

No. 14697

Supreme Court of Illinois

Porter

vs.

Dement.

71641  7

STATE OF ILLINOIS,
SUPREME COURT,
THIRD GRAND DIVISION.

Reported by
No. 122 23

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

Porter

vs

Leahy

STATE OF ILLINOIS,
SUPREME COURT.

} ss. The People of the State of Illinois,

To the Sheriff of Lee County, GREETING:

Because, In the record and proceedings, and also in the rendition of the judgment of a plea which was in the Circuit Court of Lee County, before the Judge thereof, between John Dement

plaintiff, and Aaron L. Porter

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

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

that he be and appear before the Justices of our said Supreme Court, at the next term of said Court, to be holden at Ottawa, in said State, on the first Tuesday after the third Monday in April - AD. 1864 next, to hear the record and proceedings aforesaid, and the errors assigned, if he shall see fit; and further to do and receive what said Court shall order in this behalf; and have you then there the names of those by whom you shall give the said John Dement

notice, together with this writ.

Witness, The Hon. John W. Caton, Chief Justice of our said Court, and the Seal thereof, at Ottawa, this 1st day of April in the year of our Lord One Thousand Eight Hundred and Sixty-four.

L. L. Leland
Clerk of the Supreme Court
by J. N. Rice

Aaron L. Potts

Robert Cameron

No. 122 vs.

Ex parte Widiment

SCIRE FACIAS.

FILED... April 16th A. D. 1864

S. Seland Clerk.

Dec. Copy 30
Doubt 30
Travel 05
Return 10
\$11.15

State of Illinois
Ad County
I have this month seen a species
of B. D. 1864 which was of the
within was by no means the same
as the one in the present case having
the within marked with a small oval
bearing a true copy of the same
B. D. 1864, which was of the same
with this.

Supreme Court,
Third Grand Division.

April Term A. D. 1864.

Harold L. Porter. Plaintiff in Error.

vs.

John Dement. Defendant in Error.

Error to be.

Argument for Plaintiff in Error.

The insinuation that the objection made by counsel for defendant in error in his written argument, on the ground that the bill of exceptions contained in the record in this case, does not declare that it "contains all the evidence in the case," is not well taken: because the motion for a new trial in this case, was not made upon the ground that the verdict was contrary to the evidence; but upon the ground that the court below admitted the so called "copy" or "duplicate" or "duplicate original" of an unrecorded chattel mortgage to be read in evidence to the jury - gave the plaintiffs (below) instructions and refused to give the defendants instructions as asked. This being the case, as the court will readily understand upon an examination of the bill of exceptions in the record in this case, the case of *The Trustees of Elizabethtown vs. Lefler*, 23 Ill. 70, cited by counsel for defendant in error, does not apply to the case now submitted to the consideration of this court. It is not necessary

that a bill of exceptions should declare that it contains all the evidence, unless a motion for a new trial is made on the ground that the verdict was contrary to the evidence, and this is assigned for error. *Harris et al. vs. Peiner*, 28 Ill. 138. *Strickney et al. vs. Campbell*, 1. Illus. 420.

The bill of exceptions presents the testimony in such a manner as to exclude the possibility of their being any thing left out or anything interpolated. It gives the first item of evidence and the next and the next, and so on through, and then declares that each of the respective parties rested his case.

Barg & Hansen
Attys for Pltff in error.

W. 120.
Supreme Court 23
Third Grand Division
April Term A.D. 1884.

Harriet L. Parker, Pltff in error

vs.

John Bennett, Deft in error

error to law.

Argument for Pltff in error

Filed May 30, 1884
J. L. Deland
Clerk

Barg & Hansen
Attys for Pltff in error

State of Illinois } In Supreme Court,
Third Grand Division } To April Term A.D. 1864.

John Dement }
vs. } Error to Lee County
Aaron L. Porter }
Judgment at February Term
A.D. 1863, ~~for damages~~ in Replevin -

Issue a writ of error to The Circuit Court
of Lee County, against John Dement, at the
suit of Aaron L. Porter plaintiff in error,
returnable on the first day of said term of said
Supreme Court.

V Barger & Frank
Attorneys for Aaron L. Porter
plaintiff in error.

Chief of Supreme Court
of Third Grand Division

~~122~~ 122

Amos L. Pahr

vs.
John Deere -

Plaintiff for Debt

Brought Forth
Plaintiff's Exhibit

Supreme Court of Illinois
Third Grand Division

April Term A.D. 1864

Caron & Porter Plffs in error }

vs

John Bennett-Def't in error }

The Defendant in error

further submits in argument that the Bill
of Exceptions contained in the Record of this
cause fails to state that it contains all
of the evidence in the case and in the
absence of such a statement the presumption
is that there was sufficient evidence to
sustain the finding of the court below
And the judgment of the Circuit Court
should therefore, if for no other reason
be affirmed.

The Trustees of Elizabeth were as before 23rd Ill 90

Wm. T. Goodwin

Atty for Defendant in error

Supreme Court
Third Ward Division
April Term A.D. 1864

Case & Parties Officers

vs

John Bennett Defendant

Attorney & Jonathan
Banks for Deft.

Filed May 2, 1864

J. L. D. W.

Wm. P. Goodwin
Atty for Deft in error

STATE OF ILLINOIS, }
SUPREME COURT, }

ss. The People of the State of Illinois,

To the Clerk of the Lee Court for the County of Lee Greeting:

Because, In the record and proceedings, as also in the rendition of the judgment of a plea which was in the Circuit Court of Lee County, before the Judge thereof, between John Deunt

Complainant, and Aaron L. Porter

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

as we are informed by his complaint..... and we being willing that error should be corrected, if any there be, in due form and manner, and that justice be done to the parties aforesaid, command you that if judgment thereof be given, you distinctly and openly, without delay, send to our Justices of the Supreme Court the record and proceedings of the complaint aforesaid, with all things touching the same, under your seal, so that we may have the same before our Justices aforesaid at Ottawa, in the County of La Salle, on the first Tuesday after the third Monday in April next, ^{AD. 1824} that the record and proceedings, being inspected, we may cause to be done therein, to correct the error, what of right ought to be done according to law.

Witness, The Hon. ~~JOHN D. CATON~~, Chief Justice of our said Court, and the Seal thereof, at Ottawa, this 1 day of April in the Year of Our Lord One Thousand Eight Hundred and Sixty four

L. Leland

Clerk of the Supreme Court.
by J. B. Rice Deputy



122 23

Aaron L. Porter
No. *vs.*
John Dement

WRIT OF ERROR.

FILED *April 1st* A. D. 1864

L. Leland
Clerk.
J. B. Shaw



122 23

SUPREME COURT,

Third Grand Division,

APRIL TERM THREOT, A. D. 1864.

AARON L. PORTER, *Plaintiff*,
vs. } *Error to Lec.*
JOHN DEMENT, *Defendant*. }

ABSTRACT.

BARGE & FOUKE,

Attorneys for Plaintiff in Error.

Filed Apr 20. 1864
L. Leland

SUPREME COURT OF ILLINOIS,

THIRD GRAND DIVISION.

APRIL TERM THEREOF, A. D. 1864.

AARON L. PORTER, *Plaintiff*,
vs.
JOHN DEMENT, *Defendant*. } *Error to Lee.*

ABSTRACT OF THE RECORD.

1, 6, SUIT commenced by Dement against Porter. Commenced November
Term, A. D. 1862.

6, 8 Declaration in Replevin : 2 counts, one for taking, the other for de-
tention of one cream colored mare and one bay horse ; valued at two
Hundred Dollars.

11 First Plea, that defendant did not take said goods and chattles, &c.—
Similiter.

Second plea, that the property was not at said time when, &c., the
property of plaintiff. *Similiter*.

12 Third plea, that property was property of George Glenn and not
property of plaintiff. *Similiter* after demurrer overruled.

Fourth plea, that in vacation, after May Term of the Lee County Cir-
cuit Court, to wit : on 23d day of June A. D. 1862, one Conrad Durkes
recovered judgment by confession against one George Glenn, for \$172.
64 and costs of suit. That afterwards, on said 23d day of June, A. D.
1862, execution issued on said judgment and was placed in hands of
defendant as Sheriff to execute ; that said execution came to hands of said
defendant to execute on the 23d day of June, A.D. 1862 ; that afterward,
on the 20th day of September A. D. 1862, said defendant levied on prop-
erty in declaration mentioned, by virtue of said execution, as the prop-
erty of said George Glenn, the defendant in execution, the same being
then and there in his possession, which taking was same one complained
of by said plaintiff, and not other or different ; and that said goods and
chattles were then and there liable to be seized as property of Glenn,
were property of Glenn and not the property of said plaintiff.

15, 17 Demurrer of plaintiff to defendant's third plea. Demurrer overruled.

18, 20 Replications to forth plea: 1st, that property was property of plaintiff and not property of Glenn. Conclusion to country. Similiter added by defendant.

2d, that Conrad Durkes did not on 23d day of June A. D. 1862, recover judgment against George Glenn, &c. Conclusion to country. After overruling of demurrer to said Replication, similiter was added.

3d, that no such writ of *fieri facias* and fee bill as in said 4th plea alleged did issue on said 23d day of June A. D. 1862. Conclusion to country. After demurrer was overruled by court, similiter added by defendant.

4th, that no such writ on said 23d day of June A. D. 1862, came to hands of defendant as sheriff to execute. Conclusion to country. After overruling of demurrer by court, similiter added by defendant.

5th, that said defendant was not, on said 23d day of June A. D. 1862, Sheriff of County of Lee. Conclusion to country. Similiter added after demurrer was overruled.

6th, that said execution did not thereby become a lien upon all and singular the goods and chattles of George Glenn in the county liable to execution.

7th, that said defendant did not, on said 20th day of September A. D. 1862, proceed to levy said execution, &c., upon the goods and chattles in controversy. Conclusion to country. Similiter added after demurrer overruled.

8th, that said goods and chattles were not property of said George Glenn. Conclusion to country. Similiter.

21 Demurrer to 2d, 3d, 4th, 5th, 6th, and 7th Replications.

Demurrer to 6th Replication sustained, overruled as to the rest.

22 Leave given to rejoin.

23, 24 Trial by Jury. Verdict for plaintiff as follows:

"We the undersigned, jurors, find the issues for the plaintiff, and assess the damages at one cent."

24, 25 Motion in arrest of judgment and for new trial.

25 Motion overruled. Judgment on verdict and for costs.

25 Defendant has 30 days to file Bill of Exceptions.

Bill of Exceptions.

26, 27, 28

The evidence as preserved in Bill of Exceptions is in substance as follows: The defendant in error produced as a witness William S. Thompson, who certified as follows: that he was in 1861 an acting Justice of the Peace; that on the 17th of September 1861 said George Glenn made and executed a chattel mortgage to John Dement, defendant in error; that a list of the property mentioned in said mortgage was entered upon his justice's docket and acknowledged before him on said 17th day of September 1861: that about two months after this time, Glenn told witness that said mortgage was lost and had not been recorded: that Glenn wanted witness to fill out another one of the same date as the first one and to certify to it as having been acknowledged on the same day as the original one, but this witness refused to do, on the ground of being conscientiously opposed to making certificates that were untrue: but told Glenn that if a copy of the original would answer his purpose, he (witness) would fill out a blank and certify it as an exact copy of the original, which, at Glenn's request, witness did, taking the description of the property from witness's chattle mortgage record, and certifying upon the back of said copy "this chattle mortgage to be an exact copy of one originally made and acknowledged according to the records of my office, the original mortgage is said to be lost." The instrument shown witness is the copy then made, has Glenn's signature to it, but was never acknowledged by the mortgagor Glenn, nor was it ever entered on his chattle mortgage docket.

30-33

Copy of Instrument.

The plaintiff then offered to read in evidence the copy of the chattle mortgage testified to by Thompson. To its introduction the defendant objected, because, among other reasons, it had not been shown that the original chattle mortgage from Glenn to Dement had been properly recorded, and that said original was lost or destroyed.

34

Plaintiff, John Dement, then testified to Court, that Glenn made a chattel mortgage to him in September, A. D. 1861, and sent the same to Dixon to him by mail; that he laid it away among his papers and that when he came to look for it, for the purpose of having it recorded, he could not find it; that his opinion was that he had since seen said mortgage somewhere among his papers, but was not positive, and thought perhaps the same was lost; that he wrote to Glenn to send him another mortgage; that the copy now offered in evidence was the one sent by Glenn in answer to his request, and that he, Dement, took said copy to Clerk's office and had same recorded.

Defendant objected to reception of said testimony.

35 The plaintiff further offered an affidavit of said plaintiff, Dement. States that original was lost, and that he believes, and was informed that copy offered in evidence was delivered as a duplicate original of the lost mortgage, &c. Defendant objects to introduction of affidavit of Dement and excepts to ruling of Court in allowing said affidavit.

George Glenn was next sworn as a witness. Defendant objected to allow Glenn to testify. Objection overruled and exception saved. Glenn testified that he was mortgagor in mortgage; that he confessed a judgment in favor of Conrad Durkes. That at the time, and also two or three weeks before, he told Durkes he had mortgaged his teams to John Dement.

36 Defendant objected to introduction of Glenn's testimony because it was not the best evidence, and that the proper foundation had not been laid for the secondary evidence; that there was no sufficient evidence before the Court that said original mortgage was lost, and that, if lost, no copy of the instrument could, under the circumstances, be admissible. Defendant excepted to overruling of said objection by Court.

Plaintiff then offered in evidence the copy of the original chattel mortgage, to the reading of which to the jury the defendant objected, for the reasons stated in objection to Glenn's testimony above. Court allowed copy to be read and defendant excepts.

37. 38 Plaintiff then recalled Glenn as a witness. Defendant objected to his being sworn. Objection overruled and defendant excepted.

38 Glenn testified that original chattel mortgage was given for a cream-colored mare and a bay horse; that some time after mortgage was made bay horse died; that he bought said team of plaintiff and gave therefor his note for \$250, which note was still unpaid; that witness was a tenant of Dement, living on Dement's farm in town of Ogle; that after bay horse died Dement told witness to take one of the colts of Dement's on the farm and trade it off and get him (witness) another horse; that witness traded colt to one Henry Howard and gave to boot a plow, for which he gave Howard an order on Dement; that horse he got of Howard was too light for his (witness's) work, and he told Howard to get him a heavier horse. Howard did trade him a heavier horse, for which witness gave him two plows and his (witness's) note for five dollars, still unpaid; that horse and mare in controversy were same taken on Durke's execution as property of Glenn; that witness gave Sheriff a forthcoming bond for said horse and mare; that they were in his (witness's) possession when levied upon; that they were afterwards given up by said witness to Sheriff.

40 Plaintiff then rests his case.

411. 40 Defendant, to prove issues on his part, offered as a witness Joseph Ball, who, when sworn, testified that he was Deputy Clerk of Lee County Circuit Court, and as such Deputy Clerk kept record of said Court. That a judgment by confession was entered up in favor of Conrad Durkes, and against George Glenn, in said Court, and that the record of said judgment was still remaining in Lee County Circuit Court. The witness then identified the record.

47 Record of the judgment by confession, and *cognovit* in case of Conrad Durkes vs. George Glenn. Commission of Aaron L. Porter as Sheriff of Lee County. Execution and fee bill issued upon said judgments, together with endorsements thereon, showing time the same came to hands of Sheriff, and levy of said execution upon property in question.

48 Defendant then offered as a witness Charles F. Lynn, who testified that he was, at the time of issuing and levying execution offered in evidence, an acting Deputy Sheriff in and for Lee County, acting under Aaron L. Porter, the then Sheriff of Lee County. That as such Deputy he took the execution just offered in evidence and went up to the residence of George Glenn, in the town of Ogle, and by virtue of said execution levied upon the horse and mare replevined by John Dement, the plaintiff in this suit. I found the horse and mare in possession of and use of said Glenn, the endorsement of the levy upon the back of the execution just offered in evidence was made by me and is in my hand writing. Horse and mare were same replevied by John Dement, from defendant.

44, 49 Henry Howard was next witness offered by defendant. Said he traded a bay horse to Glenn for a colt, Glenn said belonged to John Dement. Got a plow to boot. Got plow of Dement. Afterwards Glenn told witness that horse traded to Glenn was not heavy enough, and he wanted witness to get him a heavier horse, witness traded him another horse, for the one he first got and Glenn gave witness two plows, and a note for five dollars to boot. Plows witness got at Glenn's place at Ogle. Note still due and unpaid.

49 Defendant next called George Glenn as a witness who said he had said mare and bay horse in his possession since he first got them and had used them as his own.

49 Agreement that testimony of William Thompson, witness first called, should be considered by jury without the necessity of recalling Thompson, and also that docket of Thompson should go to jury and be considered in evidence.

49 Defendant then rested, and this was all testimony offered.

49 Plaintiff asked court to instruct jury:

1st. If the jury believe from the evidence that the witness George Glenn executed, acknowledged and delivered to the plaintiff, a chattle mortgage of the cream colored mare in question, and a bay horse which subsequently died, and the chattle mortgage offered in evidence is a duplicate of said mortgage, properly acknowledged and recorded and that Conrad Durkes, the execution plaintiff and party in interest in this suit, before and at the time of the recovery of his judgment and the issuing of the execution and the placing of the same in the hands of the defendant as the then sheriff of the County of Lee and State of Illinois, had direct and positive notice that said property was mortgaged as aforesaid, then they should find the property of said cream colored mare in the plaintiff, provided further, that it is proved that said chattle mortgage was given and executed in good faith and for a *bona fide* consideration.

50 2d. The Jury are instructed that where personal property has been *bona fide* mortgaged for a good and valid consideration, the property therein passes to the mortgagee; and if by the mortgage the mortgagee has the right to take possession of the property mortgaged, at any time during the existence of said mortgage; that said mortgagee may deem himself unsafe, then the mortgagee has at any time the right to reclaim and take the possession of said property whenever the property may have been levied upon by virtue of any execution against the mortgagor, unless said execution shall have been placed in the hands of the proper officer prior to the recording of such mortgage duly executed and acknowledged or actual notice to the judgment creditor of such mortgage.

51 3d. If the jury believe from the evidence that the bay horse in question was traded for by property of the plaintiff and for the benefit of the plaintiff by permission of the plaintiff, then they should find the property of said horse in the plaintiff, although they may believe from the evidence that the witness Glenn, by or through whom the trade was made for said plaintiff, may have contributed himself to induce such trade to be made.

4th. If the jury believe from the evidence that by the direction of the plaintiff the witness George Glenn traded for the bay horse in question with property of the plaintiff, they should find the property of said bay horse in the plaintiff, although the said Glenn may have ever since said horse was so traded for retained possession of said horse, and used the same as his if his own.

5th. The fact, if proved, that the witness Glenn gave a forthcoming bond to the officer by whom the property was levied upon can in no way prejudice or affect the rights of the plaintiff, if any in said property.

To the giving of the foregoing instructions and each of them the defendant excepted.

~~52, 53~~ Defendants instructions as asked :

52, 53, 54 1st. The jury are instructed that in order to make a chattle mortgage valid, good and binding where the property is left in the possession of the mortgagor, the mortgage must be acknowledged by the mortgagor before a justice of the peace of the election precinct where the mortgagor resides ; the said justice must make and keep a memorandum of the mortgage together with a description of the property mentioned in the mortgage, and that the mortgage thus acknowledged shall be recorded in the recorder's office in the county in which it was made, executed and acknowledged. And unless the jury believe from the evidence that all the requirements of the statute have been complied with in reference to the chattle mortgage in question, then the jury are at liberty to disregard the same, as it is of no binding force as against this defendant.

Court refused instruction as asked, and modified the same by adding :

"Unless the defendant is shown to have actual notice of such mortgage and the rights of the mortgagee against the mortgagor under such mortgage;" and gave the same to the jury so modified.

2d. That copies of original papers of the character of chattle mortgages can only be introduced in trials as evidence of the contents of the original, where the original being perfect in itself has been lost ; and unless the jury believe that the original mortgage in this case being a good and valid chattle mortgage is lost and out of the power of the plaintiff to produce it, then they must disregard the copy offered in evidence.

3d. The jury are instructed that an unacknowledged, although recorded copy of an unrecorded chattle mortgage, is invalid and of no effect as to the rights of creditors and third parties, unless possession of the mortgage has been delivered to and remained with the mortgagee.

4th. The jury are instructed that possession of personal property is *prima facie* evidence of ownership, and that if such possession is open and apparent and parties obtain credit upon such appearance of ownership, the real owner of the property who has allowed such possession and apparent ownership cannot claim such property if rights of *bona fide* creditors have accrued.

- 54 5th. If the jury believe that the bay horse in question was obtained by witness Glenn, and used and held out to the world as his own, that said horse is liable to be seized under and by virtue of an execution against Glenn in favor of his creditors.

6th. The jury are instructed that the giving to the sheriff of a forthcoming bond by an execution debtor for property levied upon by virtue of an execution, is an admission of the party giving such bond that the property in question is his own, and if the jury believe that George Glenn the witness gave such forthcoming bond in reference to the property in question, then said Glenn is estopped from denying that the property did at the time belong to him.

Court refused to give all instructions as asked, but modified and gave 1st one, to all of which the defendant excepts.

Verdict of jury, for plaintiff.

- 55 Motion for new trial and in arrest of judgment.

Motion overruled. Defendant excepts and asks 30 days to file bill of exceptions, which is allowed. Judgment on verdict for plaintiff.

57

ASSIGNMENTS OF ERROR.

- 1st. Court erred in allowing written affidavit to be read to court.
- 2d. Court erred in allowing copy of chattel mortgage to be read in evidence to jury.
- 3d. Court erred in giving plaintiff's instructions and each of them.
- 4th. Court erred in modifying some and refusing to give the rest of defendant's instructions.
- 5th. Court erred in overruling motion for new trial.
- 6th. Court erred in overruling motion in arrest of judgment.
- 7th. Court erred in rendering judgment for plaintiff.

BARGE & FOUKE,
Att'y's for Plaintiff in Error.

State of Illinois, 3^{ps.}
Lee County, 3

Pleas in the Lee County Circuit Court in the Twenty Second Judicial Circuit of the State of Illinois, in a certain matter lately pending in said Court, wherein John Dement was plaintiff and Aaron L. Pates was defendant, in an action of Replevin,

Be it remembered, that on the 6th day of October A.D. 1862, the said plaintiff, by George A. Goodwin, his attorney, filed in the office of the Clerk of said Court, his affidavit for a writ of Replevin in said cause, which affidavit is in the words and figures following, that is to say;

"State of Illinois 3^{ps.}

"County of Lee 3

"Lee County Circuit Court,

Nov Term A.D. 1862,

"John Dement being duly sworn doth
"depone and say that he is the owner of and
"is now lawfully entitled to the possession
"of a certain Corn Coland Mare about
"nine years old, and one bay horse eight
"years old about fifteen vers half hands
"high, with one white hind foot, and a
"white strip or blaze in the face, all of the
"value of two hundred dollars, That
"one Aaron L. Pates in said county of Lee

" has wrongfully taken, and now wrongfully
 " detains said goods and chattels from the pos-
 " session of this deponent,

" This deponent further deposes and says,
 " that said goods and chattels have not been
 " taken for any tax, assessment or fine, levied
 " by virtue of any law of this State, nor seized
 " under any execution or attachment against
 " the goods and chattels of this deponent liable
 " to execution or attachment, and therefore
 " prays that a Writ of Replevin may be is-
 " sued by the Clerk of said Court to the
 " Coroner of said County of Des, as the said
 " Aaron L. Porter is Sheriff of said County of
 " Des, to replevy said goods and chattels
 " from the possession of said Aaron L. Porter,
 " Subscribed & sworn to before me John Dement,
 " on this 6th day of October
 " A.D. 1862.

" B. F. Shaw, Clerk
 " By E. A. Davis, Deputy " "

And said Affidavit is endorsed as follows,
 to wit;

" Filed Oct 6th, 1862,
 " B. F. Shaw, Clerk "

And thereupon a Writ of Replevin was issued
 by the Clerk of said Court, in said case, in
 the words and figures following, that is to say,

State of Illinois, }
LEE COUNTY.

Comes

THE PEOPLE OF THE STATE OF ILLINOIS TO THE SHERIFF OF LEE COUNTY, GREETING;

of John Dement shall give you good and sufficient security to prosecute his suit to effect, without delay, and to make return of the following described goods and chattels, the property of him

the said John Dement to wit:

a certain German colored man about nine years old - and one boy here eight years old, about fifteen and one half hands high, with one white hind foot, and a white snip or blaze in the face, all

of great value, to wit: of the value of two hundred Dollars, which Aaron E. Porter also of said

County, wrongfully took, and wrongfully detains—and return the said property, if return thereof be awarded—and further to save and keep you harmless in replenishing said property; then you are to cause the said goods and chattels to be replenished and delivered to said plaintiff without delay. And summon the defendant personally to be and appear before our Circuit Court in and for said Lee County, on the first day of the next term thereof, to be holden at the Court House in Dixon in said Lee County, on the fourth Monday of November A. D. 1862, to answer to the said complaint of the said plaintiff for wrongfully taking and wrongfully detaining the goods and chattels aforesaid. And make due return of the Bond to be taken of the said plaintiff aforesaid, together with this Writ, to the Clerk of our said Court, with an endorsement hereon as to your doings in the premises.

WITNESS, Benjamin F. Shaw Clerk of said Court, and the seal thereof, at Dixon, in said County, this fifth day of October A. D. 1862.

Benjamin F. Shaw CLERK.
By E. A. Dime, Deputy

Recd of Lee Co.
Circuit Court
50 cent internal
Return Stamp

And the said Writ of Replevin so issued as afore-
 said, was by the Coroner of said Sec County returned
 endorsed as follows, to wit;
 " Since the within Writ on the 8th day of October
 " 1862 by reading the same in the presence and
 " hearing of the within named Aaron L. Porter,
 " and delivering the within described property, one
 " Cram Colored mare about nine years old and
 " one bay horse eight years old about fifteen
 " and a half hands high with one white hind
 " foot and a white snip in the face and sum-
 " moning the defendant to appear before our Cir-
 " cuit Court to be holden on the 4th Monday of
 " Nov. 1862
 " My fees were settled
 " by the plaintiff

H. O. Kelsey
 Coroner of Sec Co Ills

REPLEVIN.

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vs.

186

CLERK.

FILED

And said Writ of Replevin is further endorsed as follows, to wit;

" Filed for number 23^d 1862.
 " By J. F. Shaw, Clerk.
 " per Joseph Ball D. C.

And the bond taken by the said Cornes in said cause, and filed in the office of the Clerk of said Court, is in the words and figures following, that is to say;

Bond
 " Know all men by these presents, that we,
 " John Dement and Charles Ruston are held
 " and firmly bound unto Henry O. Kelsey Cornes
 " of the County of Lee in the State of Illinois,
 " and to his successors in office, executors, ad-
 " ministrators and assigns, in the penal sum
 " of four hundred dollars, lawful money of the
 " United States, for the payment of which sum
 " we do hereby jointly and severally bind our-
 " selves, our heirs, executors, and administrators,
 " The condition of this obligation is such,
 " that whereas, on the sixth day of October
 " in the year of our Lord one thousand eight
 " hundred and sixty-two the said John De-
 " ment sued out of the Circuit Court of
 " Lee County, a writ of Replevin against
 " Aaron L. Pates defendant, for the recovery of
 " the following described goods and chattels,
 " property, to wit; a certain cream colored
 " man about nine years old, and one bay
 " horse eight years old about fifteen and one
 " half hands high; with one white hind foot,
 " and a white snip or blaze in the face,
 " Now if the said John Dement plaintiff, shall
 " prosecute his said suit to effect, and without

6
" delay, and make return of the said property,
" if return thereof shall be awarded, and save
" and keep harmless the said Comers in reply-
" ing the said property, then this obligation
" to be paid, otherwise to remain in full force
" and effect.

" Witness our hands and seals this seventh
" day of October A.D. 1862.

" Witness;

" John Dement *Read*
" Charles Ruxton *Read* "

And said Bond is endorsed as follows, to
wit;

" Filed Nov 25th 1862,

" Benj F. Shaw Clerk

" per Joseph Ball D. C. "

And afterwards, to wit; on the 22nd day
of January A.D. 1863 came the said plaintiff,
by his attorney aforesaid, and files his declara-
tion in said cause, in the words and figures
following, that is to say;

" State of Illinois

Declaration
" County of Lee *ss.* Res County Circuit Court
" of the February Term A.D. 1863

" Amos L. Porter the defendant in this suit
" was summoned to answer John Dement the
" plaintiff in this suit of a plea wherefore
" he wrongfully took the chattels of the said
" plaintiff and unjustly detained the same

" against sureties and pledges until ye, And
 " thereupon the said John Dement plaintiffs
 " in this suit, by George O. Goodwin his attorney,
 " complains; For that the said defendant on
 " the twenty third day of September A.D.
 " 1862, in the County of Lee aforesaid wrong-
 " fully took the following chattels, to wit;
 " a certain cream colored mare about nine
 " years old, and one bay horse eight years old,
 " about fifteen and one half hands high,
 " with one white hind foot and a white
 " snip or blow in the face, of the said plain-
 " tiff of great value to wit; of the value of
 " two hundred dollars, and detained the same
 " against sureties and pledges until ye

" And for that the said defendant after-
 " wards to wit; on the twenty third day of
 " September A.D. 1862, in the County of Lee
 " aforesaid took the following other chattels,
 " to wit; a certain cream colored mare
 " about nine years old, and one bay horse
 " eight years old about fifteen and one half
 " hands high with one white hind foot,
 " and a white snip or blow in the face, of
 " him the said plaintiff, of great value to wit;
 " of the value of two hundred dollars, and
 " wrongfully detained the same against sureties
 " and pledges until ye

8 " Wherefore the said plaintiff says he has
" sustained damage to the amount of two
" hundred dollars and therefore he brings his
" suit &c

" *Geo. P. Goodwin*
" *Plffs Atty*

And said declaration is endorsed as follows,
to wit;

" Filed January 22^d 1863

" By J. F. Shaw, Clerk

" For Joseph Ball D.C. "

And afterwards, to wit; on the ninth day
of February A.D. 1863. came the said defendant
by Barks, Foulke & Warren, his attorneys, and filed
in the office of the Clerk of said Court, an
affidavit in said cause, in the words and
figures following, that is to say;

" State of Illinois ss

" County of Lee ss

" John Dement ss

" Aaron S. Porter ss

" Conrad Durkin being

" duly sworn upon oath says that he is informed

" and believes that Charles Ruston the sec-

" ury in the Replevin Bond in the above

" entitled cause has no property subject to

" execution in this State.

*Aff't for
security*

" Conrad Durkin
 " Subscribed and sworn to
 " before me this ninth day
 " of February A.D. 1863.
 " Robt. B. Warner A.P.C. "

And said affidavit is returned, to wit;
 " Filed February 9th 1863,
 " By F. Shaw, Clerk
 " For Joseph Bass D.C. "

And afterwards, to wit; at a regular term
 of the Lee County Circuit Court, begun and
 held at the Court House in the City of Dixon,
 in said Lee County, on the second Monday,
 the same being the 9th day, of February A.D.
 1863, then being present.

Honorable William W. Heaton,

Judge of the said 22^d Judicial Circuit,
 David Mc Carney,

States Attorney for said 22^d Judicial Circuit,
 Benjamin F. Shaw,

Clerk of said Lee County Circuit Court,
 and Charles F. Lynn,

Sheriff of said Lee County,
 on the said 9th day of February, the
 following proceedings were had in said
 cause; as appears to us of record, that
 is to say;

" John Dement vs Aaron L. Porter Replevin,

" On this day comes the de-
 " fendant by Barge & Fouke, his attorneys,
 " and enters his motion to dismiss this writ
 " for want of a sufficient writ herein"

And afterwards, to wit; on the 10th day of
 February A.D. 1863, the same being one of the
 regular days of said February term, the fol-
 lowing proceedings were had in said case
 as appears to us of record, that is to say;

" John Dement vs Aaron L. Porter Replevin -

" On this day comes the plain-
 " tiff by Goodwin his attorney, also comes the
 " defendant by Barge & Fouke his attorneys
 " and now on motion of said plaintiff he has
 " leave to affix a proper stamp upon this
 " writ of Replevin herein; and the defen-
 " dant's motion to dismiss being now heard
 " is by the Court overruled; and the said de-
 " fendant now enters his motion for a rule
 " as plaintiff to give additional security on
 " the Replevin Bond in this case, which said
 " motion is by the Court overruled"

And afterwards, to wit; on the 11th day
 of February A.D. 1863, the defendant filed
 his pleas in said Court, in the words
 and figures following, that is to say;

"State of Illinois"
 "Leas County" } In the Leas County Circuit Court,
 " of the February term A.D. 1863
 "Sam L. Porter }
 " ats } Pleas
 "John Dement }

And now comes the said
 "defendant by Barger & Foulke, and Warrin
 "his attorneys and defends the force and vi-
 "jurs, when &c. says that he did not take
 "the Chattels in the said declaration of the
 "said plaintiffs mentioned and set forth,
 "or any or any part thereof, in manner
 "and form as the said plaintiffs have above
 "thereof complained against him; and
 "thereof he puts himself upon the Country &c.
 "And the Pff doth the like
 "Geo O. Goodwin Pffs Atty."

"And for a further plea in this behalf said
 "defendant says that the said chattels in
 "said plaintiffs declaration mentioned, at
 "the said time when &c, were not the
 "property of him the said plaintiff as is
 "in said plaintiffs declaration alleged.

" and of this the defendant puts himself
 " upon the country &c
 " And the Poff doth the like
 " Geo. P. Goodwin Poff Atty "

" And for a further plea in this behalf
 " said defendant says actio non, because
 " he says, that the said Chattels in said
 " plaintiffs declaration mentioned, at the
 " said time when &c, was the property of one
 " George Glenn and not the property of the
 " said plaintiff in manner and form as
 " said plaintiff hath above thereof in his
 " said declaration alleged; and of this the
 " defendant puts himself upon the country &c
 " And the Poff doth the like
 " Geo. P. Goodwin "

" And for a further plea in this behalf
 " said defendant says actio non, because
 " he says that heretofore, to wit; on the
 " twenty third day of June A.D. 1862, in
 " vacation after the May term A.D. 1862. of
 " the said County Circuit Court, one James
 " Durkin, by the consideration of said said
 " County Circuit Court, rendered a judgment
 " against one George Glenn, for the sum
 " of one hundred and seventy two dollars
 " and ninety four cents damages, together

" with the costs of suit in addition thereto;
 " That afterwards, to wit; on the said
 " twenty third day of June A.D., 1862, at
 " and within said County of Lee & State of
 " Illinois a certain writ of Fieri Facias and
 " Fret Bill were duly issued out of the office
 " of the Clerk of said Court, under the seal of
 " said Court, upon said judgment, which
 " said writ of Fieri Facias was directed to the
 " sheriff of said Lee County commanding
 " him that of the Chattle lands and ten-
 " ments of the said George Glenn, in his
 " County he cause to be made the sum of
 " one hundred and seventy two dollars and
 " ninety four cents which the said Conrad
 " Durkes plaintiff lately in said Circuit
 " Court, of said County recovered against the
 " said George Glenn, and the further sum
 " of three dollars and ten cents, which were
 " adjudged to the said Conrad Durkes,
 " plaintiff therein, for his costs and charges
 " in and about his said suit in that he
 " half expended; which said writ of Fieri
 " Facias and fee he afterwards, on the said
 " 23rd day of June A.D., 1862, came to the
 " hands of this defendant, who was then
 " and then the sheriff in and for the County
 " of Lee aforesaid, duly authorized and
 " commissioned, to be executed, and thereby

" then and there beamed a lien upon all and
 " singular the chattels of the said George
 " Glenn, in Lee County, liable to execution,
 " That afterwards, to wit; on the 20th day
 " of September A.D. 1862, this defendant, as
 " Sheriff of the County of Lee aforesaid,
 " proceeded to and did levy the said writ
 " of Fieri Facias and Fecit Breve upon the said
 " chattels in said plaintiffs declaration
 " mentioned, as the property of the said George
 " Glenn, defendant in said writ of Fieri Facias
 " named; which said act of this defen-
 " dant is the one and same taking complain-
 " ed of by said plaintiff in his said decla-
 " ration and not other or different, And
 " the defendant in fact says that the said
 " chattels were then and there liable to be
 " seized and levied upon under and by vir-
 " tue of said writ of Fieri Facias and Fecit Breve
 " as the property of the said George Glenn,
 " and that the same were then and there the
 " chattels of the said George Glenn and not
 " the property of the said plaintiff, and this
 " the defendant is ready to verify, wherefore
 " he prays judgment &c and for a return &c,
 " Burge & Fouke & Harrod
 " Defts Attornies-

And the said pleas are endorsed, to wit;

" Filed February 11th, 1863
 " O. H. Shaw, Clerk
 " For Joseph Ball, D.D. "

And afterwards to wit; on the 14th day of February A.D. 1863. came the said plaintiff by his said attorney, and filed his demurrer to the third plea herein, which demurrer is in the words and figures following, that is to say;

" State of Illinois
 " County of Lee ss. Lee County Circuit Court
 " February Term A.D. 1863
 " John Dement
 " vs
 " Aaron L. Porter

Demurrer to 3^d Plea. And the said plaintiff says that the said third plea to the plaintiff's declaration and the matters setting therein set forth in manner and form, as the same are stated set forth are insufficient in law to preclude the plaintiff from having or maintaining his said suit against said defendant and that he is not bound by law to reply to the same, and that he is ready to verify, wherefore on account of the insufficiency of said pleas the plaintiff prays judgment &c.

Geo. P. Goodwin
 Plff's Atty -

" And for cause of demurrer the plaintiffs shew
 " to the court here that said plea concludes to
 " the country whereas it should conclude with
 " a verification - and that said plea is
 " otherwise informal, insufficient, uncertain &
 " informal

Geo P. Goodwin
 Piffs Atty

And said demurrer is endorsed as follows,
 to wit;

" Filed February 14th 1863

" B. F. Shaw, Clerk

" per Joseph Ball D.C. "

And afterwards, to wit; on the 14th day
 of February A.D. 1863, the same being as
 yet one of the regular days of the said Feb-
 ruary term of said Court, the following pro-
 ceedings were had in said cause, as appears
 to us of record, that is to say;

" John Dement }
 " vs } Replevin.
 " Aaron E. Porter }

" On this day came the said
 " parties to this suit by ^{their} respective counsels,
 " and submit to the court for hearing the de-
 " murrer to the third plea herein"

And afterwards, to wit; on the 16th day of

February A.D. 1863, the same being as yet not
of the regular days of the said February term
of said court, the following proceedings
were had in said court, as appears to us
of record, that is to say;

" John Dement 3
" vs 3 Replevin.
" Aaron L. Porter 3

" On this day again came
" the said parties by their respective counsel,
" and the demurrer to the third plea herein
" is now by the court overruled"

And afterwards, to wit; on the 16th day of
February A.D. 1863, the plaintiff by his
said attorney, filed his replication to the
said fourth plea, in the words and figures
following, that is to say;

" State of Illinois 3
" County of Lee 3 ss. Lee County Circuit Court,
" February Term A.D. 1863.
" John Dement 3
" vs 3
" Aaron L. Porter 3

Replication
to 4th Plea

And for a replication to
the said defendants fourth plea the said
plaintiff saith precludi now because he
saith that the said chattel when so ever
the property of the said plaintiff without

" that they were the property of the said
 " Glenn and of this he puts himself upon
 " the country &c

" And the said defendant doth the like &c
 " *Barger & Foulke & Warren*
 " *Defts Attorneys* "

" And for a further replication to the
 " said fourth plea by leave of the Court first
 " had the said plaintiffs said preclusion
 " because he said that the said Conrad Dur
 " her did not on the said twenty third day
 " of June A.D. 1862, in vacation after the
 " May term A.D. 1862 of the Gen County Cir-
 " cuit Court receive such judgment in
 " manner & form as in said plea alleged
 " and of this he puts himself upon the
 " country &c

" And the defendant doth the like &c
 " *Barger & Foulke & Warren*
 " *Defts Attorneys* "

" And for a further replication by like leave
 " &c the said plaintiffs as to said fourth plea
 " said preclusion because he says that
 " no such writ of Fieri Facias &c has been
 " as in said plea alleged did issue on the
 " said twenty third day of June A.D. 1862
 " and of this he puts himself upon the country &c

19 " And the defendant doth the like &c
" Barger & Foulke & Warren
" Defts Attys "

" And for a further replication to said fourth
" plea by like leave &c the said plaintiffs
" saith precludi now because he saith
" that no such writ on the said 23^d day of
" June A.D. 1862 came to the hands of said
" defendant as in said plea alleged and
" of this the said plaintiffs puts himself
" upon the country &c

" And the defendant doth the like &c
" Barger & Foulke & Warren
" Defts Attorneys "

" And for a further replication to said fourth
" plea by like leave &c the said plaintiffs
" saith precludi now because he saith
" defendant was not on the said twenty
" third day of June A.D. 1862. the Sheriff
" in and for the County of Los Angeles, as
" in said plea alleged and of this he puts
" himself upon the country &c

" And the defendant doth the like &c
" Barger & Foulke & Warren
" Defts Attorneys, "

" And for a further replication to said fourth

"plea by like leave &c the said plaintiff
 "saith precludi now because he saith that
 "the said writ did not thereby then and
 "there becom lie upon all and singular
 "the goods and chattels of the said George
 "Glenn in &c county liable to execution
 "as in said plea alleged and of this he
 "puts himself upon the country &c "

"And for a further replication to said fourth
 "plea by like leave &c the said plaintiff
 "saith precludi now, because he says that
 "the said defendant did not on the 20th
 "day of September A.D. 1862 as sheriff of
 "the County of &c aforesaid proceed to and
 "levy the said writ of Fieri Facias &c &c
 "upon the chattels in said plaintiff's decla-
 "ration mentioned as the property of the said
 "George Glenn, as in said plea alleged
 "and of this he puts himself upon the country
 "&c

"And the defendant doth the like &c
 "Barger & Fouke & Mann
 "Deft's Attorneys "

"And for a further ~~plea~~ replication to said
 "fourth plea by like leave &c the said
 "plaintiff saith precludi now because he
 "saith that the said chattels at the said

20 "time when &c was not the property of the
"said George Glenn as in the said plea al-
"leged and of this he puts himself upon the
"Country &c.

" Geo P. Goodwin,
" Pltffs Atty.

" And the defendant doth the like &c
" Barger & Fouke & Hann
" Deft. Attorneys "

And said applications are endorsed as
follows, to wit;

" Filed Feb. 16th 1863.

" B. F. Shaw Clk.

" pr Joseph Ball D.C. "

And afterwards, to wit; on the 17th day
of February A.D. 1863, the said defendant
files his demurrer to plaintiffs 2^d, 3^d, 4th,
5th, 6th & 7th applications, in the words
and figures following, that is to say;

" State of Illinois

" Les County ^{3rd} In the Les County Circuit Court
" of the February term A.D. 1863.

" Aaron L. Porter

" ^{advs} Demurrer,

" John Dement

" And the said defendant as
" to the said applications of the said plaintiffs

Demurrer to

2^d, 3^d, 4th, 5th,

6th & 7th

Applications

"by him secondly, thirdly, fourthly, fifthly,
 "sixthly & seventhly above replied by him, in
 "manner & form as the same are replied,
 "are not sufficient in law to enable the
 "said plaintiffs to further have or maintain
 "his aforesaid action against the defen-
 "dant and that the said defendant is not
 "bound in law to answer the same, And
 "that he is ready to verify. Wherefore he prays
 "judgment &c.

Barger & Foulke & Warren
 for Defendant

And said demurrer is answered as follows,
 to wit; "Filed Feb 17th, 1863
 "By F. Shaw, Clerk
 "pr Joseph Ball D. C."

And afterwards, to wit; on the 17th day
 of February A.D. 1863, the same being as
 yet one of the regular days of the said
 February term of said Court, the following
 proceedings were had in said Court, as
 appears to us of record, that is to say;

John Dement

as
 Saml. L. Porter

Replevin.

On this day again came
 the said parties by their respective counsel

"and the demurrer to the replication
 "herin filed coming up for hearing the
 "court sustains the said demurrer as to the
 "sixth replication, and annuls the said
 "demurrer as to all the other replications
 "herin"

And afterwards, to wit; on the 18th day
 of February A.D. 1863, the same being as
 yet one of the regular days of the said
 February term of said Court, the following
 proceedings were had in said cause, as
 appears to us of record, that is to say;
 "John Dement ~~~~~
 " vs ~~~~~ Replevin,
 " Aaron L. Porter ~~~~~

" On this day again came the
 "inspection parties to this suit by their respective
 "attornies, and on the motion of said defendant
 "he has leave to file rejoinders herin; and
 "the issues being now joined, this cause is
 "called for trial, and thereupon came a jury
 "of good and lawful men, to wit; Harry
 "Marsh; Lorenzo Bixby; D. B. McKenry;
 "Daniel Barber; John Brown; W. R. Hollis-
 "ter; William E. Ketchum; The Mead; Joseph
 "Smith and George Jones, and the regular
 "panel of jurors being exhausted, the Court
 "directed the Sheriff to call two talemans

" from the bystanders, and the said Sheriff
 " thereupon called Samuel Fargo and Jacob
 " Vertiz, who came, and they, together
 " with the ten jurors of the regular panel
 " were duly elected, tried and sworn, ac-
 " cording to the form of the statute in such
 " case made and provided, and so the
 " trial of this cause proceeds till the hour
 " of adjournment of this Court for this
 " day, when the said jury are dis-
 " missed by the Court, and then directed
 " to separate, and to meet the Court to-mor-
 " row morning at nine o'clock "

And afterwards, to wit; on the 19th day of
 February A.D. 1863. the same being as yet
 one of the regular days of the said February
 term of said Court, the following proceedings
 were had in said cause, as appears to us of
 record, that is to say:

" John Dement

" vs

" Aaron L. Porter

"

Replevin.

On this day again come the
 " respective parties to this suit by their attor-
 " nies aforesaid, also come the jury heretofore
 " empanelled in this behalf, and thereupon
 " the trial of this cause proceeds; and the
 " said jury after hearing the evidence, and

"the argument of counsel return to consider
 "of their verdict; and afterwards on this
 "day again send the said jury into court
 "and return the following verdict, to wit;
 "We the undersigned jurors find the issues
 "for the plaintiff, and assess the damages
 "'at one cent' And thereupon the de-
 "fendant enters his motions in arrest of
 "judgment, and for a new trial herein"

And the said verdict returned by the said
 jury in said cause is in the words and fig-
 ures following, that is to say;

"John Dement

"^{or}
 "Aaron L. Porter

"We the undersigned jurors
 "find the issues for the plaintiff and assess
 "the damages at one cent

"D. B. McKenney

Lymon L. Bixby

"Saml Fargo

Abel Mead

"John Brown

Joseph Smith

"George Jones

Daniel Barber

"Jacob Vertrees

W. R. Hollister

"Henry Marsh

William C. Ketchum "

And said verdict is endorsed as follows, to wit;

"Filed Feb. 19th 1863

"B. F. Shaw, Clerk."

And afterwards, on the 25th day of February A.D. 1863, the same being as yet one of the regular days of said February term of said Court, the following proceedings were had in said cause as appears to us of record, that is to say;

" John Demont
" as Replevin,
" Aaron L. Porter

judgments

" On this day again came the
" said parties to this suit by their counsel afore-
" named, and the motions in arrest of judg-
" ment and for a new trial coming on to
" be heard and by the Court here ordered,
" It is considered and adjudged by the Court
" that the plaintiffs have and receive of the
" said defendant his costs and charges
" by him in and about this suit expended,
" as also one cent his damages in this
" behalf, and that he have execution
" therefor; to all of which the said defendant
" by his counsel then and there excepted;
" and on motion of said defendant he has
" leave to have his Bill of exceptions signed
" in thirty days from this date, and filed
" in this cause "

And afterwards, to wit; on the 5th day of March A.D. 1864, the said defendant filed their Bill of exceptions in said cause, in the words and figures following, that is to say:

Bill of
Exceptions

State of Illinois } In the Lee County Circuit Court
Lee County } of the February Term A.D. 1863

John Pecum }
vs } Replevin
Aaron S. Porter }

Afterwards to wit, at a
Circuit Court held at the Court House in the
City of Dixon in and for the County of Lee
on the _____ day of February A.D. 1863, and
before the Honorable William W. Heaton, Circuit
Judge duly elected to hold the said Circuit
Court, according to the form of the Statute in
such case made and provided, the aforesaid
issue as joined between the said parties as aforesaid
came on to be tried by a jury of the County of
Lee aforesaid, duly impanelled for that purpose
good and lawful men of the said County,
at which day came there as well the said
Plaintiff as the said Defendant by their respect-
ive attorneys aforesaid, and the jurors of the jury
aforesaid impanelled to try the said issue
being called also came and were then and there
in due manner chosen and sworn to try the
same issue, And upon the trial of the said
issue the Counsel for the said Plaintiff, to
maintain and prove the said issue on his
part produced and offered as a witness one
William S. Thompson, who testified that he

said Thompson, was acquainted with the parties to the suit, that he also knew one George Glenn, that said Glenn resided in the same political Township with himself, that he, said Thompson, was in the year ^{A.D.} 1861 an acting Justice of the Peace in and for the Township in which he resided and of the County of Lee, and State of Illinois, that on the 17th of September A.D. 1861, the said George Glenn made and executed a Chattel Mortgage to John Demmitt the Plaintiff in this suit, that said Mortgage was acknowledged before him as a Justice of the Peace, and a list of ^{the} property entered upon his docket, kept for such purpose, which said Docket Entry was and is as follows to wit:

George Glenn	}	Description of property as follows: "One mare of a cream color, seven years old; one horse of a bay color six years old."
to John Demmitt		
		Acknowledged this 17 th day of Sept A.D. 1861
		William S Thompson
		Justice of the Peace.

That some two months after this time, witness was informed by said Glenn, the Mortgagor, that the Mortgage heretofore referred to, had been lost and had not been recovered, and that Glenn requested witness to fill out another Chattel Mortgage of

the same date as the other ^{or} first one, and to
 certify to it as having been acknowledged on
 the same day as the original one. This, said
 witness refused to do on the ground of being conse-
 ciously opposed to make certificates that
 were untrue, but witness told said Glum that
 a copy of the original would answer his purpose
 and he, witness, would fill out a blank and
 certify it as an exact copy of the original, which at
 the request of said Glum, witness proceeded to
 do and make a copy, using the same printed
 form, taking the description of the property from the
 record of witness Chattel Mortgage record, which copy
 was then signed by Glum, and witness Thompson
 entered on the back of the ^{witness} copy, Certificate of
 acknowledgment as ^{the same} now appears, and also
 "certifying this Chattel Mortgage to be an exact
 "copy of one originally made and acknowledged,
 "according to the records of my office. The original
 "Mortgage is said to be lost." The instrument now
 shown witness is the copy then made of the Chattel
 Mortgage, has the signature of said George Glum
 but was never acknowledged by the Mortgagor
 Glum nor was any entry made of the property
 on witness Chattel Mortgage Docket. The only
 entry on witness Docket of said Mortgagor's property
 was made at the time of the acknowledgment
 of the original. The instrument shown witness
 was never acknowledged before him, and no

entry of it made on his Docket, that is to say
 "no new or formal special acknowledgment
 was then made, except as shown by the facts
 above related and no new entry was made
 in my docket," And the Counsel for the
 Plaintiff further to prove the issue upon his
 part produced and offered in evidence a certain
 instrument with the certificate of acknowledg-
 ment and Recording thereon endorsed
 heretofore referred to and being the one shown
 to said witness Thompson, and referred to by
 him in his testimony as a copy of the original
 Chattel Mortgage made by George Glenn
 to said John Cement. Plaintiff in this
 suit which said instrument was, and is
 in the words and figures following to-wit,

This Indenture made and entered into this Seventeenth day of September, in the year of our Lord One Thousand Eight Hundred Sixty one, Between George Glenn of the County of Lee and State of Illinois party of the first part, and John Dement, Dixon, County and State aforesaid party of the second part, —

Witnesseth, that the said party of the first part, for and in consideration of the sum of Two Hundred and fifty Dollars, in hand paid, the receipt whereof is hereby acknowledged, do hereby grant, sell, convey and confirm unto the said party of the second part his and assigns forever, all and singular, the following described Good and Chattels to wit, One cream colored Mare, 8 years old, One Bay Horse, 7 years old, Together with all and singular the appurtenances thereto belonging, or in any wise appertaining, to have and to hold the above described goods and chattels unto the said party of the second part his and assigns forever.

Provided Always, and there presents are upon this Express Condition, that if the said George Glenn his, executors, administrators or assigns shall on or before the 17th day of September A.D. One Thousand Eight Hundred and Sixty three, pay or cause to be paid to the said John Dement, or his lawful attorney or attorneys, heirs, executors, administrators or assigns the sum of Two Hundred and fifty Dollars, together with the Interest that may accrue thereon at the rate of 10 per cent. per annum from the Seventeenth day of September A.D. One Thousand Eight

Hundred and Sixty one until paid, according to
 the tenor of a certain agreement bearing equal date
 with this Mortgage. That then, and from thence-
 forth, these presents and everything herein
 contained, shall cease, and be null and void,
 anything herein contained to the contrary
 notwithstanding. Provided also
 that the said George Glenn may retain the possession
 if and have the use of said goods and chattels until
 the day of payment aforesaid, and also at his own
 expense to keep said Goods and Chattels;
 and also at the expiration of said time of payment
 if said sum of money, together with the Interest as
 aforesaid shall not be paid, to deliver up said
 Goods and Chattels in good Condition to said
 John Dement or his heirs, executors, adminis-
 trators or assigns. And Provided Also that
 if default in payment, as aforesaid by said party of the first
 part shall be made, or if the said party of the second part
 shall at any time before said Agreement becomes due, feel himself
 unsafe or insecure, ^{that} then the said party of the second part, or
 his attorney, agent, assigns, or heirs, executors or administrators
 shall have the right to take possession of said Goods and Chattels wherever
 they may or can be found, and sell the same, at Public or Private sale
 to the highest bidder for cash in hand, after giving ten days
 notice of the time and place of said sale, together with a description
 of the goods and chattels to be sold by at least 3 advertisements
 posted up in Public places in the vicinity where said
 sale is to take place, and proceed to make the sum of money
 and Interest promised, as aforesaid, together with all reasonable costs, charges
 and expenses in so doing; and if there be any surplus, shall pay the same
 without delay to the said party of the first part, or his legal representatives.
 In Testimony whereof the said party of the first part has hereunto set his
 hand and seal the day and year first herein written
 George Glenn Seal

State of Illinois }
County of Lee } S.S.

7

J. William J Thompson
a Justice of the Peace in and for said County
do hereby certify that this Mortgage was duly
acknowledged before me by the above named
George Glenn this Seventeenth day of Septem-
ber A. D. 1861. I also certify this Chattel Mortgage
to be an exact copy of one originally ^{made and} acknowledged
according to the Records of my office. The Original
Mortgage is since the last,

William J Thompson *Just*
Justice of the Peace
Chattel Mortgage
George Glenn
To
John Gemant.
No 8463.

State of Illinois }
County of Lee } S.S.

This instrument was filed
for Record the first day of Jan'y. at the County
Clerk's. 1862, and duly recorded in Book
E of that. Mort's Page 203

Benj: F. Shaw, Recorder.

4.

To the introduction of which said instrument with the enclosures thereon, in evidence the Defendant by his Counsel then and there objected for the reason that it had not been shown by the Plaintiff that the original Chattel Mortgage from Glenn to Dement had been properly recorded and that said original was lost or destroyed. The Certificates of acknowledgment and Recording being admitted to be genuine & signed by the said justice & by B F Sherr the Recorder of said Lee County. Whereupon the Plaintiff John Dement having been first duly sworn testified as follows, That George Glenn made a Chattel Mortgage to him on September A. D. 1861, and sent the same to Dixon by mail to said Plaintiff, and that he, said Plaintiff, had received the same. That he laid it ^{away} among his papers, and that afterward when he went to look for it for the purpose of having it recorded, he could not find it, that his impression was that he had since that time (the time he received it) seen said Mortgage somewhere among his papers but he was not positive, and thought perhaps the same was lost; that he wrote to Glenn that he had lost the Mortgage, and requested him to send him another Mortgage; that the instrument offered in evidence was the paper that Glenn sent in answer to the request and that he Dement took the same to the Recorder

Office and had the same recorded - To the reception
 of said testimony, the defendant by his Counsel then
 and there objected, which objection the Court then and there
 overruled, and allowed the said testimony of said Dement
 to come ⁱⁿ to the Court, & which overruling of the said objection
 the Defendant by his Counsel then and there excepted.

The plaintiff thereupon offered as evidence to the
 Court a written affidavit of which the following is a
 copy, to wit:

State of Illinois	See County Circuit Court
See County	February Term A.D. 1862.
John D. Dement	
Aaron S. Porter	John Dement being duly

sworn doth depose and say that he is the plaintiff in
 the above entitled cause, that the Chattel Mortgage
 offered in Evidence in the above entitled cause is a
 duplicate of an original Chattel Mortgage, executed
 acknowledged and delivered by one George Glum of See
 County in the State of Illinois on the Seventeenth day
 of September A.D. 1861, & this affiant, that said original
 Mortgage, so executed acknowledged was delivered to this
 affiant by said Glum, on or about the said Seventeenth
 day of September A.D. 1861 & immediately thereafter and
 before the said Mortgage was recorded, was lost by this affiant
 and that the Mortgage offered in Evidence was executed,
 acknowledged as this affiant is informed & believes & was
 delivered to this affiant as a duplicate original of said
 lost Mortgage, and by this affiant caused to be duly recorded
 in the records office in and for the County of See and

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State of Illinois as appears by said Mortgage offered in Evidence & the certificate of acknowledgement and recording enclosed on the same John Dement.

Subscribed & Sworn to before me in open Court this 19th day of February, A. D. 1863, Benj. F. Shaw Clerk
for Joseph Ball, D. C.

To the introduction of which said testimony the Defendant by his Counsel then and there objected which, ^{the Court then} ~~the Court then~~ and there overruled which ruling of the Court the Defendant by his Counsel then and there excepted. The Court thereupon allowed said affidavit to be read in Evidence to the Court. The Plaintiff thereupon produced and offered as a witness, George Glenn, the Mortgagor in said Chattel Mortgage; to the introduction of which said Glenn as a witness, the Defendant then and there objected which objection the Court then and there overruled. To which ruling of the Court the defendant by his Counsel then and there excepted. Said witness thereupon testified as follows, after having been duly sworn That he was Mortgagor in the Mortgage offered in Evidence, that he bought a bay horse and cream colored mare of Plaintiff John Dement and gave him his note for \$250, for the same and executed a Chattel Mortgage on the property to secure the same, and acknowledged the same before Squire Thompson & sent it to Dement in a month or six weeks after Dement wrote me that he had lost said Mortgage and wished me to

make and send him a new one. Accordingly went to
 squire Thompson & told him I wanted him to make another
 Mortgage just like the first one & certify to it and enter it
 upon his docket of the same date, this he said did not like
 to do, but said a copy would do as well. He then filled up
 another Mortgage & I signed it & he certified to it & I sent
 it to Plaintiff & which is the same Mortgage now shown to
 me (being the one offered in evidence) that in the month
 of June A.D. 1862 he confessed a judgment in the Le County
 Circuit Court in favor of one Conrad Durkin, that at the
 time of confessing said judgment, and also some two
 or three weeks before, he told Durkin that he had Mortgage
 his team, the same property described in Chattel Mortgage,
 to John Dement to secure the purchase price on said
 team, that Durkin wished witness to secure him his
 debt on said team and he told him he could not do
 so for the reason that it was so mortgaged. To the introduc-
 tion of which said testimony the Defendant by his counsel
 then and there objected, for the reason that it was not the
 best evidence and that the proper foundation for the
 introduction of secondary evidence had not been laid
 and that there was no sufficient evidence before the
 Court to show that said original Mortgage was lost
 & that if lost no copy of the instrument, under the circum-
 stances was admissible, which objection the Court then
 and there overruled, to which ruling of the Court the
 Defendant by his counsel then and there excepted.
 The Plaintiff then offered to read the Chattel Mortgage
 of which the above is a copy, to the jury, to which the

Defendant by his counsel then and there objected which objection the Court then and there overruled, and allowed said instrument to be read, to which ruling of the Court the Defendant then and there excepted. The Plaintiff then recalled George Glenn as a witness who testified that the original Chattel Mortgage was made for a cream colored mare and one bay horse, that some time after the making of the original Mortgage, the said bay horse died, that he purchased said team of John Dement and gave therefor his note for the sum of Two Hundred and fifty dollars, which said note the said Dement still has, and the same is unpaid, that witness was a tenant of said Dement, living on a farm belonging to said Dement in the town of Cagle: that after said bay horse died, said Dement told the witness to take one of the colts of said Dement that were then running on the farm occupied by the witness, and trade him off and get him (witness) another horse to use on said farm, that witness afterwards did trade said colt to one Henry Howard at Dement Station, for a bay horse, and agreed to give the said Howard a plow to boot, between the said horse and colt, and that he gave said Howard an order on said Dement at Dixon for said plow. Said witness also testified that the horse he so got of said Howard, was to light for his work & that he went back to said Howard and asked him to get him a heavier horse in place of the one he so got from him, that said Howard said so, he took back the horse

he so first got from him and got & let him have
 another horse, that witness gave said Howard two
 plows & his note for five dollars for his trouble in
 getting him the last horse & making the
 Exchange, that the last mentioned horse &
 the cream colored mare described in the Mortgage
 are the property now in controversy in this suit
 that the mare and horse in controversy were the
 same that were taken upon the Execution issued on
 a judgment confessed by witness to one Conrad Dukes
 that witness gave the Sheriff a forthcoming or delivery
 bond for said horse and mare, that they were
 in his (witness) possession when levied upon,
 that they were afterwards, on the day they were
 released given up to the said Sheriff by witness
 To the introduction of which said Glenn as a
 witness and the reception of the said testimony
 of said Glenn the Defendant by his counsel
 then and there objected, which objection the
 Court then and there overruled and allowed
 said witness to testify

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and said testimony to go to the jury, to which ruling of the Court the Defendant by his Counsel then and there excepted. And the Defendant, having admitted that the proper demand had been made upon him for the property in controversy, before the bringing of the suit The Plaintiff thereupon rested his case.

The Defendant thereupon to prove the issues on his part introduced as a witness Joseph Ball who being duly sworn testified as follows, That he was Deputy Clerk of the Ill. County Circuit Court, and that as such Clerk he has possession and custody of the Records of said Court, that there was Judgment by Confession upon the Records of said Court, in favor of Conrad Durkes and against George Glenn of which Record the following is a true copy.

United States of America }
 State of Illinois } SS
 County of Lee }

In vacation after a term of the Circuit Court of the said County of Lee, began and held at the Court House in Dixon in said County and State on the first Monday (the same being the fifth day) of May in the year of our Lord One Thousand Eight Hundred and Sixty two.

Present: The Honorable William W. Keaton Judge
 David McKintrey State Atty.
 Aaron S. Porter Sheriff

Attest Benjamin F. Shaw Clerk
 for Joseph Ball D. C.

June 23^d A.D. 1862

Contract Duties
 vs
 George Blinn

Cognovit.

in
 Vacation

And now at this day comes the said Plaintiff by Robert B. Warren Esq. his attorney and files his declaration in an action in the case on promises against the said Defendant and files also three promissory notes, the execution of which is duly proven to the Court (by affidavits on file) in favor of the said Plaintiff and against the said Defendant for the sum of \$172 ⁹⁴/₁₀₀. Thereupon comes also George Blinn in proper person and files his Cognovit by which he waives service of process, and confesses and consents that judgment may be entered in favor of the said Plaintiff and against him the said Defendant for the sum of One Hundred and seventy two Dollars and ninety four cents, it being the amount due upon said note, And the said Defendant releases all errors in entering up this judgment (either in Law or Equity) or in issuing Execution thereon and consents to the issuing of immediate Execution as the same. It is thereupon considered and ordered by the Court,

Execution on F.F., J.A.

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State of Illinois }
 Sec County } ss. The people of the State of Illinois
 to the Sheriff of said County Greeting
 We command you that if the Lands and Tenements
 Goods and Chattels of George Glum Defendant in
 your County you cause to be made the sum of One
 Hundred and Seventy two Dollars and Ninety four cents
 which Conrad Durks Plaintiff lately in the Circuit Court
 of said County after a term thereof begun and held at the City
 of Dixon in said County on the first Monday of May A.D. 1862
 in Vacation Court on the 23^d day of June A.D. 1862 recovered
 against the said Defendant and which by the said
 Court was adjudged to the said Plaintiff for his damages
 in this behalf sustained, upon Cognovit filed in said
 Court. And also the further sum of three Dollars and ten
 cents which were adjudged to the said Plaintiff for his costs
 and charges in that behalf expended, whereof the said
 Defendant is convicted as appears to us of record.
 And have you these moneys ready to render to the said
 Plaintiff for damages and costs aforesaid, and make
 return of this Writ with an endorsement thereon in
 what manner you shall have executed the same in
 ninety days from the date hereof.

Execd of
 Sec Co
 Circuit Court
 1862

Witness Benjamin F. Shaw Clerk
 of our said Court and the Seal thereof at the City of
 Dixon in said County this 23^d day of June A.D. 1862
 Benjamin F. Shaw Clerk
 by Joseph Ball, D.C.

Recd This Execution and Fee
 Bill this 23rd day of June A.D. 1862 at
 9 o'clock P.M. A. S. Porter Sheriff
 W. S. Porter Deputy

State of Illinois
 County of Lee

By virtue of the within
 Execution I have this 20th day of
 September A.D. 1862 levied on the following
 described property (to wit) one cum or cream
 colored mare about nine years old, one bay
 horse with white in the face, and one white
 hind foot, about eight years old

Arson S. Porter Sheriff
 by C. F. Lynn Deputy

After May term A.D. 1862

Execution B. S.

See County Court Court

Fee Book I, page 316

Recd - U. of August page 24

Whole No. in Vacation None

Execution No. 992,

Conrad Dukes

George Glenn

Damages \$172.94

Costs 4.75

The Sheriff will collect interest
 from June 23rd 1862

Benjamin S. Shaw Clerk

C. F. Lynn Attorney

J. S. (over by Clerk)

that the said Plaintiff have and recover of the said defendant his damages & the said sum of One Hundred and Seventy two dollars and ninety four cents, so as aforesaid composed together with his costs and charges by him about this suit in this behalf expended and that he have Execution for the same"

The Defendant then offered in Evidence and read to the Jury the Record of the judgment in favor of Leonard Durkin and against George Glenn Defendant testified to by Joseph Ball, of which the above is a true copy

The Defendant then offered and read in Evidence the Commission of Aaron S Porter the Defendant as Sheriff of Lee County which said Commission was and is in the words, figures and characters as wit

John Wood
Governor of the State of Illinois
To all to whom these presents shall come Greeting
Know Ye that Aaron S Porter, having been duly elected to the office of Sheriff for the County of Lee in State of Illinois
I John Wood Governor of the State of Illinois

for and in behalf of the People of said State
do commission him Sheriff for said County
and ^{do} authorize and Empower him to execute
and fulfil the duties of that office according
to Law

To have and to hold the said
office, with all the rights and emoluments
thereunto legally appertaining, until his
successor shall be duly elected and qualified
to office.

In testimony whereof I have
hereunto set my hand and
caused the Great Seal of
State to be hereunto affixed
Done at the City of Springfield
this 23^d day of November in
the Year of our Lord One Thousand
Eight Hundred and Sixty, and
of the Independence of the United
States the Eightyfirst

By the Governor,
O. M. Hatch
Secretary of State

John Wood

The Defendant then offered and read in evidence
an Execution and Fee Bill, together with the
Encorsement thereon of which the following
is a true Copy - to wit,

Fee Bill - (Confessions)

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State of Illinois

Lee County

ss

In the Circuit Court after May Term A D 1862

In vacation

In the Matter of
 Conrad Durkes
 vs
 George Glenn

Cognovit

Plaintiffs Costs,

Docketing writ 10c; Filing Nov. & Note, 20c Appearance & Stay 15c

45

Motion for judgment, 20c Entering judgment, 23c Docketing judgment 10c

55

Order for Execution 20c, Filing Writ for Execution 5c, Execution 40c

65

Docketing & Filing Execution 15c; Enter, Sheriff's Return 10c; Enter Satisfaction 15c.

40

Order to pay, Costs 20c Making & Enter, Bill Costs 30c, Copy Bill Costs 20c, Certificate & Seal 55c

1,15

Seal of Lee County

Circuit Court

I Benjamin F Shaw Clerk of the Circuit Court of the said County of Lee County do hereby certify that the above is a true copy from my Fee Book of Plaintiffs Costs Given under my hand and the Seal of said Court, Benjamin F Shaw
 in Joseph Ball & Co

State of Illinois

Lee County

ss

In the Circuit Court after May Term A D 1862

in Vacation

In the Matter of
 Conrad Durkes
 vs
 George Glenn

Cognovit

Defendants Costs,

Appearance 5c; Affidavit & Filing 10c Filing Exp. 5c, Entering Confession 5c

40

Making & Entering Bill Costs 30c; Copy Bill Costs 20c; Certificate & Seal 55c

85

Check & Fil. Fee Bill 15c; Entering Sheriff's Return 10c Entering Satisfaction 15c

40

\$1,65

Seal of Lee County

Circuit Court

I Benjamin F Shaw Clerk of the Circuit Court of the said County of Lee County do hereby certify that the above is a true copy from my Fee Book, of Defendants Costs, Given under my hand, and the Seal of said Court

Benjamin F Shaw Clerk
 in Joseph Ball & Co

State of Illinois }
Lee County }

The people of the State of Illinois to the
Sheriff of Lee County Greeting, We command
you that if the within Fee Bill amounting to One Dollar and
Sixty five cents shall not be paid within thirty days after being by you
demanded, you cause the same to be levied on the goods and chattels, lands
and tenements of the said George Gleue in your County, according to
the Statute in such case made and provided, And make return of this
Writ within ninety days as the Law directs, with an endorsement thereon, in
what manner you have executed the same.

Witness Benjamin F. Sherid Clerk of the Circuit Court of said County and
the seal thereof at the City of Dixon in said County this twenty third day of June
A.D. 1862
Benjamin F. Sherid Clerk
per Joseph Ball

Dependants
Fee Bill - Compositions
Lee County Circuit Court

Fee Book F. page 514
Record A page 44
in Vacation
Execution 972

Conrad Durkes
vs
George Gleue

Debt -
Sums \$172.94
Costs 435-

Judgment Rendered June 23 1862
This writ issued
Return Aug. September 22 1862

Robert B. Warren
Atty

Plaintiff
Fee Bill - Compositions
Lee County Circuit Court

Fee Book F. page 316
Record A page 44
in Vacation
Execution 972

Conrad Durkes
vs
George Gleue

Debt -
Sums \$172.94
Costs 310
Costs of App. 65-

Judgment Rendered June 23 1862
This writ issued
Return Aug. September 22 1862

Robert B. Warren
Atty

The Defendant, in order to further prove the issues on his part called Charles F. Lynn as a witness, who being duly sworn testified as follows. —
 "I was in June A.D. 1862 an acting Deputy Sheriff in and for Lee County, in the State of Illinois, acting under Aaron S. Porter the Defendant who was Sheriff. As such Deputy I took the Execution and Fee Bill just offered in Evidence and went ^{up} to the residence of George Glenn in the town of Agle and by virtue of said Execution I levied upon the horse and mare replied by John Demest the Plaintiff in this suit. I found the horse and mare in the possession and use of said Glenn. The endorsement of the levy upon the back of the Execution just offered in Evidence was made by me and is in my hand writing. The horse and mare levied on were the same replied by John Demest from the Defendant).

The Defendant further to maintain the issues on his part, produced as a witness Henry Howard who being duly sworn testified as follows. I am acquainted with George Glenn who has testified as a witness, I traded a bay horse to him for a cow which he said belonged to John Demest. I got a plow & boot, the plow I got of John Demest in Dixon on an order from Glenn, afterwards Glenn told me that the horse I traded him was not heavy enough to do his work, and he wanted me to get him a heavier horse,

I traded him another horse, ^{a bay} both white on his face and a white hind foot, for the one he had at first got of me. I got to boot two plows which I got from Glenn place at Agle and a note for five dollars made by Glenn to me, which note is still unpaid and in my possession.

The Defendant next called George Glenn who testified as follows, that he had had said mare and the bay horse in my possession since I first got them and have used the same as my own.

It was hereupon agreed by the Counsel for the respective parties that the testimony of William S Thompson the witness first called should be considered by the jury without the necessity of recalling said Thompson and ^{also} that the Docket of said Thompson should go to the jury and be considered in Evidence. The Defendant hereupon restated his case. After argument to the jury by the respective Counsel, The Plaintiff by his Counsel asked the Court to instruct the jury as follows

10¹/₁₁ If the jury believe from the Evidence that the witness George Glenn Executor, acknowledged and delivered to the Plaintiff a Chattel Mortgage of the cream colored mare in question and a bay horse which subsequently died, and the Chattel Mortgage offered in Evidence is a Duplicate of said Mortgage, properly acknowledged and recorded, and that Conrad Dukes the Execution Plaintiff and party

in Interest in this suit, before and at the time of the Recording of his judgment, and the issuing of the Execution, and the placing of the same in the hands of the Defendant, as the then Sheriff of the County of Lee in the State of Illinois, had direct and positive notice, that said property was Mortgaged as aforesaid, then they should find the property of said cream colored mare in the Plaintiff provided further that it is proved that said Chattel Mortgage was given and executed in good faith, and for a bona fide consideration

2nd.

The jury are instructed that where personal property has been bona fide Mortgaged for a good & valid consideration, that the property therein passes to the Mortgagee, and if by the Mortgage the Mortgagee has the right to take possession of the property Mortgaged, at any time during the Existence of said Mortgage, that said Mortgagee may deem himself unsafe, then the Mortgagee has at any time the right to reclaim and take the possession of said property, whenever the property may have been levied upon by virtue of any Execution against the Mortgagor unless said Execution shall have been placed in the hands of the proper officer prior to the Recording of such Mortgage duly executed and acknowledged, or actual notice to the judgment creditor of such Mortgage.

If the jury believe from the evidence that the bay horse in question was traced for by property of the Plaintiff, and for the benefit of the Plaintiff, by permission of the Plaintiff then they should find the property of said horse in the Plaintiff although they may believe from the evidence, that the witness Glenn, by or through whom the trace was made for said Plaintiff, may have contributed, himself to induce such ~~to be made~~ to be made.

4th

If the jury believe from the evidence that by the direction of the Plaintiff, the witness George Glenn traced for the bay horse in question with property of the Plaintiff, they should find the property of said ^{bay} horse in the Plaintiff, although the said Glenn may have ever since said horse was so traced for, retained possession of said horse and used the same as his if his son.

5th

The fact if proved that the witness Glenn gave a fourth coming bond, to the officer by whom the property was levied upon, can in no way prejudice or affect the rights of the Plaintiff, if any in said property. To the giving of which said instructions the Defendant by his counsel objected, which objection the Court then and there overruled, and gave said instructions as asked, to which overruling of said objection and the giving of said instructions, the Defendant by his counsel Excepted.

The Defendant then asked the Court to instruct the jury on his part

The jury are instructed that in order to make a Chattel Mortgage valid, good and binding, where the property is left in the possession of the Mortgagor, the Mortgage must be acknowledged by the Mortgagor before a Justice of the Peace of the Election precinct where the Mortgagor resides that said Justice must make and keep a Memorandum of the Mortgage. Together with a description of the property mentioned in the Mortgage, and that the Mortgage thus acknowledged shall be recorded in the Recorders office in the County in which it was made, executed, and acknowledged. And unless the jury believe, from the Evidence, that all the requirements of the Statute have been complied with in reference to the Chattel Mortgage in question, then the jury are at liberty to disregard the same, and it is of no binding force as against this Defendant. Which instruction the Court refused to give as asked, but modified the same by adding thereto -

"Unless the Defendant is shown to have actual notice of such Mortgage, and the right of the Mortgagor against the Mortgagor under such Mortgage" and gave the same to the jury as modified

2^d2^d

That Copies of original papers of the Character of Chattel Mortgages, can only be introduced in trials as Evidence of the contents of the original, when the original being perfect in itself has been lost, and unless the jury believe that the original Mortgage in this case being a good and valid Chattel Mortgage is lost ~~and out~~ of the power of the Plaintiff to produce it, then they must disregard the copy offered in Evidence,

3^d

The jury are instructed that an unacknowledged although recorded copy of an unrecorded Chattel Mortgage is invalid and of no effect as to the rights of creditors and third parties unless possession of the mortgaged property has been delivered to and remained with the Mortgagee.

4th

The jury are instructed on part of Defendant that possession of personal property is prima facie evidence of ownership, and that if such possession is open and apparent, and parties obtain credit upon such appearance of ownership, the real owner of the property who has allowed such possession and apparent ownership cannot claim such property if rights of bona fide creditors have accrued.

5th

That if the jury believe from the Evidence that the bay horse in question was obtained by the witness Glenn and used and held out

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to the world as his own, then said horse is liable to be seized under and by virtue of an Execution against Glenn in favor of his creditors.

c

The jury are instructed that the giving to the Sheriff of a forthcoming bond by an Execution debtor for property levied upon by virtue of an Execution is an admission of the party giving giving such bond that the property in question is his own, and if the jury believe that George Glenn the witness gave such forthcoming bond in reference to the property in question, then said Glenn is estopped, from denying that the property said at the time belong to him.

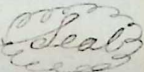
Which said 2nd, 3rd, 4th, 5th & 6th instructions & the first instruction except as modified the Court refused to give, to which refusal of the Court the Defendant by his counsel then and then excepted. The jury was then ordered by the Court to retire and consider of their verdict, and afterwards the jury returned into Court and presented the following as their verdict to wit

John Dement } We the undersigned Jurors
vs Aaron L. Porter } tried the issues for the Plaintiff
and assess the damages at one cent. D. B. McKim,
Samuel Fargo, John Brown, George Jones, Jacob Vetter, Harry Marsh,
Lyman L. Birby, Abel Mead, Joseph Smith, Daniel Barber, W. R.
Hollester, William E. Hutchinson.

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Thereupon the Defendant by his counsel entered his motion for a new trial and in arrest of Judgment, ~~Which motion~~ for a new trial the Court then and there overruled. To which ruling of the said Court the Defendant by his counsel then and there Excepted, Which said motion in arrest of Judgment the Court then and there overruled, to which ruling of the Court the Defendant by his counsel then and there Excepted, & hath 30 days allowed to file his said bill of exceptions.

And because none of the said Exceptions so offered and made to the opinions and decisions of the said Circuit Judge do appear upon the records of the said trial therefore on the prayer of the said Defendant by his counsel the said Circuit Judge hath to this bill of exceptions set his seal according to the Statute in that case made, this 10th day of March A.D. 1863

W. W. Heaton 

Judge

I hereby certify that the above bill of Exceptions but in an imperfect form was presented to me to sign and settle within the 30 days limited in the order for filing the same & that I referred counsel for Dept. to the counsel for plaintiff to agree as to the bill if they could, that not agreeing the bill has remained with me and not settled unto this date

March 5th 1864

W. W. Heaton

Judge

And said Bill of Exceptions is endorsed as follows, to wit;

" Filed March 5th 1864. "

" B. F. Shaw Clerk. "

State of Illinois

Lee County

B. F. Shaw

Clerk of the Circuit Court in and for said County of Lee and State aforesaid, do hereby certify that the foregoing is a full, true and complete exemplification of the Record in said cause, including the Bill of Exceptions filed therein, as appears from the Books and Files yet remaining in my office.



In Testimony whereof I hereunto set my hand and affix the seal of said Court, at my office in Dixon, in said County, this 19th day of March A. D. 1864.

B. F. Shaw. Clerk

By L. A. Divine. Deputy.

Assignments of error.

1st Court erred in allowing written affidavit to be read to Jury Court.

2nd Court erred in allowing copy of chattel mortgage to be read in evidence to Jury.

3rd Court erred in giving plaintiffs instructions and each of them.

4th Court erred in modifying some and in refusing to ~~allow~~ give the rest of defendants instructions.

5th Court erred in ~~refusing~~ overruling motion for new trial.

6th Court erred in overruling motion in arrest of judgment.

7th Court erred in rendering judgment for plaintiff.

Barge & Foubre
Attys for Plaintiffs in Error.

State of Illinois } In Supreme Court
Third Grand Division } To Appear Term 1864

John Bennett
at } Duft in error } finds in error
Aaron Le Postol } self in error }

And now comes

John Bennett Defendant in error
and says there is no error, either in the record
and proceedings aforesaid, or in giving
judgment aforesaid in manner and
form as above alleged, and therefore prays
that the said judgment may be affirmed
and that his costs may be adjudged to him
By George H. Woodruff
for Defendant in error

122 23
Aaron L. Porter
Plaintiff in Error
vs

Porter

John Dement
Defendant in Error
=====

Error to Lee
=====

Filed April 1st 1864
L. Leland
clerk

That said mortgage after the same was so executed and acknowledged and sent to said Dement, and before the same was recorded was lost by said Dement; and the said Glenn, about two months after the execution of said mortgage, at the request of said Dement, caused the Justice of the Peace before whom such mortgage was acknowledged, to fill up another mortgage, using the printed form and taking the description of the property from his chattel mortgage record, and that said Glenn then signed said new

mortgage, the date being same as the original mortgage; but that no new entry was made in said Justice's Docket; that thereupon said Glenn sent said new mortgage to said Dement which was duly recorded in the Recorder's office in and for Lee county, on the 4th day of January, A. D. 1862. That some time after the making of said original mortgage the bay horse died, and that said Glenn, who was a tenant of Dement on a farm of his, was told by said Dement to take one of his (Dement's) colts then running on farm occupied by said Glenn, and trade it off for another horse to use on said farm, which Glenn did, giving an order on Dement for a plow to boot, which was paid by Dement; that afterwards the horse so got in trade for the colt being too light for his work, said Glenn got one Howard with whom the colt had been traded, to take back the bay horse and exchange him for the bay horse in question, and gave him two plows and his own note for five dollars for his trouble in getting him the last horse and making the exchange. Plaintiff in error claims that said last mentioned bay horse and the cream colored mare by levy of execution issued the 23d day of June, A. D. 1862, on a judgment confessed by said Glenn in favor of one Conrad Durkes, in the Lee County Circuit Court, on the same day, the evidence showing that at the time of the confessing of said judgment and also some two or three weeks before, the said Glenn told said Durkes that he (Glenn) had mortgaged his team, the same property described in chattel mortgage to said Dement to secure the purchase price on said team; that said Durkes wished him (Glenn) to secure him (Durkes) his debt on said team, but that Glenn told him (Durkes) he could not do so for the reason, that it was so mortgaged.

To sustain the above statement of the case inasmuch as the abstract of the record filed by the plaintiff in error is not full and is in many respects imperfect as to the evidence of the defendant in error, on the trial below, the defendant in error submits the following further abstracts of the same commencing on the 25th page of said Record.

25 Judgment, Feb. 25th, A. D. 1863, on verdict and for costs. Defendant has 30 days to file Bill of Exceptions.

Bill of Exceptions filed March 5th, 1864.

EVIDENCE.

27 William S. Thompson knows parties; knows one George Glenn; that said Glenn lived in same political township with himself; that he, Thompson, in year 1861, was an acting Justice of the Peace in and for said township, and of the county of Lee, Illinois; that said Glenn on the 17th day

of Sept., 1861, made and executed to John Dement, plaintiff, and acknowledged before him as a Justice of the Peace, a chattel mortgage; that he took such acknowledgment and entered a list of the property on his Docket kept for that purpose.

Description taken from the docket.

28 That some two months afterwards Glenn informed witness that said mortgage had been lost, and had not been recorded, and requested witness to fill out another of same date as first one and to certify it as being acknowledged on same day, as original, which witness refused to do on ground of being conscientiously opposed to making certificates that were not true; that witness told Glenn a copy of the original would answer his purpose; that witness would fill out a blank and certify it as an exact copy of the original, which at request of Glenn, witness did, using the same printed form, taking the description of the property from the record of witness' chattel mortgage record, which copy was then signed by Glenn, and thereupon entered on book of same witness' certificate of acknowledgment as the same now appears, and also "certifying this chattel mortgage to be an exact copy of one originally made and acknowledged according to the records of my office. The original mortgage is said to be lost." The instrument now shown witness is the copy then made of the chattel mortgage, has the signature of said George Glenn, but was never acknowledged by the mortgagor, Glenn, nor was any entry made of the property on witness' chattel mortgage Docket. The only entry on witness' docket of said 29 mortgage property was made at time of acknowledgment of the original; Instrument shown witness was never acknowledged before witness, and no entry of it in his docket; that is to say, "no new or formal acknowledgment was then made except as shown by the facts above recited and no new entry was made in my Docket."

That defendant in error then produced and offered in evidence an instrument with the certificate of acknowledgment and recording thereon endorsed, above referred to and shown to witness, Thompson, and referred to by him in his testimony as a copy of original chattel mortgage made by George Glenn to said John Dement.

80 Instrument offered in evidence, duplicate mortgage to secure \$250, due
33 in two years from date. The certificate of acknowledgment and recording being admitted to be genuine and signed by the said Justice and by B. F. Shaw, the Recorder of said Lee county.

33-34 Affidavit of John Dement to the court as in abstract of plaintiff in error,

34-35 Further written affidavit of John Dement to the court, "that the chattel mortgage offered in evidence is a duplicate of original chattel mortgage

executed, acknowledged and delivered by said Glenn on the 17th day of Sept., A. D. 1861, to affiant; that said original mortgage so executed and acknowledged, was delivered to affiant by said Glenn, and immediately thereafter and before same was recorded was lost by affiant, and that the mortgage offered in evidence was executed, acknowledged, as affiant is informed and believes, and was delivered to affiant as a duplicate original of said lost mortgage and was by affiant caused to be recorded in the Recorder's office in and for Lee county aforesaid, as appears by mortgage offered in evidence, and the certificate of acknowledgment and recording endorsed on same.

- 35 George Glenn, the mortgagor in said Chattel Mortgage, on behalf of Defendant in Error, testified, after being duly sworn, that he was the mortgagor in the mortgage offered in evidence; that he bought a bay horse and cream colored mare of said John Dement, and gave him his note for \$250 for the same, and executed a chattel mortgage on the property to secure the same, and acknowledged the same before Squire Thompson, and sent it to said Dement; that in a month or six weeks thereafter said Dement
- 36 wrote him he had lost said mortgage and wished him said Glenn to make and send him a new one; that he said Glenn went to said Thompson and told him he wanted him to make another mortgage just like the first one, and certify to it and enter it upon his docket of the same date; said Thompson did not like to do that, but said a copy would do as well; that said Thompson then filled up another mortgage, and he Glenn signed it, and Thompson certified to it, and he Glenn sent it to said Dement, which is the same mortgage shown to said witness Glenn, [being the one offered in evidence.] That in June, 1862, he Glenn confessed judgment in the Lee County Circuit Court in favor of Conrad Durkes; that at the time of confessing said judgment, and also some two or three weeks before, he Glenn told Durkes that he had mortgaged his team, the same property described in Chattel Mortgage, to John Dement, to secure the purchase price on said team; that Durkes wished witness Glenn to secure him Durkes his debt, on said team, and he Glenn told him he could not do so for the reason that it was so mortgaged.

36-37 The above instrument offered in evidence; allowed by the court to be read to the jury.

- 37 Said Glenn re-called as a witness for Defendant in Error: testified that sometime after the making of the original mortgage, the said bay horse died; that he bought said team of John Dement and gave therefor his note for \$250, which note said Dement then had, and same is unpaid; that witness was a tenant of said Dement, being on a farm of said Dement in town of Ogle; that after said bay horse died Dement told witness to take one of said Dement's colts, then running on the farm occupied by witness, and

- trade him off and get him witness another horse to use on said farm ; that witness afterwards did trade said colt to one Henry Howard for a bay horse, and agreed to give said Howard a plow to boot, and gave said Howard an order on said Dement at Dixon for said plow ; that horse he got of Howaad was too light for his work, and he went back and asked Howard to get him a heavier horse in place of one got from him ; that
- 38 Howard did so; took back the horse first got from him, and got and let him have another horse ; that witness gave said Howard two plows and his note for five dollars for his trouble in getting him the last horse and making the exchange; that the last mentioned horse, and the cream colored mare described in the mortgage, are the property now in controversy in this suit ; that the mare and horse in controversy were the same that were taken upon the execution issued on judgment confessed by witness to said Conrad Durkes: witness gave Sheriff forthcoming bond for said horse and mare; that they were in his (witness) possession when levied upon; afterwards, on the day of Replevin, they were delivered up to Sheriff by witness.
- 40 Defendant below admits that the proper demand had been made upon him for the property in controversy before the bringing of this suit.

Plaintiff below thereupon rested his case.

On the above statement of the case, and the evidence, it is submitted by the Defendant in error, that the bay horse in question never was the property of Glenn, but was the property of Defendant in error; was traded with his property at his request; and that Glenn was merely permitted to use it in his work.

And that as to the mortgage offered and read in evidence, it was a good and valid mortgage as between the parties to it and was made in good faith, and was good as to all persons except *bona fide* creditors and *bona fide* purchasers.

And as Conrad Durkes, the execution plaintiff and party in interest, before and at the time of the recovery of his judgment and the issuing of the execution thereon, and the placing the same in the hands of the plaintiff in error, (the Sheriff of Lee county,) had direct and positive notice that said property was mortgaged as aforesaid to defendant in error. Plaintiff in error, on his execution, took the title subordinate to such mortgage, the said Durkes not being a bona fide creditor in the sense or meaning of a bona fide creditor, as to the rights of Defendant in error under such mortgage.

It is essential in all cases that the rights and interests of all third persons shall be bona fide in order to prevail against the rights of a bona fide Mortgage, and where such third person at the time of the acquiring of his rights and interests has direct and positive notice of the prior rights of such bona fide mortgage his rights and interests at once cease to be bona fide as against such Mortgage and become subordinate thereto.

The case of Forest et al. vs Tinkham et al. 29 La R. 141. does not apply, as the question of the right to the mortgage property, as between the Mortgage and the purchasers, did not arise at all but the question was, a Bill of Chancery being filed for that purpose, whether Tinkham & Ambler, at the time of purchasing the stock of Goods of Leach Fabian & Ellis, had obligated themselves to pay the mortgage of Forest as a part of the purchase money of said Goods; and the question of Tinkham & Ambler, being bona fide purchasers did not come up in the case at all.

Nor does the question of the bona fides of the purchase seem to have been ^{fully} raised in the cases cited from Maccall by the Plaintiffs in error but the court intimates that to make an unrecorded Mortgage good as against an attacking creditor purchaser the notice if good should be clear and explicit.

The Defendant in error further submits, that the Chattel Mortgage, offered in evidence, being a duplicate original, the description of the property being taken from the Docket of the Justice, taking the acknowledgment of the original, said Justice having entered his certificate of acknowledgment thereon in full, was substantially acknowledged before the said Justice, as required by law, as appears from the whole evidence, the same identical property having already been properly entered and described in said Justice's Docket, as required by the Statute: and was, to all intents and purposes, the same as the original, and would be good and binding, as against the rights and interests of all third persons, whose rights and interests had accrued subsequent to the actual execution and the recording of said Mortgage, as was the case with said Conrad Dukes.

Geo. T. Gordon
Atty for Defendant in error

(In Judge Walker) 122
Supreme Court
Third Hand Division
April Term 1864

Aaron S. Porter ^{Officer}
vs
John Dement ^{Defendant}
Argued & Briefed
Sept in error

Filed Apr 28, 1864
L. Leonard Clerk

Geo. P. Goodwin
Atty for Deft in error

Supreme Court of Illinois,
THIRD GRAND DIVISION.

APRIL TERM, A. D., 1864.

AARON L. PORTER, PLAINTIFF IN ERROR,

vs.

JOHN DEMENT, DEFENDANT IN ERROR.

Brief for Plaintiff in Error.

The evidence in the bill of exceptions shows that, on the 17th day of September, A. D., 1861, George Glenn executed and delivered a chattle mortgage on one cream-colored mare and one bay horse, to John Dement, defendant in error, plaintiff below, which said chattel mortgage was acknowledged by said Glenn before one William S. Thompson, then an acting Justice of the Peace in and for the election precinct in the County of Lee and State of Illinois, in which said George Glenn resided, on the same day of its execution; that about two months afterwards said Glenn informed said Thompson that said chattel mortgage was lost and had never been recorded, and that he, said Glenn, wanted said Thompson to fill out another chattel mortgage on the same property and

to certify it as having been acknowledged on the same day as the original one, which said Thompson refused to do, "on the grounds that he was conscientiously opposed to making certificates that were untrue; but told said Glenn that if a copy of the original would answer his purpose, he would fill out a blank and certify it as an exact copy of the original," which, at the request of said Glenn, said Thompson did fill up a blank of the same printed form with the contents of the original, but the indorsement thereon was not like the indorsement upon the original; that the said pretended copy was signed, but never acknowledged by said Glenn, nor was there any entry or memorandum of the property mentioned in said pretended copy made in said Thompson's Justice's Docket; that said Glenn afterwards sent said so called copy to said plaintiff, John Dement, who caused the same to be recorded in the Recorder's Office of said Lee County, on the 4th day of January, A. D., 1862; that on the 20th day of September, A. D., 1862, plaintiff in error, defendant below, who was then the acting Sheriff in and for the County of Lee and State of Illinois, levied upon and took, as the property of said George Glenn, the cream-colored mare and the bay horse in question, under and by virtue of an execution and fee bill issued out of the Lee County Circuit Court, in favor of Conrad Durkes, and against said George Glenn; that the said cream-colored mare and bay horse, mentioned in said chattel mortgage and pretended copy, were in the possession of said George Glenn at the time of the making of said chattel mortgage and at the time of making said pretended copy; that said cream-colored mare continued to remain in and was in said Glenn's possession at the time of said levy and taking; that some time after the execution of said chattel mortgage and pretended copy, the bay-horse mentioned in the original chattel mortgage, died; and that the bay horse now in controversy

is one that said Glenn obtained of one Howard in exchange for another horse, two plows and the individual note of said Glenn; that said Glenn had the property in question in his possession, used it as his own, exchanged and traded it, and when taken by defendant below on said execution and fee bill, gave a forth coming bond for the delivery of said property to said Sheriff.

The record shows that on the trial of said cause, which was an action of replevin, at the February Term of the Lee County Circuit Court, A. D., 1863, defendant in error, plaintiff below, offered and read in evidence to the jury the said pretended copy of said chattel mortgage, together with the endorsement thereon, made as aforesaid, and to the introduction of which, as evidence, the plaintiff in error, defendant below, objected, which objection the Court overruled and to which ruling of the Court, the defendant below excepted, upon the following grounds and for the following reasons :

I.

To make a chattel mortgage valid, good and binding, as to creditors and third persons, where the property is left in the possession of the mortgagor, the mortgage must be acknowledged before a Justice of the Peace in the justice's district in which the mortgagor resides; certified to by said Justice, who shall make and keep a memorandum of the mortgage together with a description of the property mentioned in the mortgage, and the mortgage thus acknowledged must be recorded in the Recorder's Office in the county in which the mortgagor resides.

The chattel mortgage from George Glenn to John Dement, defendant in error, made, executed and acknowledged on the 17th day of September, A. D., 1861, was never recorded, and was therefore worthless so far as the rights of creditors and third persons are concerned, and inadmissible as evidence.— Revised Statutes, State's Com., p. 814, §3, "Any mortgage of personal property, so certified, shall be admitted to record by the recorder of the county in which the mortgagor shall reside at the time when the same is made, acknowledged and recorded; and shall, thereupon, if *bona fide*, be good and valid from the time it is so recorded, for a space of time not exceeding two years, notwithstanding the property mortgaged or conveyed by deed of trust, may be left in the possession of the mortgagor; *Provided*, that such conveyance shall provide for the possession of the property so to remain with the mortgagor." 18 Ill., 401.

The case of *Forest et. al. vs. Tinkham et. al.* 29 Ills., 141, decides that an unrecorded and unacknowledged chattel mortgage is void as to creditors and third persons.

II.

A copy of a chattel mortgage is only admissible in evidence, when the original is perfect in and of itself, and complies with all the requirements of the Statute in relation to chattel mortgages, and is lost and cannot be produced. The original chattel mortgage from George Glenn to John Dement, never having been recorded, was void and worthless as to creditors and third persons, and no copy thereof can be used in evidence on the trial of this cause.

Revised Statutes, Seate's Com., p. 814, §4, "A copy of any such mortgage made, acknowledged and recorded as aforesaid, certified by the proper recorder from the proper record may be read in evidence in any Court of this State, without any further proof of the execution of its original, if said original be lost or out of the power of the person wishing to use it."

III.

The instrument of writing used in evidence in the Court below on the trial of this cause, was not a copy of the record, but a pretended copy or "duplicate" or "duplicate original" of the original chattel mortgage, which was never recorded.— The copy contemplated by the chattel mortgage act, is a copy of the record and not a copy or duplicate or duplicate original of the original. The law provides for recording original chattel mortgages, and allows a copy of the record of an original chattel mortgage to be used in evidence under certain circumstances; but makes no provision for the recording of copies or duplicates or "duplicate originals" of chattel mortgages; nor does it allow copies of copies or copies of duplicates or of "duplicate originals," or copies or duplicates or duplicate originals themselves to be used in evidence under any circumstances, whatever. Duplicate and duplicate originals are terms unknown to the law of chattel mortgages.

Rev. Stat. Seate's Comp., p. 814, §4, §5.

IV.

The chattel mortgage act must be strictly complied with.—
The case of *Hunt vs. Bullock et al.*, 23 Ills., 320, decides that corporations as well as individuals, can only mortgage property by conforming strictly to the statute in reference to chattel mortgages.

V.

The recording of a chattel mortgage is an indispensable requisite to the validity of the mortgage, where the rights of creditors and third persons are involved; as much so as any other requirement of the chattel mortgage act. The validity of the Mortgage commences with the date of its record.

Rev. Stat. State's Comp., p. 813, 814, §2, §3, §4.

Forest et al. vs. Tinkham et al., 29 Ills., 141.

In *Travis vs. Bishop*, Met. 304, the court says: "There having been no delivery of the horse and no registration of the mortgage, the plaintiff had not established his claim to the property, so as to maintain this action against the defendant who claims under a sale and delivery and is not a party to the mortgage."

The court, in *Forest et al. vs. Tinkham et al.* 29 Ills., 141, says: "The mortgage was not acknowledged before a Justice of the Peace of the precinct in which the mortgagors resided. It was not recorded, nor had the mortgagee acquired possession when Tinkham and Ambler purchased of mortgagors. Failing in these requirements, whilst it was binding upon the parties to it, yet it was void as to third persons."

VI.

Where the original chattel mortgage, if in existence, would, itself, be inadmissible as evidence, it is absurd, contrary to reason and a palpable violation of law, to admit a copy, a duplicate or a duplicate original. This is doing indirectly what the law will not allow to be done directly.

VII.

The instrument of writing introduced and read in evidence to the jury on the trial of this cause in the court below, was not a duplicate nor a "duplicate original," nor a copy of the original; because the indorsements upon the one are not like those upon the other, nor were the instruments themselves made at the same time. See testimony of William S. Thompson and copy of said instrument of writing read in evidence.

For one thing to be a copy, or a duplicate, or a "duplicate original" of another, it must correspond exactly to the first or original. It must be a second of the same kind; a transcript precisely of the first or original, and must, to be a duplicate or duplicate original, be made and executed at the same time with the first or original, and must declare upon its face that it is done or executed in duplicate.

Webster's Dictionary, 1 *Bouv. Law Dict.* p. 313.

² *Jacob's Law Dictionary*, 327, 67,

¹ *Tomlin's Law Dict.* 417, 590.

VIII.

The object of the legislature in requiring the execution, acknowledgement and record of chattel mortgages in the manner prescribed by the chattel mortgage act, was, evidently, to protect creditors and purchasers, acting in good faith by notifying them of the condition of the property. The law made it the imperative duty of parties to a chattel mortgage, to give notice of the existence of such mortgage, in the manner pointed out by the Statute concerning chattel mortgages; and creditors and purchasers, acting in good faith are not bound by notice given in any other manner. The reason for this rule is apparant from the fact that, were the rule otherwise, a mortgagor might, by falsely representing the property as being mortgaged, delay or defeat the payment of the debt of the execution creditor.

Forest et. al. vs. Tinkham et. al., 29 Ills., 141.

Smith vs. Moore, 11 New Hamp. 55.

Travis vs. Bishop, 13 Met., 304. This case decides that, a party who buys mortgaged personal property in the possession of the mortgagor, the mortgage not benig recorded, and takes possession of it, though he has knowledge of the mortgage, will hold the property against the mortgagee.—Denney vs. Lincoln, 13th. Met. 200, decides that an actual notice to a creditor, of an unrecorded mortgage of personal property of his debtor, does not debar him from taking such property by attachment or execution.

IX.

Possession of personal property is *prima facie* evidence of ownership. And the facts that the execution debtor, George Glenn, obtained the bay horse now in controversy, in exchange for other property and the individual note of said Glenn; that he used and traded him as his own; that he had him in his possession and gave a forth coming bond for the delivery of said horses at the time of the levy of the execution and fee bill, clearly show said Glenn to be the owner of said property and enstop him from denying the ownership thereof after the levy of the execution and fee bill.

1 *Parson's on Contracts*, 442.

1 *Scem.*, 296, 2 *Kent's Com.* 552.

BARGE & FOUKE,

Att'ys for Plaintiff in Error.

*Conrad Durbin was a bona fide creditor
and acted in good faith, see Abstract of
record & record.*

*Bill of exceptions ^{properly} filed filed, see
Certificate of Hon. W. W. Weston, Judge of
the Co. Cir. Court, on 55 p. of Record*

Supreme Court.

Third Grand Division

April Term A.D. 1864

Sam L. Porter, Plaintiff in Error.

vs.

John Bennett, Defendant in Error

Error to Lic.

Brief & Points for Plaintiff in Error

I filed Apr 20. 1864

I signed etc

Barge & Foulke

Attys for Plaintiff in Error

...the loss of the execution and the bill ...
...the bill clearly show said Glenn to be the owner of ...
...the title of the loss of the execution ...
...the bill clearly show said Glenn to be the owner of ...
...the title of the loss of the execution ...

I have on Company 4th ...
I have on Company 4th ...

...the loss of the execution and the bill ...