was delivered to me about
 a week ago by Mr. Holliday, in front of the Eldred House.

George Ingham helped me shell corn a few days in December, 1860;
 he did not employ men to harvest the crop of corn, and direct in harvest-
 ing the same, no further than he was requested by me.

37 Have not paid Truman Huling any money for his place for 1860. I
 have had no settlement with him; don't know whether I owe him or not.
 I had a written lease from him, drawn by Mr. Bonfield, dated in March,
 37 1860. I paid George H. Ingham, for rent of his part of the place, in
 38 1860, \$650.00; had no written lease with him. It was 200 acres; of this
 I had of George, I had twenty-two acres in wheat, and about one hundred
 and twenty acres in corn. Made agreement with George sometime in the
 spring of 1860; paid first rent in first days of August, which was \$312.50;
 he gave me no receipt for it: I paid it to Adsit, as his interest money, the
 39 first days of August, 1861. I sent it to him through the mail, in a draft
 which I got of Holliday & Reed. At my request, Cyrus B. Ingham wrote
 the letter, and I mailed it. Cyrus reported that Adsit said it was all
 40 right; I never received any other reply. Paid George more money as
 rent on the first days of March, 1861; I paid him then \$312.50, the same
 way I paid the other. I obtained drafts from same party, and same party
 41 wrote the letter to Adsit. I don't think the lease from Truman Huling
 was ever in my possession; I have seen it in Bonfield's office; never saw
 it elsewhere. I did not read it.

George Ingham hauled the corn in dispute, from the crib to Holliday
 42 & Reed's warehouse. He bought a wagon afterwards. I never saw him
 deliver it there; he told me he did. John Harvey Cooly and Sylvanus
 Williamson helped him; he used a span of gray horses, which were then
 mine, and teams belonging to the men that helped him. I did not employ
 the men, nor pay them for hauling. I don't know how much Holliday &
 Reed paid me for this crib; they agreed to pay me the market price the
 1st day of June, 1861. I delivered it the first days of March, 1861.
 43 When we settled, he paid me sixteen cents per pushel, which netted me
 eleven cents per bushel. The corn was hauled by different persons, my-
 self for one, but none from the frame crib by the barn; George and others
 44 hauled that. Holliday & Reed never paid me for 1200 bushels separate;
 they paid me for about 2900 bushels. Settlement was made in summer of
 1861, after their warehouse was burnt down; there was not any money
 due me after the warehouse burnt down; I was owing them about twenty
 dollars.

45 The crib of corn hauled by George was included in the settlement;
 they allowed me 16 cents per bushel for it. After Cobb purchased the
 Ingham farm, he purchased about 300 bushels of corn of me, which was
 in the barn, some time in March, 1861.

46 Witness produced release from Holliday & Reed.

47 Direct examination resumed.

George H. Ingham signed the mortgage because Bonfield insisted upon it. I paid George H. Ingham for all work done for me in 1860. I delivered the corn in dispute to the plaintiff before the commencement of this suit, and before the taking by defendant. The crib measured six or seven hundred bushels when hauled away by Holliday & Reed to their
51 warehouse; the whole account was burnt. There was no corn in the crib sold by me or any other person to Cobb. In my lease with George Ingham, I was to have the use of all the tools, and used them.

Holliday & Reed employed George H. Ingham to haul the corn in
48 dispute to their warehouse. The corn in dispute was all raised upon the land I leased from Truman Huling.

Re-Cross Examination.

George Ingham's account against me for 1860, was \$112.00; a part was for work, and a part for money. I cannot answer any other way.
49 That was his account against me. I paid him as much as \$40 for work on the farm for 1860; paid him the last in March, 1861; have no means of knowing the exact amount then paid him.

Know nothing about a contract between Holliday & Reed and Ingham, by which Ingham was to haul the corn.
50

The last piece of 40 or 50 acres of corn, raised on the Ingham land, was kept separate.

52 Writ of Replevin and return read in evidence, and plaintiff rested.

54 Defendant introduced in evidence an execution in due form, issued by the Clerk of the Circuit Court of Kankakee County, dated January 14, 1861, directed to sheriff of said county to execute, which was levied upon the corn in dispute.

Plaintiff objected, overruled, and exception taken.

56 Defendant offered in evidence a chattel mortgage, dated May 21, 1860, made by Geo. H. Ingham and A. T. Ingham to Thomas P. Bonfield, being the same chattel mortgage spoken of by said Augustus T. Ingham, in his deposition.

Plaintiff objected, overruled, exception taken.

57 *Thomas P. Bonfield* testified that he was the person who took said
58 mortgage. Plaintiff objected to his testifying to the consideration of said mortgage; overruled, and exception taken. Witness states that said consideration was \$100 and upwards, owing him by George H. Ingham, and to cover any loan of money for which he should go security for Augustus T. Ingham; that said Augustus afterwards borrowed from \$100 to \$200 of Holliday & Reed, for which witness went his security; that George Ingham's name was on the note with Augustus; that witness transferred said mortgage to Holliday & Reed, Nov. 30, 1859, before which time the note, which witness signed to Holliday & Reed, was taken up and canceled. Assignment was made at request of both of said Inghams; witness received no pay for what George H. Ingham owed him when he assigned the mortgage; he promised to pay him when he sold his farm, of which he

59 then had a prospect. George objected to executing the mortgage, but witness insisted upon it. Holliday & Reed had no notice of the consideration of the mortgage.

59. Sylvanus Williamsom was hired by George H. Ingham to haul corn in crib back of barn, on the Ingham place, to Geo. Huling's warehouse. Huling paid me \$10, which I paid to George Ingham. Augustus Ingham did not help. The bags had H. & R. on them. George H. Ingham told me if Holliday & Reed came across me when hauling the corn, to tell them I was hauling for myself; it was some I had traded tomb stones for. Holliday stopped me with one load I told him it was some I got for tomb stones; that seemed to satisfy him.

James W. Selvy was requested by George Ingham to help in threshing. George afterwards promised to pay me. Augustus Ingham's son paid me \$5.00, and my brother-in-law paid me the balance. I don't know whether Augustus or George sent the money to me.

No. 3.—The Court instructs the jury, on the part of the defendant, that if they believe, from the evidence, that Augustus T. Ingham agreed with Holliday & Reed to sell them all the corn he raised on his place in 1860, more or less, at a stipulated price, and that the corn in dispute was the corn raised in 1860 on said place, yet that, of itself, does not give Holliday & Reed the property in the corn in question, and the jury should find for the defendant.

62 1st. If the jury believe from the evidence that the corn in dispute was owned in partnership, by George H. Ingham and Augustus, at the time the defendant received the execution against Samuel S. Ingham and George H. Ingham, then the said defendant had a right to levy upon and seize the whole of said corn, by virtue of said execution against George H. Ingham and Samuel S. Ingham, and sell the interest of the said George H. Ingham therein to satisfy said execution, and a sale of the said corn by Augustus Ingham to the plaintiffs, after the defendant received said execution, would not convey the property in said corn.

2d. The court instructs the jury on the part of the defendant that if they believe the witness, Augustus T. Ingham, has intentionally sworn falsely in any particular they have a right to disregard his testimony wholly.

63 4th. The court instructs the jury on the part of the defendant that if they believe from the evidence that the plaintiffs purchased 2,900 bushels of corn from A. T. Ingham, raised on the farm known as the Ingham farm, and that A. T. Ingham delivered to the plaintiff 2,900 bushels of corn, which the plaintiff accepted out of other corn than the 1,200 bushels in dispute, then that contract was filled, and the plaintiff would have no right under that contract to hold the corn in dispute, and in that case the jury should find for the defendant.

63 5th. If the jury believe from the evidence that the plaintiff purchased 2,900 bushels from A. T. Ingham, and that the crib of corn in dispute was contained in said sale and purchase, and that afterwards the plaintiffs received other to the amount of 2,900 in the place of the corn in controversy, then the plaintiff, under such contract, would have no right to hold the corn in controversy, and the jury should find for the defendant.

63 6th. The court instructs the jury on the part of the defendant, that in the sale of personal property, where anything remains to be done to complete the contract such as ascertaining quality, or delivering possession, or measuring or weighing the property, the title does not pass till the contract is thus completed, and if the jury believe from the evidence in this cause that Holliday & Reed purchased what corn was raised on the Ingham farm in 1860, or so much thereof as the said Ingham would have to spare, and that the corn in dispute was raised on the Ingham farm, 1860, and that the corn was yet to be hauled to the warehouse of the plaintiff, or was to be weighed or measured there, the title to the corn did not pass to the plaintiff, and the law is for the defendant.

64 7th. That if the plaintiffs in this suit, Holliday & Reed, recover at all they must recover upon the strength of their own title to the property in controversy, and if they have failed to prove to the jury that the corn was their corn, sold and delivered to them, they cannot recover, and it matters not whose corn it is.

8th. If the jury believe that George H. Ingham had an interest in the said corn, as a partner or otherwise, at the time it was levied upon by the defendant, then the defendant had a right to levy upon and hold the whole property in dispute, by virtue of a writ of execution against the said George H. Ingham, and a sale by the other parties made after the writ of execution came into the defendant's hands, would not convey the property, and in that case they should find for the defendant.

64 9th. That the execution in evidence became, and was a lien upon the property of George H. Ingham, from the date the defendant received it, and the plaintiffs were bound in law to take notice of it,

10th. That all sales of personal property made with the intent and purpose to defraud and delay creditors in the collection of debts, are void.

65 No. 9.—The Court instructs the jury that if, from the evidence, they believe that the witness, A. T. Ingham, and George H. Ingham were joint owners of the corn in dispute, subsequent to the defendant having received an execution against George H. Ingham and Samuel Ingham, and also that Augustus T. Ingham sold the corn to the plaintiff while the defendant had the execution in his hands, and that the sale was made for the purpose of hindering and delaying the defendant in the collection of the execution, and that either of the plaintiffs were knowing to the fraud and the purpose of the sale, then the sale is absolutely void, and the jury should find for the defendant.

62 & 65 To the giving of said instructions, plaintiff then and there excepted.

65 Verdict, not guilty.

Motion to set aside verdict, and for new trial, overruled. Plaintiff

66 excepted.

Judgment for defendant. Writ *De Retorno* ordered.

ERRORS ASSIGNED.

- 1st. Admitting incompetent evidence.
- 2d. Excluding competent evidence.
- 3d. Giving improper instructions.
- 4th. Overruling motion for new trial, and to set aside verdict.
- 5th. Entering judgment for defendant, and awarding a writ of *De Retorno*.

LELAND & BLANCHARD,

For Appellants.

J. C. Holaday
vs
J. W. Burges

Abstract

Given May 6, 1864
Leland W

The People of the State of Illinois
By the Grace of God !!!
Free and Independent,

To all to whom these Presents shall
come Greeting!!!

Know Ye that we having caused to be
inspected the Records and Proceedings now remaining in
the office of Our Clerk of Our Circuit Court in and for
the County of Kankakee - Do find certain Records and
Proceedings in the mass and figures following To Wit;

" United States of America }
" State of Illinois } SS
" Kankakee County }

" Pleas before the Honorable
" Charles R Starr Judge of the Twentieth Judicial
" Circuit and Presiding Judge of the Kankakee County
" Circuit Court in the State of Illinois at a Term of the Circuit
" Court of said Kankakee County begun and held at the Court
" House in the City of Kankakee in said County and State
" aforesaid on the Second Monday (the same being the eighth
" day) of April in the Year of our Lord one thousand eight
" hundred and sixty one and of the Independence of the
" United States the Eighty Fifth

" Present Hon Charles R Starr Judge of the 20th Judicial Circuit
" C. H Wood States Attorney
" James W. Burger^{Sheriff} of Kankakee County
" Elon Curtis Clerk of the Circuit Court

and Heretofore To Wit.
on the 13th day of March A D 1861. John C Halliday &
Hiram Reed by Thomas P Bonfield their Attorney did
file in the office of the Clerk of our said Court a certain
affidavit and Precept in the mass and figures following

2

to wit: State of Illinois }
Kankakee County } ss Replevin

John C Halliday one of the Plaintiffs being duly sworn deposes and says that John C Halliday and Hiram Reed partners under the name firm and style of Halliday & Reed are the owners of the following described goods and chattels viz: A quantity of corn containing about Twelve Hundred Bushels more or less in crib upon the Ingham Farm in said County of the value of Two Hundred and Sixty Four dollars and that they are entitled to the possession of the same and that James H. Burgess defendant wrongfully took and wrongfully detains the same from their possession & that on the Twelfth day of March AD 1861 at said County, and he further says that said goods and chattels have not been taken for any tax assessment or fine levied by virtue of any law of said State nor seized under any execution or attachment against the goods and chattels of said Plaintiffs liable to execution or attachment

John C Halliday
Subscribed and sworn to before me
this 13th day of March AD 1861

Elon Curtis Clerk
By J B. Welch deputy

State of Illinois }
Kankakee County } ss Circuit Court of the April Term AD 1861

John C Halliday & Hiram Reed
partners under the name firm & style
of Halliday & Reed

Replevin Damages \$100.00

James H Burgess } Issue a writ of Replevin
against the said James H Burgess defendant in the
above entitled cause returnable according to law for
the following goods and chattels. to wit: A quantity

3

of corn containing about Twelve Hundred Bushels
more or less in crib upon the Ingham farm in
said county of the value of Two Hundred and Sixty four
Dollars

Thomas P Bonfield

To Philip Worcester esq clerk Circuit Court- Plaintiffs atty

And afterwards do wit: the day and year
last aforesaid our said clerk in pursuance of the directions of said
Precept did issue a certain writ of Replevin in the words and
figures following to wit:

State of Illinois {

Kankakee County }

The People of the State of Illinois to the Corner
of said county Greeting!!! . Whereas John C
Holliday & Harwin Reed partners under the name firm & style
of Holliday & Reed Plaintiffs complain that James H Burgess
Defendant unlawfully and wrongfully has taken and does
detain the following described goods and chattels to wit:

a quantity of corn containing about Twelve
Hundred bushels more or less in crib upon the Ingham
Farm in said county of the value of Two Hundred and Sixty
Four Dollars . Therefore we command you that if the said
Plaintiffs 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 to keep you harmless
in replevying said goods and chattels you cause the said
goods and chattels 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 for said
County on the first day of the next Term thereof to be holden at
Kankakee City in said County on the second Monday of April
next to answer said Plaintiffs in the premises. And you

have then and there this writ with an endorsement thereon
in what manner you have executed the same together with
the Bond which you shall have taken from the said Plaintiffs
as before commanded before executing this writ



Witness Elon Curtis clerk of our said Court
and the seal thereof at Kansas City in said
County this 13th day of March A.D. 1861

Elon Curtis clerk

By J B Welch Deputy

On the Back of said writ is the following endorsement to wit:
" I have served this writ by replevying the ^{nothing described} goods and chattels
" and delivering the same to the mittim named Holliday Reed
" and by reading this writ to the mittim named James H
" Burgess this 15th day of March A.D. 1861

" George R Setonno Coroner

And afterwards on the 13th day of March
A.D. 1863 aforesaid the Plaintiffs by J P Bonfield their
attorney did file in the office of our clerk their declaration
in the words and figures following to wit

State of Illinois }
Kansas County } Levant Court April Term A.D. 1861

James H Burgess the defendant in this suit was
summoned to answer John C Holliday & Hiram Reed partners under
the name firm and style of Holliday & Reed the Plaintiffs in this suit,
wherefore he took the goods and chattels of the Plaintiffs and unjustly detained
the same until so and thereupon the said Plaintiffs by Thomas P Bonfield
their Attorney complain for that the said defendant on the Twelfth day
of March in the ^{year} of our Lord one thousand eight hundred and sixty one
at the County of Kansas aforesaid took the goods and chattels to wit
A quantity of corn containing about twelve hundred bushels more or less
in crib upon the Ingheuen farm in said County of the said Plaintiffs of
great value to wit of the value of Two Hundred and Fifty four dollars and iniquity

5
detains the same until &c And also for that the said defendant on the twelfth day of March in the year of our Lord one thousand eight hundred and sixty one at the said County of Kauka Ke detained the goods and chattels to wit: A quantity of corn containing about twelve hundred bushels more or less in ear when the Ingham farm in said County of the said plaintiffs of great value to wit of the value of two hundred and sixty four dollars and now equally detains the same &c and the said plaintiffs are now

lawfully entitled to the possession thereof to wit at said County wherefore the said Plaintiffs say they are injured and have sustained damage to the sum of one Hundred dollars and therefore they bring suit &c

J P Benfield

Plffs Atty

And afterwards to wit on the tenth day of April A D 1861 the defendant by Stephen R Moore his Attorney filed his Plea and Answer in the words and figures following to wit

State of Illinois }
Kauka Ke County }

Superior Court of the April Term
A D 1861

James W Burgess }

ads

Replevin

Holliday & Reed }

And the said defendant by

Stephen R Moore his Attorney comes

1st Plea
and defends the wrong and injury whereof and says that he did not take and did not detain the said goods and chattels and property in the said declaration mentioned or any part thereof in manner and form as the said Plaintiffs hath above complained against him and of this the said defendant puts himself upon the country
&c
Stephen R Moore

Defts Atty

2^d Plea

And for a further plea in this behalf as to the wrongful taking and wrongful detention of said goods and chattels in said declaration mentioned the said defendant says that the said Plaintiffs ought not to have or maintain

their aforesaid action against him because he says
that the said goods and chattels in the said declaration
mentioned at the said time when &c were the goods and
chattels and property of one George H Ingham and not the
goods and chattels of the said Plaintiffs as by the said
declaration is supposed and this they are ready to verify
wherefore he prays judgment if the said Plaintiffs ought
to have or maintain their aforesaid action thereof against
him and he also prays a return of said goods and chattels
together with his costs and charges in this behalf expended
according to the statute in such case made and provided
to be adjudged to him &c Stephen R more

Defts atty

3^d Plea

and for a further plea in this behalf as to the wrongful
taking and wrongful detention of said goods and
chattels in said declaration mentioned the said
defendant says that the said Plaintiffs ought not to
have or maintain their aforesaid action against him
because he says that the said goods and chattels in the
said declaration mentioned at the said time when &c
were the goods and chattels of one Augustus Ingham
and not the goods and chattels of the said Plaintiffs
as by the said declaration is above supposed and this
he is ready to verify wherefore he prays judgment if the
said Plaintiffs ought to have or maintain their aforesaid
action against him and he also prays a return of said
goods and chattels together with his costs and charges in
this behalf expended according to the statute in such
case made and provided to be adjudged to him &c

Stephen R more

Defts Atty

4th Plea

And for a further plea in this behalf as to the wrongful

67
taking and the wrongful detention of said goods and
chattels in said declaration mentioned the said defendant
says that the said Plaintiffs ought not to have or maintain
their aforesaid action against him because he says that the
goods and chattels in the said declaration mentioned at
the said time when or were the goods and chattels of Thomas
P Bonfield and not the goods and chattels of the said Plaintiffs
as by the said declaration is above supposed and this he
is ready to verify therefore he prays judgment if the
said Plaintiffs ought to have or maintain their aforesaid
action against him and he also prays a return of said
goods and chattels together with his costs and charges in
his behalf expended according to the statute in such case
made and provided to be adjudged to him &c

Stephen R Moore

sefto Atty

5th Plea

And for a further plea in in this behalf the said defendant
says Actio non because he says that the said goods and
chattels in the said declaration mentioned at the said time
when or were not the property of the said Plaintiffs and that
they had not the right of possession of the said goods and
chattels and this the said defendant is ready to verify
therefore he prays judgment if the said Plaintiffs ought
to have or maintain their aforesaid action thereby against
him and he also prays a return of the said goods and
chattels together with his costs in this behalf according to
the statute in such cases made and provided to be adjudged
to him

Stephen R Moore

sefto Atty

1 Answer
6th Plea

And for a further plea in this behalf the said defendant
comes and defends the wrong & injury when or and
well avows the taking and the detention of the said goods

and chattels in the said Declaration mentioned and
justify it because he says that heretofore to wit: on the
fifteenth day of April AD 1859 at the April Term AD 1859
of the Kandakee County Circuit Court begun and held
in the town of Kandakee city in said County of Kandakee
and State of Illinois on the second Monday of April AD
1859 William Butler by the consideration and judgment of
the said court recovered against Samuel S Ingham ^{and}
George H Ingham the sum of one Hundred and Ninety
seven ^{dollars} for the damages which the said Butler had sustained
by the nonperformance of certain promises and undertakings
before that time made by the said Samuel S Ingham and the said
George H Ingham together with the costs of suit and charges laid
out and expended which were adjudged to the said William
Butler in and by the said Court whereof the said Samuel S
Ingham and George H Ingham were convicted as by the Record
and proceedings thereof still remaining in the office of the Clerk of
said Court will more fully appear and the said defendant
further says that on the 14th day of January AD 1861 the said
William Butler sued and prosecuted out of the said Court a
Writ of Fieri Facias directed to the Sheriff of said County to exe-
cute being the County in which the said George H Ingham
lived by which said Writ the said Sheriff was commanded
that of the lands and tenements goods and chattels of the said
Samuel S Ingham and George H Ingham which should be
found in his County that he cause to be made the sum of one
Hundred and Ninety Seven dollars less Thirteen dollars
made on a former execution which the said Butler had so
recovered against the said Samuel S Ingham and George H
Ingham for his damages and also the further sum of Thirteen
dollars and Fourteen cents which were adjudged to the said
Butler for his costs and charges in that behalf expended

7
and that he the said Sheriff have said money ready to render
to the said Butler for his damages and costs aforesaid & to make
return of said writ with an endorsement in what manner he
had executed the same in ninety days from the date thereof
as by the said writ under the seal of said court & tested
by the clerk thereof bearing date the 14th day of January AD
1861 as may more fully appear reference thereto being had and
which this defendant brings into court here. and the said
defendant Sheriff of said county after the delivery of said writ
to him to be executed as aforesaid and in the lifetime thereof at
the time and place where by virtue of such writ as he lawfully
might and as it was his duty to do levied upon and took the goods
and chattels in the said declaration mentioned and then and
there as he lawfully might and as it was his duty to do
held and detained them in his custody as such sheriff as
aforesaid through and by virtue of such writ until or and the
defendant avers that the said goods and chattels at the time when
or were the goods and chattels of the said George H. Dugham
and not of the said plaintiffs and lawfully liable to be taken
by the defendant as sheriff of said county upon
and levied upon and by virtue of said writ of Fieri Facias^{Ed}
this the said defendant is ready to verify wherefore he prays
judgment and a return of the said goods and chattels together
with his damages according to the form of the statute in such
case made and provided to be adjudged to him or

Stephen R. Moore
seft's atty

7th Plea

And by further leave of the court for this purpose first had
and obtained according to the form of the statute in such case
made and provided the said James M. Burges well answers
and acknowledges the taking of the said property goods and chat-
tels mentioned in said declaration in said county of Hamilton
in which or and finally or because he says that the said goods

and chattels at the time when or were the property of George
H Ingham and not the property of the said Holliday & Reed
Plaintiffs aforesaid as is by the said declaration above supposed
and said goods and chattels so being the property of the said
George H Ingham the said defendant then and there being
the acting Sheriff of said Kansas County and holding and
having in his hands at the time an execution issued out of the
Circuit Court of the county of Kansas under the seal of said
Court wherein ^{one} William Butler was plaintiff and George
H Ingham and Samuel S Ingham were defendants dated
January 14. 1861 and was delivered to the said defendant as
Sheriff aforesaid to be executed according to law on the 14th of
January AD 1861 and afterwards to wit on the day and year last
aforesaid at the county aforesaid did levy by virtue thereof on
the goods and chattels above set forth in the plaintiffs declara-
tion as in law the said defendant as such sheriff had a right
to do and as it was his bounden duty to do and this is the only
allegation ~~and detention~~ charged in the plaintiffs declaration and
this he is ready to verify wherefore the said defendant
prays judgment and a return of the said goods and
chattels together with his damages to be adjudged to him
according to the form of the statute in such cases made
and provided or

Stephen R Moore

Def'ts atty

And afterwards on the 14th day of April
in the year AD 1862 the said Plaintiffs by Thomas
P Bonfield their Attorney file a certain Replication in the
words and figures following to wit

State of Illinois {
Kansas County } ss

Circuit Court of the January Term AD 1862

John C Holliday & William Reed }

James H Burgess } Replevin. And the said

Pleffs say to the said Plea of said seft secondly above pleaded says precludi non because they say that at the said time whence the said corn goods and chattels in said declaration mentioned were the corn goods and chattels & property of said Pleffs and not the corn goods and chattels & property of said George H Ingham as is by said plea above supposed and of this they put themselves upon the country & seft doth the like

And the said Pleffs as to the said Plea thirdly above pleaded by said seft says precludi non because they say that at the said time whence the said goods & chattels in said declaration mentioned were the goods & chattels & property of the said Pleffs and not of the said Augustus J Ingham as is by said plea above supposed and of this they put themselves upon the country & seft doth the like

And the said Pleff as to the said Plea fourthly above pleaded says precludi non because they say that the said goods & chattels at the said time whence were the property of said Pleffs and ^{were} not the property of said Thomas Bonfield as is by said Plea above supposed and of this the said Pleffs put themselves upon the country & seft doth the like

And the said Pleffs as to the said Plea fifthly above pleaded by said seft says precludi non because they say that at the said time whence the said goods and chattels in said declaration mentioned were the property of said Pleffs and the said Pleffs had the right to the possession thereof and this they pray may be enquired of by the country & seft doth the like

And the said Pleffs as to the said Plea sixthly & seventhly above pleaded precludi non because they say that the said goods and chattels at the said time whence were the property of said Pleffs and not the property of said

George H Ingham as is by said Plea above supposed
and of this they put themselves upon the country & seft doth
the like

And the said Refs as to the said last mentioned Plea
further says that there was no such judgment as is by said
Plea supposed and there was no such execution issued and
placed in the hands of said seft as is by said plea above supposed
and of this they put themselves upon the country & seft doth
the like

And the said Refs as to the said Plea severally above
pleaded further says that at the time whereof that the said
defendant did not have and hold any such execution
as is by said Plea above supposed and of this they put
themselves upon the country & seft doth the like

Thomas P Bonfield

Refs Atty

And afterwards to wit on the 14th day of April A D 1862
the same being one of the regular days of the April Term
of the Tennessee county circuit court for said year A D 1862
and said court being then duly organized and sitting
for the transaction of judicial business the following
proceedings were had and entered of Record in the
words and figures following to wit:

" John C Holliday and Hiram Reed }
" partners under the name and style }
" of Holliday & Reed }

Replevin

" James H Burgess }

" now comes the Plaintiffs

" by J P Bonfield their Attorney and enter their motion to

" continue and the court being fully advised in the premises

" it is ordered that this cause be and the same is hereby

" continued at the Plaintiffs cost and the agreement of the

12
11 Last term as to taking deposition is also hereby vacated
11 It is thereupon considered by the court that the defend-
11 ant recover of the Plaintiffs his cost and charges of this term
11 about his defence in this behalf expended and that he do
11 have execution therefor

And afterwards do mit on the 6th day
of January A.D. 1863 the same being one of the regular
days of the January Term of said Court ^{for said year 1863} and
the Court being then duly organized and sitting for
the transaction of business the following proceedings were
had and entered of Record in said cause by said Court to wit:

11 John C. Holliday and Horace Reed
11 partners under the name
11 firm and style of

1308 " Holliday & Reed

Replevin

11 James H. Burgess

And now comes the
Plaintiffs on whose motion it is
ordered that the depositions now on file in this cause be opened
and afterwards do mit on the 8th

day of January A.D. 1863 the same being one of the regular
days of the January Term of the said Court in and
for said Year A.D. 1863 and the said Court being
duly organized and sitting in open Court for the trans-
action of judicial business the following proceedings were
had and entered of Record by said Court in said cause
to wit:

11 John C. Holliday and Horace Reed
11 partners under the name style of firm

11 Holliday & Reed

Replevin

1308 "

and now come the parties
James H. Burgess by their attorneys and waive
all objections to the form of the deposition of
A. J. Ingham

And afterward do sit on the 9th day of January A.D. 1863
the same being one of the regular days of the January
Term of said court for said year A.D. 1863 and said
court being then duly organized and sitting in open court
for the transaction of business the following proceedings were
had in said cause and entered of Record do wit:

1308 " John C. Holliday & Hiram Reed
" partners under the firm name & style
" of Holliday & Reed } Replevin
" James H. Burgess }

" and now comes the parties
" by their attorneys and the court being fully advised in the
" premises it is ordered that this cause be and the same is
" hereby continued at the defendants costs of to day

And afterward do sit on the 12th day of January
in the year A.D. 1863 last aforesaid the same being one of
the regular days of the circuit court of said county for
said January Term A.D. 1863 and said court being
duly organized and sitting in open court for the transactions
of business the following proceedings were had in said cause
and entered of Record do wit:

1308 " John C. Holliday & Hiram Reed
" partners under the name firm and
" style of } Replevin
" Holliday & Reed
" James H. Burgess } And now come the

" parties to this suit by their attorneys on
" whose agreement it is ordered by the court that this cause do
" now proceed to trial and that a jury do now come for that pur-
" pose thereupon came the jurors of a jury of good and law-
" ful men for that purpose do wit:

" Jesse Julian G. T. Spring William Riggs
" Thomas Smith Giles Gimes of Richmond

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" Ellis Reed Elijah Ellingwood F. L. Eggleston
 " J. Alcock Charles S. Palmer and S. B. Jones
 " who were duly tried, elected and sworn well and truly to try
 " the issues joined between the parties to this suit and a true
 " verdict give according to the evidence after hearing the evidence
 " this day adduced by the agreement of the parties the jury
 " are allowed to separate and meet the Court again to mor-
 " row morning at nine o'clock

and afterwards to sit on the 13th day of
 January A.D. 1863 the same being one of the regular days
 of the Circuit Court of said county for said year A.D. 1863
 and said Court being duly organized and sitting
 in open court for the transaction of business the following
 proceedings were had in said cause and entered of
 Record to wit:

" John L. Holliday Nathaniel Reed
 " partners under the name firm & style }
 " of } Reflevin
 " Holliday & Reed
 1368 " vs
 " J. Ames W. Burgess } And now again
 " come the parties to this suit by their
 " respective Attorneys and the jury in this cause again
 " come and after hearing the evidence this day adduced the
 " arguments of Counsel and instructions of the Court retired
 " to consider of their verdict

And afterwards to sit on the 14th day
 of January A.D. 1863 the same being one of the regular days
 of the January Term of said Court for the year A.D. 1863
 and the said Court being then duly organized and sitting
 in open court for the transaction of business the following
 proceedings were had in said cause and entered of Record
 to wit:

" John C Holliday & Horam Reed }
 " partners under the name firm &
 " style of
 " Holliday & Reed - } Replevin
 1308 " 75
 " James H. Burgess } and now comes the parties
 " to this suit by their respective attorneys &
 " the jury again come into open court and for verdict say
 " that the jury find the defendant 'not guilty'. Thereupon
 " the Plaintiffs by their attorneys enter their motion for a
 " new trial in this cause

And afterwards do mit on the 16th day
 of January A.D. 1863 the same being one of the regular days
 of the January Term of said Circuit ^{court} for said year
 A.D. 1863 and the said court being then duly organized
 and sitting in open court for the transaction of business
 the following proceedings were had and entered of Record
 do mit.

" John C Holliday & Horam Reed }
 " partners under the name style of firm
 " of Holliday & Reed } Replevin
 1308 " 75
 " James H. Burgess - } and now comes the
 " Parties to this suit by their Attorneys and
 " the Court being fully advised in the premises on the Plaintiffs
 " motion for a new trial it is hereby ordered that said motion
 " be and the same is overruled and it is also ordered that a mit
 " De Returno do issue herein for a return of the property and
 " that ^{the} defendant do have judgment against the Plaintiffs
 " for his cost.
 " It is Thereupon considered by the court that the
 " defendant do have judgment and Recover of the Plaintiffs his
 " cost and charges by him about his defence in this behalf

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" expended and that he do have execution therefor

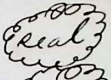
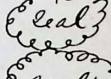
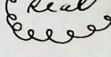
" In which decision the Plaintiffs excepts and
 " prays an appeal of this cause from this court to the Supreme
 " Court which is granted upon the Plaintiffs filing a Bond
 " conditioned in the sum of Five Hundred Dollars for
 " a faithful prosecution of said appeal with George V Halving
 " as surety and also that the Bill of exceptions in this cause
 " be filed by the 15th day of February next.

and afterwards do mit on the 11th
 day of February AD 1863. the Plaintiffs by their Attor
 neys file a certain Bond in the words and figures
 following to wit Know all men by these presents that
 we John C Holliday Horace Reed and George V Halving
 are held and firmly bound unto Henrietta Burgess
 sole executor of the last will and testament of James
 M Burgess late of the County of Kansas State of Illinois
 deceased and her assigns and the heirs of said James
 M in the penal sum of Five Hundred Dollars for the
 payment of which will and truly to be made we bind
 ourselves our heirs executors and administrators jointly
 severally and firmly by these presents witnesses our
 hands and seals this 10th day of February AD 1863

The condition of the above obligation is such
 that whereas the said James M Burgess did in his life
 time in the Circuit Court of the County of Kansas
 State of Illinois at the January Term AD 1863 of said
 Court in a certain Replevin suit in which said
 Holliday & Reed was Plaintiffs & said James M
 was defendant recover a judgment against said
 Plaintiffs for costs of suit and also for an order for
 a mit de Retorno for a quantity of corn containing
 Twelve Hundred Bushels more or less in the said

on the Lykome farm in said county of the value
of Ten Hundred and sixty four dollars
from which judgment said Holliday
and Reed have taken an appeal to the
Supreme court of the state of Illinois

Now therefore if the said
Holliday & Reed shall pay said Judgment
costs & Interest and damages in case said
judgment shall be affirmed and also shall
make due prosecution of said appeal then
this obligation to be void otherwise to remain in
full force & effect

John C Holliday 
Hiram Reed 
Geo. V Hulme 

And afterwards so int. on the 12th day
of march A.D. 1863 the parties by their
attorneys come and file their Bill of
exceptions in the said cause in the
words and figures following so int

State of Illinois }
Hankassee County } Circuit Court of the January Term AD 1863
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John C Holliday & Hiram Reed
partners under the name firm &
style of Holliday & Reed } Replevin .

vs
James W. Burgess —

Be it remembered on the trial of
this cause in the circuit court of the county of Hankassee
of record at the January Term thereof AD 1863 the said
Plaintiff to maintain the issue on his part offered and
read in evidence to the Jury a deposition of Augustus
J. Ingham which was in the words and figures fol-
lowing to wit:

State of Illinois }
Hankassee County } vs

Holliday & Reed } Replevin in Circuit Court
vs } September Term AD 1862
James W. Burgess }

Deposition of Augustus J Ingham
a witness of lawful age produced sworn and examined
upon his corporal oath by and before Rodney Ashley a
Justice of the Peace of said County at his office in said
County at his office in said County by agreement of
the parties. Both parties being present by their counsel
said depositions to be read in evidence in the above
entitled suit now pending in the Circuit Court of said
County on the part of the Plaintiff

June 6th 1862

Augustus J Ingham being first duly

sworn deposes and says as follows

Question 1 What is your age where do you reside and what is your occupation

Answer My age is 41 years I reside in Kansas City I am not in any employment at present

Question 2 are you acquainted with the parties to this suit

Answer Yes, Sir

Question 3 State whether you owned any corn in the fall and winter of the years of 1860 and 1861 and if so how did you come to own said corn and how much was there of it

Answer I did I raised it there was five or six thousand Bushels

Question 4 where did you raise it

Answer I raised it on the Ingham Farm

Question 5 State whether you sold any of that corn to the Plaintiffs and if so when and how much of it

Answer I did sell to Plaintiffs in the month of December 1860 and some the last of January or the first of February 1861. I think twenty nine Hundred Bushels in all

Question 6 State where the corn was when you sold it

Answer A Part of it at the ware House of the Plaintiffs a part of it was in the crib by the barn on the farm and a part of it was in the field unharvested and was to be put in that crib

Question 7 How much was in the crib

Answer There was about twelve Hundred bushels

Question 8 do you know of the defendants interfering in any way with this corn in the crib

Answer He secured an execution on it

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Question 9

State when it was whether before or after you sold it to Holliday & Reed

Answer

It was after

Question 10

Was you present when the Coroner served the writ of Replevin

Answer

I think I was not

Question 11

What County is the Ingham Farm in

Answer

Kankakee County

Question 12

State whether you delivered to the Plaintiffs the corn which you sold

Answer

I delivered a part of it at their warehouse and a part of it at the crib

Cross examined by defendant

Question 1

Was George H Ingham a partner in raising this corn mentioned

Answer

No Sir

Question 2

Who plowed and planted the ground

Answer

I did with my hired help

Question 3

Who owned the land

Answer

George Ingham owned a part of it and Imman Huling owned a part of it I suppose

Question 4

Who did you lease it of

Answer

Part of Imman Huling and a part of George Ingham

Question 5

What rent did you pay and how did you pay it

Answer

I Paid Six Hundred and Fifty dollars in money

Question 6

Did you chattel mortgage this corn during the year 1861

Answer

I did a part of it

Question 7

How much

Answer

about 80 acres of it

Question 8

To whom

Answer

Thomas P Bonfield

Question 9

What was the consideration

Answer

Six Hundred dollars I think

Question 10

Was it the part that was raised on the Ingham land or upon the Hulring land

Answer

on the Ingham land

Question 11

How much money did you receive from Thomas P Bonfield at the date of that mortgage

Answer

I did not receive any

Question 12

For what purpose was that mortgage executed and Recorded

Answer

Well sir I will tell you all about it I did it to accommodate George he wanted to secure Mr Bonfield for a certain amount of money and I did it for that purpose

Question 13

For what was George Ingham owing Mr Bonfield

Answer

I don't know

Question 14

Was he owing him any thing

Answer

I don't know but I should suppose he was by the amount of business he was doing for him

Question 15

What business was Mr Bonfield doing with George H Ingham

Answer

He was doing some law business

Question 16

Who united with you in the execution of that mortgage

Answer

George H Ingham

Question 17

Was you present and did you consent to his executing the mortgage

Answer

Yes Sir

Question 18

Was there any money passed between Mr Bonfield and Mr. George H Ingham at that time

22

Answer

I did not see any

Question 19

Who paid for Recording that mortgage

Answer

I don't know

Question 20

did you and George A Ingham unite in any other mortgage ^{during} that year

Answer

I think not

Question 21

Know as near as you can the date of this mortgage

Answer

Some time in the spring of 1860 I think. I can't tell exactly

Question 22

What was the date of your contract with Holliday & Reed for this corn

Answer

The first days of December 1860

Question 23

Was that contract in writing or verbal

Answer

That contract was verbal that was made in December

Question 24

Who was present when that contract was made

Answer

I am not positive whether Holliday & Reed was there or whether there was not any one but Holliday was any person present but Holliday or Holliday & Reed

Question 25

Answer

I think not

Question 26

Where was that contract made

Answer

at Holliday & Reed's Ware House

Question 27

Had you ^{then} sold any of the corn you raised that season

Answer

I think I had

Question 28

To whom

Answer

To several whom I was owing small debts I think I let Murray have a load and some other hands who worked for me

Question 29

How much did Holliday & Reed agree to pay you for this corn

Answer They agreed to pay the market price the first of June 1861 taking out four cents per Bushel for storage

Question 30 What money did they pay you at that time if any

Answer Three Hundred and Twelve dollars and Fifty cents

Question 31 What time did you commence to ~~hustle~~ that corn

Answer About the last of October

Question 32 Did you sell all the corn ^{that you might raise} more or less to Holliday or Reed

Answer I did not

Question 33 How much did you sell them

Answer What I would have to spare

Question 34 When did you deliver the first bushel

Answer The first of December or in December

Question 35 How much did you deliver during the month of December

Answer Twenty Two or Twenty Three Hundred bushels

Question 36 How much did you deliver during the month of January 1861

Answer I don't know

Question 37 How much did you deliver during the month of February 1861

Answer I don't think I delivered any at the Ware House

Question 38 When did you deliver the last Bushel

Answer I think it was in the fore part of March 1861

Question 39 How many bushels in all had you then delivered

Answer I think about Twenty nine Hundred bushels

Question 40 State the day in March that you delivered the last to them

Answer I don't know whether it was the 5th or 15th I finished husking about the first of March and when I finished husking I finished delivering

24

Question 41 Do you think it was as late as the 8 day of the month?

Answer I think it was.

Question 42 Do you think it was as late as the tenth?

Answer. I do not know

Question 43 How much money in all did Holliday & Reed pay you for corn

Answer I do not know

Question 44 Did they pay you more than Three Hundred and twelve Dollars and fifty cents?

Answer I had a good deal more than that of them

Question 45 How much more than that have they paid you for that crop

Answer I don't know for I sold them a good deal of wheat and some oats

Question 46 When they paid you that Three Hundred and Twelve ⁵⁰/₁₀₀ Dollars was it not a payment upon your wheat and oats as well as on your corn

Answer No

Question 47 Had they at that time paid you in full for your wheat and oats

Answer I think they had

Question 48 Can you not ^{now} tell whether they paid you any money Subsequent to December 1860

Answer They did

Question 49 How much did they pay you

Answer I could not tell I drew five or ten dollars occasionally as they would let me have it

Question 50 How much in all did it amount to or about how much

Answer I don't know

Question 51 Was it as much as Fifty Dollars

Answer

It might have been

Question 52

How many bushels in all did you raise during the year 1860

Answer

about five or six thousand bushels of corn

Question 53

How much did George A Ingham raise during that year

Answer

About four acres probably two hundred and fifty bushels

Question 54

What did George Ingham do with his corn

Answer

He fed most of it I think

Question 55

at what time did you commence to deliver this corn to George V Huling or Huling and Matteson

Answer

I don't know as I ever sold them a bushel of corn

Question 56

Will you swear that you did not

Answer

In the best of my recollection I never did

Question 57

How near to the barn on the Ingham farm is the crib

Answer

About 1/2 mile Rods

Question 58

How large is that crib

Answer

I don't know it is the only corn crib there is there

Question 59

did you not feed your stock out of that crib in 1860 and 1861

Answer

I did

Question 60

did you feed out of that crib in April and May 1861

Answer

No Sir

Question 61

did you feed out of that crib in January or February 1861

Answer

I don't know one might have fed some very probably we did

Question 62

did you sell any corn in 1860 or 1861 to George H Ingham

26

Answer

I traded him some corn for ^{some} oats

Question 63

When was that

Answer

Towards the latter part of winter or early in the spring of 1861

Question 64

How much did you trade

Answer

About three hundred and fifty Bushels

Question 65

Was that corn a part of the corn in that crib

Answer

It was not

Question 66

Was it a part of the corn raised on that farm that season

Answer

Yes Sir

Question 67

Were these Plaintiffs present and did they give their consent to that trade

Answer

They were not nor did not give their consent

Question 68

Who helped you gather that corn

Answer

There was two parties gathered on shares and a man by the name of Porter was one of them and several others I don't know their names

Question 69

Who employed those men

Answer

I did ~

Question 70

For whom did you employ them

Answer

For myself

Question 71

Did these Plaintiffs give their consent to employing these men

Answer

I don't know as they had anything to do with it

Question 72

Where was this corn put when it was husked

Answer

It was put in Rail Pens in the field west of the house some in the barn and in the crib between the barn and River which is the crib before mentioned and some in an old log House on the farm known as the Seloy house

Question 73

Where was that corn in the Seloy house taken to

27 answer It is my impression now that the man who
done my thrashing that year got three hundred
bushels of it

Question 74 Did Holliday & Reed have any out of Chassey house

answer They did I could not tell how much whether it
was Twenty Bushels or Five Hundred. but probably
several hundred bushels

Question 75 How much corn did Holliday and Reed have
out of the barn

Answer I can state that they had Three Hundred and I don't
know but they had other Three Hundred but I know
they had Three Hundred bushels

Question 76 at what time was that crib by the barn filled

answer In February or March 1861 it was the last of my husking

Question 77 How much corn in all did you sell of the crop
of 1860

answer I cannot tell I sold to Holliday and Reed about
Twenty nine Hundred bushels and the thrasher about
Three Hundred and that is not all

Question 78 Who helped you to haul the corn which you delivered
to Holliday and Reed in 1861 or of the crop of 1860

answer I did the most of it myself some of the hands came
once in a while that were at work for me

Question 79 Who was at the ware house to receive that corn when
you delivered it

answer Holliday and his men

Question 80 Dry and fix upon the day when you hauled the
last load

answer The last corn I delivered to Holliday was in the crib
somewhere about the first or from the first to the fifteenth
of March. The last loads I hauled him was probably
in January

28

Question 81

How long after the crib was filled did you go over to Holliday & Reas Wares House and deliver that corn

Answer

I delivered them the corn the same day we quit husking which was between the first and fifteenth of March 1861

Question 82

did George Ingham reside in the house upon the Ingham farm in 1860 and 1861

Answer

He did in one of them

Question 83

who lived in the other

Answer

I did

Question 84

What stock did George & Ingham have in 1860 and 1861

Answer

He had one span of horses one a black and the other bay. that is he had them in his possession I don't think he had any cattle hogs or mules

Question 85

was there a span of Gray Horses on that place in 1860 or 1861 in George & Inghams possession or in your possession

Answer

after sometime in March 1861 there was a span of Gray horses there.

Question 86

Who owned them

Answer

Well I can tell how I came by these horses. I owned them I think it was in January George traded a piece of land at Twelve mile gone for a stud horse and before making that trade he said to me that if I would take him and take care of him I might have the use of him for a year. I agreed to it. When I went after the horse I did not like him and I found where if I missed a little I could trade him for a team that I had rather have than to have him. and I traded

Question 87

How long did you keep those horses

Answer

I kept them until last December I had the privilege

29
of paying three hundred dollars or Return the
Stud Horse to George

Question 88

Who did you sell the traps to

Answer

Ayres in Chicago

Question 89

Who did Ayres pay for that season

Answer

I turned them on rent for the Burnett House
and took byrns for pay

Question 90

Have you Received that pay

Answer

I have I turned it over to George

Question 91

What interest did George have in that Burnett House

Answer

He had no interest in the House

Question 92

How long did George have those horses in his possession
here

Answer

They went into his possession soon after I went to
work for Cobb I think somewhere about the last of April
that is he took them to take care of

Question 93

What stock did you have on the farm in 1860 and up
to April 1861

Answer

I had a span of large sord horses two cows and
one yearling in the spring of 1861

Question 94

Was there any other stock on that place

Answer

Yes

Question 95

To whom did that belong

Answer

To Truman Huling

Question 96

What did it consist of

Answer

Four Horses Ten cows There was some young
stock

Question 97

Who fed and controlled this stock

Answer

I did

Question 98

What pay did you get for it. ^{Ans} I got five dollars per month
did he ever pay me for it

Question 99

Answer

I never settled with him I never received any money
I had the use of the stock

- Question 100 From whom did Huling get this stock ^{Answer} he bought it from an execution or mortgage sale by George Longfellow against George H Ingham
- Question 101 Who did Huling sell this property to if any one
Answer I dont know
- Question 102 Did not Cobb get it when he purchased the farm
Answer He did
- Question 103 Who made the sale to Cobb
Answer It would take a Philadelphia Lawyer to tell I dont know
- Question 104 Did George H Ingham use the Huling horses in 1860 and up to April 1861
Answer I guess not
- Question 105 Who carried and fed them
Answer Emory Review Eugene Bell Charles J Ingham a German boy called John
- Question 106 Where they kept in a barn by George Inghams House
Answer a part of them was
- Question 107 What Part
Answer Sometimes one part sometimes another Sometimes all and sometimes not any
- Question 108 How far is this barn from your house and stable
Answer Less than half a mile
- Question 109 At whose house did Review eat
Answer He eat at my house
- Question 110 All the time he was on the farm
Answer Yes
- Question 111 With whom did Bell eat
Answer He eat with me
- Question 112 Did George Ingham have any hired help in 1860
Answer I cant remember
- Question 113 Give your best recollection

31 Answer

Question 114

I can't tell

Is it likely that he ^{had} hired help and that you have forgotten it

Answer

He might have had

Question 115

In what business was George Ingham in April and May 1860

Answer

I don't think he had any business

Question 116

Where was he living at that time

Answer

He was living there on the place where he has lived ever since he has been here

Question 117

Give the names of all the persons who helped you prepare the ground and plant your crop in 1860

Answer

Eugene Bell Emery Stewie John the Dutels boy Harry Cooley and Charles A Ingham. I can't recollect whether Cyrus sowed corn for me that spring or not I guess that was all

Question 118

Did you see George Ingham often during the months of April May and June of 1860

Answer

Yes

Question 119

What was he doing

Answer

Most of the time he was not doing anything

Question 120

Did he ^{do} any plowing

Answer

He might have done some but I guess not

Question 121

Was his team engaged at work at that time

Answer

Yes

Question 122

Who was working them

Answer

I think that Eugene Bell drove them most of the time when he was with me

Question 123

Did his team help do the work on the Ingham farm during that year

Answer

Yes

Question 124

Was George Ingham ever with the team

32

Answer

Yes

Question 125 Did the horses called the Hauling horses work on the farm during the year 1860.

Answer

Yes

Question 126 Did George Ingham assist advise direct or encourage directly or indirectly the planting of that crop

Answer

He did not direct; he assisted some

Question 127 When did he commence to assist you

Answer

In April I think

Question 128 What did he work at in April

Answer

He sowed corn

Question 129 Did he assist some in May

Answer

Yes

Question 130 What did he work at in May

Answer

He sowed corn

Question 131 Did he work in June

Answer

I don't think he did

Question 132 Will you swear he did not

Answer

I will not because whenever he had anything to come to town for he would send Charley and he would work in his place and sometimes he would do somethings and I would come to town

Question 133 Did he work on the farm any in July

Answer

Yes

Question 134 What doing

Answer

He helped in thrashing

Question 135 What was he doing when you were harvesting

Answer

I don't think he was doing much there was a piece of wheat that was very heavy and lodged and the machine would get clogged and he come up once in a while and helped

Question 136 Where was his horses at that time

- Answer I think during the harvesting they were at home at work on the farm
 Question 137 Who purchased the machine that done ^{the} thrashing
 Answer I don't know who purchased it it was not one who purchased the machine that done the harvesting
 Question 138 Clark & Ingham
 Answer What Ingham
 Question 139 George Ingham
 Answer Who owned the Plows that done the plowing
 Question 140 I owned part of them and there was two there and I don't know whether they were Georges. or Hulings
 Answer Who had formerly owned the Harrows and Plows and Wagons used on the place at this time
 Question 141 L B & A J Ingham
 Answer Did George Ingham afterwards own them
 Question 142 A part of them
 Answer Who owned the other part
 Question 143 I did
 Answer How many wagons and plows did you own
 Question 144 I owned one wagon and two plows
 Answer Who did you get the wagons of
 Question 145 Sam Ingham
 Answer Was that wagon sold to Cobb
 Question 146 Yes
 Answer At the time he purchased the farm
 Question 147 after he purchased the farm
 Answer Was it not at the time he purchased the stock and other personal property on the place
 Question 148 It was when he purchased a part and not when he purchased a part
 Answer Give the date he purchased it
 Question 149 It must have been the last days of March
 Answer

34

1861

Question 150

Answer

Did he pay you in money for it
He gave me a check on Adair in connection with other money that he owed me

Question 151

Answer

Did he give you more than one check at that time
No Sir

Question 152

Answer

What else did he purchase of you
He purchased a span of horses & harness ~~two~~ cows a yearling steer. Cart & harness two plows one hog one hay Rack

Question 153

Answer

What did he give you for that span of horses
I don't recollect what the horses were put in at the whole lot was put in at Five Hundred Dollars

Question 154

Answer

Do the articles you have enumerated cover all the principal personal property you sold him in 1861
Yes

Question 155

Answer

What did you do with the check you received of him
I put it in Harwood Bank

Question 156

Answer

Did you have a deposit account with Adair or any other Chicago banker that year
No

Question 157

Answer

Did George H Ingham have any account with Adair or any Chicago Banker in his own name or in your name or any other persons name for his benefit

Answer

He had none in my name nor any other persons name that I know of

Question 158

Answer

Was this Five Hundred Dollars check all the money he paid you for the purchase of property during the year 1861
It was

Question 159

Have you any written contracts or contract relative

to the purchase of property by Cobb
 No

Answer

Question 160

Have you any correspondence or letters from Cobb or A M Maest or Cyrus B Ingham or George H Ingham or Immanuel Huling relative to the sale and purchase of the Ingham Farm or the sale and purchase of the personal property on the farm

Answer

I have not nor never had

Question 161

Did Cobb retain from George H Ingham or yourself money sufficient to pay the amount of an execution that was levied on the property now in dispute

Answer

He did not from me and I have no positive knowledge that he did from George

Question 162

What is your best knowledge of the fact

Answer

I have been told that he did

Question 163

By whom was you told so

Answer

George H Ingham

Question 164

Did Holliday Reed retain any money or moneys or pay from the grain sold to them in 1860 and 1861 from the Ingham farm to indemnify them against the execution levied upon the property in dispute or the costs of this suit growing out of it or the expenses of Attorneys fees

Answer

No

Question 165

are you in any wise directly or indirectly interested in the event of this suit

Answer

Not that I know of

Question 166

Have you agreed to pay any of the costs of this suit or attorneys fees or any money to conduct this suit directly or indirectly ^{Answer} No

Question 167

was you in any way interested in the event of this suit at the time it was instituted

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Answer

No

Question 168

Since the commencement of this suit did Halliday and Reed execute and deliver to you a written instrument in the nature of a Release of any and all interest you have in this suit

Answer

Yes

Question 169

When was that done

Answer

September 9th of last year

Question 170

When did they deliver it to you

Answer

about a week ago

Question 171

What did they give you a release if you had no interest in this suit

Answer

I don't know

Question 172

Was it not given to you after you had given your direct testimony in answer to the interrogatory proposed by Mrs Benfield the Plaintiffs attorney in this case

Answer

No

Question 173

Who gave it to you

Answer

Mr Halliday

Question 174

Where

Answer

on the avenue in front of the Elated House

Question 175

What was George H. Gingham doing in the months of October November & December of 1866

Answer

I don't know as he was doing much of any thing except his chore in October and November he helped me shell corn in December a few days

Question 176

Did he employ men to husk the crop of corn and direct in husking and storing it

Answer

No further than he was requested to by me

Question 177

Did he employ men to husk the crop of corn and direct in the husking and storing of it

Answer

No

Question 178

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was not be at work in the corn or about it and directing the harvesting all the time or a greater portion of the time it was being gathered

Answer

Yes

Question 179

How much money did you pay Inman Huling as rent for his place where a portion of the crop in 1860 grew

Answer

I have not paid him any

Question 180

How much do you now owe him as rent for it

Answer

I don't know for I have not settled with him

Question 181

do you owe him anything

Answer

I expect I do

Question 182

Will you swear that you do owe him anything

Answer

I will not

Question 183

did you ever agree to pay him anything as rent for that land for the season of 1860

Answer

I had a lease from him I think that stipulated that I was to pay him

Question 184

was that a written lease

Answer

Yes

Question 185

What was the date of that lease

Answer

I think it was dated march 1860

Question 186

Who drew the lease

Answer

I think Mr Bonfield did draw it

Question 187

How much money did you pay George^H Ingham as rent for his part of the place in 1860

Answer

I paid him six hundred and fifty dollars for for what I had the use of

Question 188

did you have a written lease with him

Answer

I did not

Question 189

How many acres did you lease of George

Answer

It was the old lamb farm and was called

Two Hundred acres

Question 190 How much of this was under cultivation.

Answer I don't know how much there was it was always called one hundred and fifty acres until it was measured last spring and fell short

Question 191 About how much of this ^{that} you had of George did you have in wheat

Answer Twenty or Twenty Two acres

Question 192 How much was there in corn.

Answer Well most of the balance of it was in corn

Question 193 How many acres was there in corn

Answer I think it was called one hundred and twenty acres

Question 194 Where did you make that agreement with George

Answer Well some time in the Spring of 1860

Question 195 When did you pay up the first installment of Rent

Answer I think it was the first days of August

Question 196 How much Rent did you pay him then

Answer Three Hundred and Twelve dollars and Fifty cents

Question 197 Did he give you a receipt for it

Answer He did not

Question 198 Who was present when it was paid

Answer Well I paid Asat his interest money Six Hundred and fifty dollars and that was a part of it it was sent up to Asat

Question 199 How did you send it to Asat

Answer That is none of his business

Question 200 Did you send it by express

Answer I did not

Question 201 When did you send it to Asat

Answer The first days of August 1861

Question 202 How did you send it to him

Answer I sent it to him through the mail

Question 203

did you send it by draft or in Gold or in bills or in silver

Answer

I sent it by draft

Question 204

from whom did you purchase this draft

Answer

I got it from Holiday & Reed

Question 204

To whose order was it payable

Answer

I don't Remember. I don't know to whose order it was drawn. It was to pay that interest I don't know how it was got up

Question 205

did you enclose the check or draft in a letter and send

Answer

I did not

Question 206

Who did

Answer

Cyrus B Ingham

Question 207

Did you see him

Answer

Well I was in the room when it was done and I mailed the letter

Question 208

At whose request did he write

Answer

at mine

Question 209

Whose name did he sign to it

Answer

I don't know

Question 210

did you receive a Reply from Adsit

Answer

Well Cyrus Reported that Adsit had said that it was all right

Question 211

did you receive a Reply from Adsit

Answer

That was the only reply that I Received

Question 212

Did you receive a Reply from Adsit

Answer

Well no

Question 213

Have you ever seen the letter that was received in answer to it

Answer

I suppose I did

Question 214

Have you that letter in your possession now

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Answer

I have not

Question 215

When did you next pay George any money for the rent of the place

Answer

The first days of March 1861

Question 216

How much did you pay him then

Answer

Three hundred and twelve dollars and fifty cents

Question 217

Who was present when you paid it

Answer

I paid it in the same way I paid the other

Question 218

Did you get a draft from Halliday & Reed

Answer

Yes

Question 219

Did Cyrus write the letter accompanying the draft to assist

Answer

Yes

Question 220

Have you got the reply to that letter in your possession

Answer

I have not

Question 221

Where was Cyrus when he wrote the letter

Answer

He was in the room that he occupied over what was known as the Ingham Store

Question 222

On what account did Halliday & Reed pay you this last draft

Answer

It was on account of what grain they had and was to have

Question 223

Did you afterwards deliver them corn to pay the full amount of this last draft or do you still owe them for it

Answer

I did

Question 224

Give as near as you can the date of this draft

Answer

The first days of March 1861

Question 225

Have you now the lease executed by Truman Hulick for the rent of that place in 1860

Answer

I don't think I have

Question 226

What did you do with it

Answer

It may be with Cyrus' papers I don't recollect

- whether he had or not
- Question 227 When did you have it in your possession last
- Answer I don't think it was ever in my possession
- Question 228 Did you ever see it
- Answer Yes
- Question 229 Who had it when you saw it
- Answer In Thomas Bonfidas office
- Question 230 Did you ever see it elsewhere than there
- Answer I think not
- Question 231 Did you read it
- Answer No sir
- Question 232 You can't be mistaken about seeing it can you
- Answer I might
- Question 233 Don't you think you are mistaken
- Answer I don't think I am
- Question 234 Who hauled this crib of corn in dispute from the crib on the farm to Halliday & Reed's warehouse
- Answer George Ingham
- Question 235 Did you see him
- Answer I did
- Question 236 Did you help him
- Answer I did not
- Question 237 Whose waggon did he have
- Answer Well I think he had Ennos's a part of the time and I think he had Cobbs some and he might have had his own. I don't know whether he had bought his then
- Question 238 Did he buy a waggon after this
- Answer Yes
- Question 239 Do you swear that he hauled this crib of corn to Halliday & Reed
- Answer He said he was hauling it to them I never saw him deliver a load ~

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Question 240

do you swear that he hauled this crib of corn to Holliday Reed

Answer

I do not

Question 241

Who helped him load and haul it

Answer

a outchman all the name I know for him is John and Harvey Cooley and my impression is that Sylvanus Williamson helped him

Question 242

Whose horses did he have

Answer

He had a team of Gray horses that was mine at that time and if Sylvanus Williamson helped him he had his and if Washington Rely helped him he had his

Question 243

What time did he commence to haul this corn

Answer

Well I don't know it was before the 30th of July 1861 I don't know whether it was in June or July 1861

Question 244

How long was he hauling

Answer

I don't know how many days it took him

Question 245

Did he haul it all out of the crib at that time

Answer

Yes

Question 246

Was not the stock on the farm fed out of that crib after the 15th of March 1861 to some extent

Answer

No

Question 247

Did you employ the men or pay them for hauling this corn

Answer

No

Question 248

How much did Holliday Reed pay you for this crib of corn supposed to contain Twelve Hundred Bushels

Answer

Well it was rich Well I received pay Well I don't know

Question 249

How much did they agree to pay you for it

Answer

They agreed to give me the market price per bushel when it was delivered

Question 250

When did you deliver it

Answer

I delivered it the first days of March 1861

- Question 251 What was the market price then
Answer It netted me eleven cents there
- Question 252 What was the market price then
Answer I don't remember what they were paying here in town
- Question 253 Was not this the agreement that you was to have the market price ⁱⁿ June
Answer The corn that I stored with him, in December I was to
- Question 254 Was not this the agreement that you was to have the market price in June
Answer Yes
- Question 255 Did you have a settlement with Holliday Reed after June for this Twelve Hundred Bushels
Answer Yes
- Question 256 When
Answer After his building burned. I don't recollect the time
- Question 257 How much did he pay you a bushel then
Answer I think it was sixteen cents and after taking out the storage and expenses it left eleven cents
- Question 258 What expenses was there
Answer The shelling and drawing of that corn
- Question 259 How much was the storage
Answer Well it was to be a cent a month per bushel the first four months but he bumped it off and I think called it five cents a bushel
- Question 260 Who shelled the corn
Answer Well I don't understand the question
- Question 261 Who hauled the corn
Answer Different persons
- Question 262 Where then
Answer Myself for one but none from the frame crib by the barn. and George. and I think Sylvanus

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Question 263 Williamson it was Williamson or Wash Seloy
How much money in dollars and cents did Holliday and Reed pay you for this Twelve Hundred Bushels of corn

Answer They did not pay me for any Twelve hundred bushels separate. they paid me for I think about twenty nine hundred bushels

Question 264 How much money in dollars and cents did Holliday and Reed pay you for this Twelve hundred bushels of corn after June 1861

Answer They did not pay me for any Twelve hundred bushels of corn separately. they paid to me I think for twenty nine hundred bushels of corn

Question 265 Did they give you any money in June 1861 for corn
Answer No I think not

Question 266 Did you have a settlement with them in June for this corn

Answer I don't know what time it was but some time along in the summer after their warehouse burnt down

Question 267 When did their warehouse burn down
Answer I can't state

Question 268 Can you give me the year if so do so
Answer I think it was in 1861

Question 269 Name the month in 1861 as near as you can

Answer I can't name the month

Question 270 Was there snow on the ground

Answer No I think not I think it was in the spring

Question 271 In this settlement after this warehouse burned down how much money was there due you if any

Answer There was not any

Question 272 How much was you owing them if any at that time

Answer I think about twenty dollars

Question 273 Who was present at this settlement

Answer I don't think there was anybody there but Holliday and myself

Question 274 Was it before or after George hauled this twelve hundred bushels to them

Answer It was after he hauled the crib of corn to them

Question 275 Was this twelve hundred bushels included in the settlement

Answer That crib of corn was included in the settlement

Question 276 What did they allow you per bushel for that crib

Answer Fifteen cents

Question 277 What did they allow you for all the other corn you sold them that season

Answer Sixteen cents a bushel

Question 278 In this settlement did they deduct five cents per bushel for storage and thrashing and hauling upon all the corn you sold them that season

Answer Well sir the settlement was a jumped at concern they had no books and they allowed me eleven cents per bushel

Question 279 How much corn in the crib did Cobb purchase on the Lughorn farm when he purchased the Lughorn property

Answer He did not buy any at that time

Question 280 Did he buy some afterwards

Answer He did

Question 281 How soon after

Answer I should think about two weeks

Question 282 How much did he buy

Answer Three hundred bushels

Question 283 Who did he buy it of

Answer He bought it of me

Question 284 Whereabouts on the Lughorn farm was this corn Cobb purchased

Answer In the granery in the barn

Question 285 When did Cobb purchase this corn

Answer I think it was some time in March 1861 It

46

might have been in April

Question 286

you have mentioned in answer to one of the Interrogatories in this deposition that you have a written release from Holliday & Reed releasing you from any interest or liability you may have in this suit have you got that release with you

Answer

Yes

Question 267

I give a copy of that release or the release itself

Answer

I give the release hereto attached and marked ^{Exhibit} A of my deposition

Exhibit A

State of Illinois

Kankakee County

{
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Circuit Court of the September Term AD 1862

John L. Holliday &

Hiram Reed

} Defendants

vs.

James H. Burgess

} For value Received we do hereby release

Augustus J. Ingham a witness whose deposition we are about to take to be read in evidence upon the trial of said cause of and from any claim or demand which we now or may hereafter have against him by reason of the determination of this suit or any matter either directly or indirectly brought or to be brought in question in the same suit either for or against us ^{and} we do further release him from all demands connected with or depending upon the subject matter of this suit or any part thereof which we now or may hereafter have against him

Witness our hands and seals this the 4th day of September AD 1862

John L. Holliday *[Signature]*
Hiram Reed *[Signature]*

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Re Direct Examination by Plaintiffs

Question 1

State how George H Ingham came to sign the mortgage made to Bonfield

Answer

Because Mr Bonfield insisted on his signing it

Question 2

State whether the dropping corn and other work which George H Ingham done for you in 1860 was gratuitous or whether you was to pay him for it and did pay him for it

Answer

He charged me for all work done and paid him for it

Question 3

State whether you delivered the corn in the crib in dispute ^{to the Plaintiffs} before or after the commencement of this suit and whether before or after the taking by defendant in this suit

Answer

Before

Question 4

How much did the crib measure when it was hauled away by Holliday & Reed to their warehouse

Answer

I think between seven and eight hundred bushels the whole thing was burned.

Question 5

was there any of the corn in this crib sold by you or any other person to Cobb

Answer

No

Question 6

did your lease with George Ingham include the barn and corn crib which you have spoken of

Answer

There was nothing said particular about the corn crib or barn I was to have the use of all the tools and I used them

Question 7

Who employed George H Ingham to haul this corn in dispute to the Plaintiffs warehouse

Answer

Holliday & Reed

Question 8

was the property in dispute raised upon the land you leased from Truman Huling or upon the land you leased of George H Ingham

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Answer It was raised upon the land I leased from Sumner Huling every bushel of it

Re cross examination by defendant

Question 1 How much did you pay George Ingham in money for the work he done on the Ingham farm in 1860

Answer I think the whole account was a hundred and twelve dollars a part of it was for work and a part of it was for money

Question 2 How much did you pay George Ingham in money for the work he done on the Ingham farm in 1860

Answer Well sir I shall answer it just the way I answered it before that is just the way the bill is and that is the way I paid it the account is a hundred and twelve dollars

Question 3 How much did you pay George Ingham in money for the work he done on the Ingham farm in 1860

Answer you may onto the same answer you did before I paid him a hundred and twelve dollars a part for work done and a part for money

Question 4 How much did you pay George Ingham in money for the work he done on the Ingham farm in 1860

Answer I have no means of answering it any different from what I have answered it before I don't know

Question 5 did you pay him a dollar ^{in money} for work done

Answer I did

Question 6 Did you pay him two dollars in money for work done

Answer I did

Question 7 When did you pay him two dollars

Answer I paid him two dollars in June 1860

Question 8 Did you pay him ten dollars for work done

Answer Yes

419
Question 9
Answer

When did you pay him ten dollars

I don't know as I paid him ten dollars at any one time

Question 10

Did you pay him in the aggregate as much as fifteen dollars in money for work done on the place in 1860

Answer

Yes

Question 11

Did you pay him as much as twenty ^{five} dollars in money for work ^{done} on the farm in 1860

Answer

Yes

Question 12

Did you pay him as much as twenty five dollars in money for work done on the farm in 1860

Answer

Yes

Question 13

Did you pay him as much as thirty ~~five~~ dollars in money for work done on the ~~place~~ farm in 1860

Answer

Yes

Question 14

Did you pay him as much as thirty five dollars in money for work done on the ~~place~~ farm in 1860

Answer

Yes

Question 15

Did you pay him as much as Forty dollars ^{in money} for work done on the ~~place~~ farm in 1860

Answer

Yes

Question 16

Did you pay him as much as Forty five dollars in money for work done on the Lughan farm in 1860

Answer

I think I did

Question 17

Will you swear that you did

Answer

As

Question 18

When did you pay him the last money for work on the farm

Answer

I think it was in March 1861

Question 19

How much did you pay him then

Answer

Maybe Fifteen or Twenty dollars I

50

Question 20

have no means of knowing exact
did you hear Halliday & Reed employ George Ingham to
haul this corn to their warehouse

Answer

I did not

Question 21

was you present at such a contract

Answer

No

Question 22

did you ever see such a contract

Answer

No

Question 23

did you swear in this deposition that they did
employ him to haul the corn

Answer

I said Halliday & Reed employed him

Question 24

do you of your own personal knowledge know
any thing about such a contract

Answer

All I know about it is Halliday told me
George was going to haul it. and George told me he was hauling it

Question 25

do you of your own personal knowledge know
any thing about such a contract

Answer

If you mean by seeing contract or hearing
contract I do not

Question 26

do you of your own personal knowledge know
anything about ^{any} such ^a contract

Answer

I do not

Question 27

did you keep the corn raised on that part of the
Ingham farm pretended to be owned by Hurling
separate from the corn raised on the land in
possession of George Ingham when you trusted
and cribbed it

Answer

The last piece of Forty or Fifty acres was
because it was the last and was kept separate

A J Ingham

Subscribed and sworn to before
me this 12 day of June 1862

Rodney Ashley J P

Upon hearing the foregoing deposition read
the witness makes the following corrections

In answer to cross Interrogatory No 30.

I should have said - I did not receive any money
at that time but received three hundred and twelve
dollars and fifty cents the first days of March
1861

In answer to cross Interrogatory No 169 I said in
September of last year. I should have said I did
not know for I see upon examination the release is
dated September 1862. It was handed me the day
we commenced this deposition

In answer to cross Interrogatory No 249

I should have said they agreed to pay me the market
price the first day of June 1861

In answer to redirect interrogatory No 4

I should have said the whole account was burnt
instead of the whole thing was burned

A J Ingham

Subscribed and sworn to before
me this 12th day of June 1862
Rodney Ashley

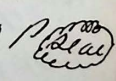
State of Illinois

Kankakee County

I Rodney Ashley a justice of the Peace
of the County of Kankakee and State of Illinois
do certify that previous to the examination of the said Augus-
tus J Ingham as a witness in the said suit between
John L Holliday and Hiram Reed Plaintiffs and
James H Burgess defendant he was duly sworn by me
as justice of the peace to testify the truth in relation to
the matters in controversy between the said parties so far as

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he should be interrogated in relation to the same. that the said deposition was taken by me at my office in Kankakee in the county and state aforesaid commencing on the 6th day of June A.D. 1862 and continuing from day to day until the 12th day of June 1862. and that after said deposition was taken by me aforesaid the interrogatories and answers thereto as written down by me were read over to the said witnesses and that thereupon the same was signed and sworn to by the said Augustus J. Ingham before me the oath being administered by me at the place last aforesaid and on the day mentioned as the date when said deposition was signed and sworn to

Witness my hand and seal this 12th day of June A.D.
1862 Rodney Ashley J.P. 

State of Illinois {
Kankakee County } SS I Rodney Ashley a justice of the Peace
in and for the County of Kankakee and State
of Illinois do certify that the said depositions were taken
before me and that my fees for taking and certifying
the same are thirteen ⁷⁰/₁₀₀ dollars and that the same
have not been paid

Witness my hand and seal this 12th day of
June A.D. 1862

Rodney Ashley J.P. 

and also offered and read in evidence the writ of Replevin issued in this cause & the Corners Return thereon which was in the words and figures following to wit:

State of Illinois {
Kankakee County } ²⁰ The People of the State of Illinois to the
Coroner of said county Greeting !!!

Whereas John C. Holliday & Hiram Reed partners under

the name firm and style of Holliday & Reed Plaintiffs complain that James M Burgess defendant unlawfully and wrongfully has taken and does detain the following described goods and chattels to wit A quantity of corn containing about Twelve Hundred Bushels more or less in crib upon the Ingham farm in said County of the value of Ten Hundred and Sixty Four 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 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 come and to keep you harmless in replevying said goods and chattels you cause the said goods and chattels 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 for said County on the first day of the next Term thereof to be holden at Kansas City in said County on the second Monday of April next to answer said Plaintiffs in the premises. And you have then and there this writ. with an endorsement thereon in what manner you have executed the same together with the Bond which you shall have taken from the said Plaintiffs as before commanded. before executing this writ.



Witness Elon Curtis Clerk of our said Court and the seal thereof at Kansas City in said County this 13th day of March AD 1861

Elon Curtis Clerk
by J B Welch deputy

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on the Back of which said writ is the following endorsement. I have served this writ by replevying the within described goods and chattels and delivering the same to the within named Holiday Reed and by reading this writ to the within named James H Burgess this 15th day of March AD 1861

George R Setourns Coroner
and thereupon the ^{said} Plaintiff rested

defence

And thereupon the said defendant to maintain the issue upon his part introduced an execution in the words and figures following to wit:

State of Illinois }
Kankakee County }

The People of the State of Illinois to the Sheriff of said County Greeting: "

We command you as we often before commanded you that of the lands and tenements goods and chattels of Samuel S Ingham and George H Ingham defendants in your County you cause to be made the sum of One Hundred and Ninety Seven dollars which William Butler Plaintiff lately in the Circuit Court of Kankakee County at a Term thereof begun and held at the Court House in Kankakee City in said County on the second Monday of April AD 1859 recovered against the said defendants and which by the said Court were adjudged to the said Plaintiff for his damages in that behalf less Thirteen dollars made one former execution. And also the further sum of Thirteen dollars and four cents which were adjudged to the said Plaintiff for his costs and charges in that behalf expended whereof the said defendants are convicted as appears

55-
to us of Record and have you these moneys ready
to render to the said Plaintiff for damages and
costs of said and make return of the mt with
an endorsement thereon in what manner you
shall have executed the same in thirty days from
the date hereof



Witness Elon Curtis Clerk of our said
Court and the seal thereof hereto attached at office
in Kansas City in said County this 14 day
of January A.D. 1861

Elon Curtis Clerk

By JTB Welch Deputy

on the back of said writ is the following endorsement

" The Sheriff will collect interest from April 15, 1859
Elon Curtis Clerk

" Received this ex Jan'y 14, 1861 at 3 o'clock PM

James H Burgess Sheriff

" By virtue of this execution I have levied on about 12 or 15

" Hundred bushels of ^{said} corn ^{said} being in a crib on the place

" now occupied by the within named George H Ingham

" this 11th day of March 1861

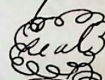
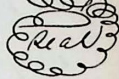
" James H Burgess Sheriff

to which the Plaintiffs excepted and exception was
overruled and execution admitted. Defendant also
offered a chattel mortgage in evidence to which the
Plaintiffs objected upon the ground that it was immaterial
and incompetent and that if it was offered to show
fraud between George H Ingham & Augustus J Ingham,
the Plaintiffs could not be charged with it
and had nothing to do with it which objections were over-
ruled. whereupon the Plaintiffs then and there excepted
The said mortgage was read in evidence which was in

the mords and figures following to wit:

This Indenture made this 2nd day of May in the year one thousand eight hundred and sixty between George H Ingham and Augustus J Ingham of the Kankakee County, Illinois parties of the first part and Thomas P Benfield of the same place party of the second part witnesseth that parties of the first part for and in consideration of the sum of Six Hundred dollars to them paid do hereby grant and sell unto the said party of the second part heirs and assigns the following goods and chattels to wit . One Hundred and Seventy three acres more or less of corn growing upon the farm known as said George H Inghams farm lying on the west side of the Kankakee river in the town of Kankakee in Kankakee Co Ill. Forty two acres of wheat growing upon the same farm and Fifty acres more or less of oats growing upon the same farm and thirty acres of Timothy Grass be the same more or less growing upon the same farm. To have and to hold the said goods and chattels unto the said party of the second part his heirs or assigns forever Provided nevertheless that if the said party of the first part and their heirs or assigns shall on or before the first day of January A.D. 1861 pay to the said party of the second part his heirs executors administrators or assigns the sum of six hundred dollars together with the ten percent interest thereon this Indenture to be void & also provided that the said parties of the first part is to have the use and possession of said property. except to remove it from this county. at their own expense to keep the same. And if payment be not made at the time above specified or if at any time the said party of the second part his executors administrators or assigns or any of them

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may deem himself or themselves unsafe it shall be lawful for him or them to take said goods and chattels wherever they may be found and sell the same to the highest bidder after giving 20 days notice as required by law in the act concerning constables or at private sale without any notice

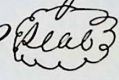
Witness our hands and seals this 21st day of May 1860
Signed sealed and delivered Geo H Ingham 
in presence of A T Ingham 

State of Illinois {

Kankakee County {

I Rodney Ashley a justice of the Peace in and for said County do hereby Certify that this chattel mortgage was duly acknowledged before me by the above named George H Ingham and Augustus T Ingham this 21st day of May.

Attest

Rodney Ashley JP 

on the back of which mortgage is endorsed as follows

State of Illinois {

Kankakee County {

AP 14192

This Instrument was filed for Record on the 23^d day of May 1860 at 11 AM and Recorded in Book 24 of Deeds page no 491

P Worcester CLK

by J T Strecheoff

- " For value Received I do hereby sell assign release
" Release + Transfer All my right title + interest in + to the within
" mortgage to Holliday Reed but without any covenant
" assurance or recourse on me
" November 8th 1860 Thomas P Bonfield

Thereupon the defendant produced Thomas P Bonfield who was sworn + testified that he was the same person who took said mortgage. and the defen

dont put the following question. What was the consideration of said mortgage? To which the Plaintiffs objected because it was immaterial as to what was the consideration as far as Plaintiffs were concerned and it was not competent to prove by said witness the consideration which objection was overruled and the Plaintiffs thereupon excepted to the overruling of the same. The witness in answer to said question said. The consideration of the mortgage was \$100.00 and upwards owing him by George H Ingham and to cover the amount of any loans of moneys which he should go security for Augustus T Ingham for that Augustus T Ingham proposed to borrow some money to enable him to carry on his farming operations the reason and mounted witness to go his security for the same and to receive witness therefor by this mortgage.

That Augustus T Ingham afterwards borrowed some money the amount witness does not remember but thinks it was between \$100.00 or \$200.00 from Holliday & Reed and witness went his security for the loan.

That witness thinks George H Inghams name was on the note with Augustus T Ingham and witness that witness assigned and transferred this mortgage to Holliday and Reed on the 30th day of November A.D. 1859 as it appears by reference to the assignment but before it was done the note which witness signed to Holliday & Reed was taken up and cancelled. The assignment was made

at the request of ^{both} George H Ingham & Augustus T Ingham witness did not receive a cent of what George H Ingham owed him when he assigned the mortgage to Holliday & Reed. He promised to pay him when he sold his farm of which he then had a prospect. He paid witness \$50.00 of the amount the next

year when he sold his farm George H Ingham executed the mortgage because witness insisted upon his doing it although George objected. Holliday Reed had no notice of the consideration of the mortgage from witness or otherwise to witness knowledge.

The defendant thereupon produced Sylvanus Williamson who being sworn testified as follows that he was hired by George H Ingham to haul some corn in the crib back of the barn on the Ingham place to Geo. Hulings warehouse in ^{City-hauled about 200 bushels} Kamskakee, George Hulings paid me \$10.⁰⁰ on it which I paid to George Ingham, believe that Augustus I Ingham was at the crib once or twice when the corn was being shelled but he did not help, the bags had H & R on them. I was told by George H Ingham that if Holliday come across me when hauling the corn to tell him. I was hauling for myself that it was some corn I had traded for tomb stones having been in the tomb stone business or some yarn of that kind and Holliday stopped me with one load as I was taking it to Hulings and asked me where I got the corn. I told him that it was some corn that I had taken in pay for tomb stones. It seemed to satisfy him.

James H Selvy being sworn testified as follows that I had helped in thrashing, was requested to help by George and afterwards asked George for my pay and he said I should have it. afterwards little Charles Ingham Augustus I Inghams son came & paid me \$5.⁰⁰ and Jackson my Bro in law paid me the balance whether Augustus or George sent it to me I don't know and thereupon the defendant rested and both sides closed.

Thereupon the court gave the following instructions to the jury upon the part of the Plaintiff. In giving of which

defendant then and there excepted

If the jury believe from the evidence that George H Ingham was during the year ~~1860~~ ¹⁸⁶¹ totally insolvent did not prevent him from renting his farm for cash rent to his brother & if the jury ^{further} believe from the evidence that said George H & one Solomon Hulving rented the Ingham farm to Augustus Ingham for cash rent during the year ¹⁸⁶⁰ ~~1861~~ and that the corn in question was raised in pursuance of said leasing and that said Augustus sold and delivered the corn in question to the Plaintiffs prior to the 11th day of March ~~1860~~ ¹⁸⁶¹ then the law is for the plaintiff

To constitute a delivery of the kind of corn in question to Plff it is not necessary that said corn should be delivered at the ware house of the Plffs unless such was the agreement but the same could be delivered to the Plffs in said crib & if the jury believe from the evidence that said corn was delivered to the Plffs in said crib before March 11th 1861 then so far as the question of delivery is concerned the law is for the Plffs

If the jury find for the Plaintiff they should ^{they find} say debt guilty & the property in question the property of Plaintiff and assess ^{Plff} damage at a nominal sum. and if they find for the debt they should say they find the debt not guilty

If the jury believe from the evidence that the corn in question at the time the same was seized by debt on the execution was the corn of the Plaintiff and that said seizure was without the consent of Holliday Reed then a demand upon the debt to return said corn was not necessary to be made to authorize the Plff to maintain this action

If the jury believe from the evidence that Geo H Ingham was owing moneys Benfield then the said ^{minors} Augustus had a right to mortgage Benfield his grain if he had

any to secure such indebtedness and to receive other advances that said Bonfield might make to either of said Lughams and to indemnify said Bonfield against all harm arising from becoming security for payment of money for on behalf of said Lughams or either of them and that it need not be expressed in said mortgage that said mortgage was designed to cover such future advances

If the jury believe from the evidence that the corn in question was the corn of the witness Augustus T Lugham at the time said Augustus says he sold said corn to the Plaintiffs and if the jury further believe from the evidence that said Augustus sold and delivered said corn to the Plaintiffs before the 11th day of March AD 1861, then the law is for the Plaintiffs

If the jury believe from the evidence that Truman Hulme owned part of the farm called the Lugham farm in AD 1860 and that said Augustus T Lugham that year rented said part of said farm of said Hulme for cash rent or rent to be paid in case of stock of said Hulme and raised said corn in question on said land as his own and that prior to the 11th day of March AD 1861 sold & delivered said corn to the Plffs in the crib spoken of by the witnesses then the law is for the Plaintiffs

Fraud is never presumed but must be proved and the jury cannot presume that Holliday & Co. have fraudulently colluded with George H Lugham to cheat the creditors of said Lugham and if the deft has failed to prove that said plaintiff so colluded then on the question of fraud the law is for the Plffs

off. Inst
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Whereupon the Court gave the following Instructions to the jury on the part of the defendant to the giving of each one of them the Plaintiffs then and there excepted at the time each one was given

1 If the jury believe from the evidence that the corn in dispute was owned in partnership by George H Ingham and Augustus at the time the defendant received the execution against Samuel S Ingham and George H Ingham then the said defendant had a right to levy upon and seize the whole of said corn by virtue of said execution against George H Ingham & Samuel S Ingham - and sell the interest of the said George H Ingham therein to satisfy said execution and a sale of the said corn by Augustus Ingham to the Plaintiffs after the defendant received said execution would not convey the property in said corn

2 In giving of which Relf then & there excepted The court instructs the jury on the part of the defendant that if they believe the witness Augustus S Ingham has intentionally sworn falsely in any particulars they have a right to disregard his testimony wholly

3 In the giving of which instruction the Relf do thereupon then and there except

2 The court instructs the jury on the part of the defendant that if they believe from the evidence that Augustus S Ingham agreed with Holliday Reed to sell them all the corn he raised on his place in 1860 more or less at a stipulated price and that the corn in dispute was the corn raised in 1860 ^{on said place} yet that if itself does not give Holliday Reed the property in the corn in question and the jury should find for the defendant

In the giving of the foregoing instruction the Relf do thereupon then & there except

63
4
The court instructs the jury on the part of the defendant
That if they believe from the evidence that the Plaintiffs purchased
2900 bushels of corn from A J Ingham raised on the farm
known as the Ingham farm and that A J Ingham delivered
to the plaintiffs 2900 bushels of corn which the plaintiffs
accepted out of other corn than the 1200 bushels in dispute
then that contract was filled and the plaintiffs would
have no right under that contract to hold the corn in dispute
and in that case the jury should find for the defendant

In the giving of said instruction the Reffs thereupon then &
there excepted

5
3 If the jury believe from the evidence that the
Plaintiffs purchased 2900 Bushels of corn from A J Ingham
and that the orb of corn in dispute was contained in said
sale & purchase & that afterwards the Plaintiffs received
other corn to the amount of 2900 Bushels in the place
of the corn in controversy then the Plaintiffs under such
contract would have no right to hold the corn in controversy
and the jury should find for the defendant

In the giving of said instruction the Reffs thereupon
then & there excepted

6
4 The court instructs the jury on the part of the defendant
That in the sale of personal property where anything remains to
be done to complete the contract such as ascertaining quality
or delivering possession or measuring or weighing the
property the title does not pass till the contract is then comple-
ted And if the jury believe from the evidence in this cause
that Holliday & Reed purchased what corn was raised on
or so much thereof as the said Ingham would have to spare and that
the Ingham farm in 1860, and that the corn was yet
to be hauled to the warehouse of the plaintiffs or was to be
weighed or measured then the title to the corn did not pass
to the plaintiffs and the law is for the defendant.

64
2 In the giving of said Instructions the Riffs thereupon
then & there except

7
5 On the part of the defendants the court instructs
the jury that if the plaintiffs in this suit Holliday & Reed
recover at all they must recover upon the strength of their
own title to the property in controversy and if they have failed
to prove to the jury that the corn was their corn sold and
delivered to them then they cannot recover and it matters
not whose corn it is

2 In the giving of said Instructions the Riffs thereupon
then & there except

8
6 If the jury believe that George H. Ingham had
an interest in the said corn as a partner or otherwise at
the time it was levied upon by the defendant then the defendant
had a right to levy upon and hold the whole property in dis-
pute by virtue of a writ of execution against the said George
H. Ingham and a sale by the other partner made after
the writ of execution came into the defendant's hands would not
convey the property and in that case they should find for the
defendant

2 In the giving of said Instructions the Riffs
thereupon then & there except

9
7 The court instructs the jury that the execution
in evidence became and was a lien upon the property of George
H. Ingham from the date the defendant received it and the
Plaintiffs were bound in law to take notice of it

2 In the giving of said instruction the Riffs thereupon
then & there except

10
8 The court instructs the jury that all sales of
personal property made with the intent and purpose to defraud
and delay creditors in the collection of debts are void

2 In the giving of said Instruction the Riff thereupon except

65

11

The court instruct the jury that if from the evidence the ^{believe that the} witness A T Ingham and George H Ingham were joint owners of the corn in dispute subsequent to the defendant having received an execution against George H Ingham and Samuel Ingham and also that Augustus T Ingham sold the corn to the Plaintiffs while the defendant had the execution in his hands and that the sale was made for the purpose of hindering and delaying the defendant in the collection of the execution and that either of the Plaintiffs were knowing to the fraud and the purpose of the sale then the sale is absolutely void and the jury should find for the defendant

In the giving of said instruction the Plffs thereupon then & there except

Thereupon the jury brought in a verdict of not guilty

Thereupon the Plaintiffs move the court to set aside verdict and grant a new trial because the verdict is contrary to the evidence because the verdict is contrary to the law because each and every instruction given upon the part of the defendant was contrary to the law because each and every instruction given by the court upon the part of the defendant were erroneous and improper. because the said instructions upon the part of the defendant given by the court were contrary to the issues because the court permitted incompetent and illegal evidence to be admitted to the jury because of improper conduct on the part of the members of the jury and because they were prejudiced against the Plffs and because the jury were misled by the instructions given the court on the part of the deft. Upon the hearing of said motion the Plff offered to prove by John M Obrecht a deputy Sheriff attending upon this Court as Bailiff and who was in attendance upon the jury in said cause that the jury were

prejudiced against said Plffs & were unanimous of the opinion from the evidence that the property in dispute had lawfully belonged to Augustus J. Lingham and that the said Augustus J. Lingham sold & delivered said property in good faith and for a fair consideration to the said plaintiffs before the commencement of this suit but that they believed that the instructions of the court required them to find a verdict of not guilty contrary to said facts and as the constable refuses to make an affidavit to show said facts to this court and as he is present in court here and is willing to be sworn and testify orally and the court is satisfied that he is present in court here & refuses to make any affidavit in regard to said facts. The Plaintiff asks the court to compel the said constable to be sworn & to be examined upon said facts upon the said hearing that the Plaintiff may prove said facts as above. The court refused to compel or allow said officer to be sworn unless he consented thereto which said deft refused to do but the court said he would receive his affidavit to which refusal the Plffs excepted.

Whereupon the court overruled said motion to set aside said verdict & grant a new trial and gave judgment for the defendant and ordered a writ de Retorno for the property replevied to which overruling of said motion the plaintiffs excepted and also excepted to giving a judgment for the defendant & ordering said writ and prays that their bill of exceptions in that behalf might be allowed and also certify that the foregoing contains all the evidence given upon the trial of said cause which is accordingly done and upon Plaintiff's motion the same is ordered to be made a part of the Record in said cause.

L R Starr Seal

Judge of the 25th Judicial Circuit

State of Illinois }
Kaukaee County } ^{as} J. Elon Curtis Clerk of the
Circuit Court in and for said
County in the State aforesaid do hereby certify that the
above and foregoing is a full true and perfect
Transcript of the Record of the Proceedings of the Circuit
Court of said County in a certain cause lately
pending in said Court wherein John C. Holliday
and Hiram Reed partners under the name firm and
style of Holliday and Reed were Plaintiffs and James
W. Burgess was Defendant as appears from the Records
and files of said Court now in my said office



Attest my hand and the seal of our said
Court hereto affixed at office in Kaukaee
City this 19th day of March A.D. 1863

Elon Curtis Clerk
By J. B. Welch Deputy

cost of Transcript \$17.72

Supreme Court of Illinois
3rd Grand Division April term 1863

John C. Holliday } Appellants
Hiram Reed }

^{vs}
James W. Burgess } Appellee

And now comes the said appellants by
Selma Blanchard their attorneys say that
in the foregoing judgment record of proceedings
there is manifest error in this

- 1st In admitting incompetent evidence
- 2 In excluding competent evidence
3. In giving improper instructions
- 4 In overruling motion for new trial
and to set aside the verdict of the jury
- 5th In entering judgment - for Defendant -
and awarding a writ of De Return
and for others errors manifest upon
the face of said record

Selma Blanchard
for Appellants

Now come the said appellees by Glover Cook & Campbell
their attys and say there
in the Record of proceedings
aforesaid and in the render-
ing of judgment in manner
aforesaid there is
no Error

Glover Cook &
Campbell
for appellees

~~172~~ 53
Holliday + Reed
vs
James W Burgess
" "

Record

Filed April 21st 1863
L. Leland
clerk