

14757

No. _____

Supreme Court of Illinois

Brownell

vs.

Dixon

STATE OF ILLINOIS,
SUPREME COURT,
THIRD GRAND DIVISION.

No. 43

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

Drumrell
25
Lawson

State of Illinois

Supreme Court 3d Term
Session

Attorney April Term 1864

William B. Connelly

vs
Normal Division } Appeal from
the 11th Circuit
Court.

First In this case the Appellant assigns
the following errors upon the record,
The Court & need to the prejudice
of Appellant, in giving the instructions
for Defendant below.

Second The Court & need to the prejudice of
Appellant, in giving the 6th instruction
for the Defendant below.

Third The Court & need to the prejudice of the
Appellant in overruling motion for new
trial.

For these errors, the case should be reversed
and remanded.

R. E. Williams and
J. Lewis Counsel for
Appellant.

And the defendant in error by C. H. Moore
his attorney Counsel says there is no error in
this record

C. H. Moore

1 Pleas continued and held at the Court House
in Bloomington in and for the County of McLean
in the Eighth Judicial Circuit of the State of
Illinois. before the Hon. John M. Scott. Judge of the
Circuit Court of said Circuit. in a certain cause there-
-in pending wherein William Brownell was Plaintiff
and Norval Dixon was Defendant.

State of Illinois *Jss*
McLean County *D* Be it remembered that heretofore.
to wit. on the 19th day of August A.D. 1863. came
William Brownell by James S. Ewing his attorney. and
filed in the office of the Clerk of the Circuit Court of
said County an affidavit for a writ of Replevin. which
affidavit was in words and figures as follows. to wit.

Affidavit State of Illinois *Jss*
McLean County *D* William Brownell being duly sworn
according to law. deposes and swears that he is the owner
of Two certain Billiard Tables & is lawfully entitled to
the possession of the same. That the said Tables are now
in the possession of one Norval Dixon. Sheriff of McLean
County. and by him unlawfully withheld from the possession
of deponent. That the said property was not 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 & chattels of deponent. liable to
execution or attachment. That the said property is
reasonably worth \$800. & is taken to satisfy a debt

of one B. W. Gays of about One Hundred Dollars & further says not.

Subscribed & sworn to before

W^m. Brownell.

me. Aug. 19th 1863

Luman Burr. clk.

And thereupon there issued out of said Circuit Court a Writ of Replevin in words and figures as follows, to wit.

Writ-

State of Illinois

McLean County

ss

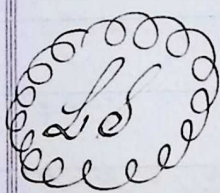
The People of the State of Illinois.

To the Coroner of McLean County - Greeting -

If William Brownell of the said County shall give you Bond with good and sufficient security to prosecute his suit to effect, and without delay, and to make return of the following described goods and chattels, the property of him the said William Brownell, to wit: Two Billiard Tables of the value of Eight Hundred Dollars which Norval Dixon, Sheriff of McLean County, also of said County, took and unjustly detains against wages and pledges as he saith - if return thereof shall be awarded, and further to save and keep you harmless in replevying said property - then you are to cause the said Goods and Chattels to be replevied and delivered to the said William Brownell without delay, and to summon the said Norval Dixon personally to be and appear before our Circuit Court in and for said County on the first day of the next term thereof, to be holden at the Court House in Bloomington on the first Monday in the month of September next, to answer

50. ct.
Rev
Stamp

to the plaint of the said William Brownell for taking and unjustly detaining the goods and chattels aforesaid. And make due return of the Bond to be taken from said Plaintiff as aforesaid to the Clerk of our said Court. together with this writ. with an endorsement thereon as to the manner in which you may execute the same.



Witness Luman Burr. Clerk of our said Court and the seal thereof hereto affixed at Bloomington this 19th day of August in the year of our Lord One Thousand Eight Hundred and sixty three.

Luman Burr. Clerk.

which said writ. was by the Coroner of said County. returned into said Court. endorsed as follows. to wit.

Return. Augst. 24th. 1863. Executed the within writ by delivering the within named stable to William Brownell. and by releasing the within to Noural Dixon. Bond. 50

Serving 50

mil - Return $\frac{15}{115}$

W^m Matthews. Coroner.

And afterwards. to wit. on the 26th day of August A.D. 1863. came the said Plaintiff by his attorney and filed his Declaration against said Defendant in this cause. which Declaration was in words and figures as follows. to wit.

Declaration State of Illinois

McLean County In the McLean County Circuit Court.

Of the September Term. A. D. 1863.

Norval Dixon. the Defendant in this suit was summoned to answer William Brownell the Plaintiff in this suit of a plea wherefore he took the goods & chattels of the said William Brownell. and unjustly detained the same against sureties and pledges. until &c.

And thereupon the said William Brownell by James S. Ewing his attorney. complains. For that the said Norval Dixon the Defendant. on the 19th day of August. A. D. 1863. in the City of Bloomington in the County of McLean. in a certain Saloon there. known as the Ashley House Saloon, took the Goods & Chattels. to wit. two certain Billiard Tables of said Plaintiff. of great value. to wit. of the value of Eight hundred Dollars. and unjustly detained the same against sureties and pledges. until &c. Wherefore the said Plaintiff saith that he is injured and hath sustained damage to the amount of Two Hundred Dollars. & therefore he saith &c.

Jas. S. Ewing.

Atty for Plff-

And afterwards. at the September Term of said Circuit Court. to wit. on the 11th day of September A. D. 1863. the following proceedings were had in this cause as appears of record. to wit.

Order of Court - William Brownell

vs

Norval Dixon

In Replevin.

And now at this day comes the said Defendant by his attorney and moves the Court to dismiss

This suit for want of a Replevin Bond filed herein.
and thereupon. on motion of said Plaintiff by his attorney.
the Coroner of this County is by the Court ruled to file the
Replevin Bond taken by him in this cause. instantler.

And thereupon. afterwards. to wit. on the 14th day of Septem-
ber A. D. 1863. came the Coroner of said County. and filed
in this cause a Replevin Bond. which Bond was in words
and figures as follows. to wit.

Replevin Bond.

Know all men by these presents. that we. E. C. Ryck. J^m.
Coroner of the County of McLean and State of Illinois. are held
and firmly bound unto J^m. Matthews. Coroner of said County
and State aforesaid. in the penal sum of sixteen hundred
Dollars. current money of the United States. for the payment
of which well and truly to be made and performed. we bind our-
selves. each of us. our heirs. executors and administrators. jointly
severally and firmly by these presents.

Witness our hands and seal this 19th day of Aug. A. D. 1863.

The condition of the above obligation is such. that whereas the
above bound William Brownell has commenced an action of
Replevin against Norval Dixon. the Sheriff. in the Circuit Court
of said County for the taking and unjustly detaining of the fol-
lowing goods and chattels to wit. Two Billiard Tables. the
property of him the said William Brownell as he saith.

Now if the said William Brownell shall personally be and appear
before the said Circuit Court on the first day of the next term
thereof to be holden at the Court house in Bloomington in said
County on the 1st Monday in the month of September next. and

shall then and there prove unto his said suit to effect and without delay, and doth make return of this said property to the said Norval Dixon, if return thereof shall be awarded by the said Circuit Court, and shall save and keep harmless the said Coroner in replevying said property, and shall pay all costs, in case he shall fail to prosecute said suit to effect, then this obligation to be void, otherwise to be in full force and virtue.

Taken by me this 24th day of
August A.D. 1863.

Wm. Matthews, Coroner

Wm. Brownell

E. C. Hoyle

R. C. Bond

And thereupon afterwards, to wit, on the said 14th day of September A.D. 1862, came the said Defendant and filed his plea to said Plaintiff's Declaration, which plea was in the words and figures following, to wit.

Pleas.

Norval Dixon

vs

William Brownell

In Reply.

And now comes the Defendant by his attorney, and defends the wrong and injury, when &c. and for plea in this behalf says actio non, because he says, that the property in said Plaintiff's Declaration mentioned, at the time and place when & where &c. was not the property of the said Plaintiff, and of this he puts himself upon the Country &c.

And for a further plea in this behalf, Defendant says that ~~they are~~ the goods & chattels in the said Declaration mentioned at the time when &c. was the property of one Byron V. Gray, without this

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that the property of the said Goods & chattels or any part thereof at the time when &c. was in the said Plaintiff, as by the said Declaration is above supposed, and this the Defendant is ready to verify, wherefore he prays judgment &c.

And for a further plea in this behalf Defendant avers the taking of the said Goods & chattels, at the time when &c. and the detention thereof, but justly - because he says, that at said time and place, and for a long time thencefore, he was and had been acting in the capacity of Sheriff of said County of McLean & State of Illinois, and as such Sheriff, he took said goods & chattels and detained the same by virtue of an execution issued out of this Honorable Court on the 29th day of May, A.D. 1863, and directed to the Sheriff of said County to execute - upon a judgment of record in said Court, in favor of one Thomas Ashley and against Byron W. Gray for the sum of \$88⁰⁰ and costs of suit, and that said Goods & Chattels were the property of B. W. Gray and this he is ready to verify, wherefore he prays judgment &c.

And for a further plea in this behalf, Defendant says he did not take and unjustly detain the Goods and Chattels in the Pltffs. said Declaration mentioned, in manner and form as the said Pltffs. hath above in his said Declaration thereof set forth and alleged against him, and of this he puts himself upon the Country &c.

Pickard. Atty for Defalt.

And thereupon afterwards, to wit, on the 16th day of September A.D. 1863, came the said Plaintiff by his attorney and filed herein his Demand to said Defendants 3^d Plea in this

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cause. which Demure was in words and figures as follows.
to wit.

Demure

William Brownell

vs

Norval Dixon

In Replevin.

And the said Plaintiff as to the said
Plea by him thrice above pleaded. says that the same. and
the matters therein contained. in manner and form as the same
are above pleaded & set forth. are not sufficient in law to bar
or preclude him. the said Plaintiff from having & maintaining
his aforesaid action thereof against the said Defendant. and
that he. the said Plaintiff is not bound to answer the same.
And this he. the said Plaintiff is ready to verify. wherefore by
reason of the insufficiency of the said Plea in this behalf the
said Plaintiff prays judgment &c.

Lat. S. Eving.

Atty. for Plff.

And thereupon. at said September term of said Court. to wit.
on the 17th day of September A.D. 1865. the following order
was made by said Court in this cause. as appears of record. to wit.

Order of Court

William Brownell

vs

Norval Dixon

In Replevin.

And now at this day comes the said
Defendant by his attorney. and the said Plaintiff having filed
his Demure to said Defendants 3^d Plea in this cause -

now comes said Defendant and confesses said Demurrer -
and on motion of said Defendant leave is granted him by the
Court to amend his said 3^d Plea.

And thereupon on said 17th day of September A.D. 1863. came
the said Plaintiff by his attorney and filed herein his Replic-
ations to said Defendants Pleas. which Replications were in
words and figures as follows. to wit.

William Brownell

Replications

vs

Samuel Dixon

In Reply.

And the said Plaintiff by his attorney
as to the first plea of the said Defendant by him pleaded
& whereof he puts himself upon the Country - doth the like.

And the said Plaintiff by his attorney as to the said plea
of the said Defendant. by him secondly also pleaded. says
precludi non. because he says, that the said Goods & chattels.
in said Plaintiffs Declaration mentioned. were not the goods
& chattels or property of B. W. Gray, and of this he puts himself
upon the Country -

And Defendant doth the like.

Packard. Atty.

And the said Plaintiff by his attorney as to the said fourth
plea of Defendant by him pleaded, and whereof he puts
himself upon the Country - doth the like.

Geo. S. Ewing

Atty for Plff.

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And the said Plaintiff by his attorney, as to the said amended plea. by him thereto above pleaded. says precludi non. because he says. that the said Defendant is Sheriff &c. as he in said plea hath alledged. but that the said Goods & Chattels in said Declaration mentioned. are & were not the property of the said B. W. Gray. & of this Plaintiff puts himself upon the country.

Las. S. Ewing

and Defendant doth the like.

Atty. for Pltff

Packard. Atty.

And afterwards at said September Term of said Court. to wit. on the 23^d. day of September A. D. 1863. this cause came on for trial.

Present.

Hon. John M. Scott. Presiding Judge.

Human Burr. Clerk.

Norval Dixon. Sheriff.

and the following proceedings were had. as appears of record to wit.

William Brownell

vs

Norval Dixon

In Replevin.

And now at this day come again the parties hereto by their attorneys. and this cause now coming on for trial. thereupon comes a Jury. twelve good and lawful men. to wit. Robert Dowthett. Samuel White William Murphy. F. R. Cowden. C. B. Land. James Swain. John Graham. Thomas J. Stringfield. James Brown. D. A.

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Jury. John M. Stansbury. & E. T. Hazle. who are duly
empannelled and sworn. to well and truly try the issues herein
joined. and a true verdict render according to the evidence.
and the Jurors aforesaid having heard the evidence produced
and the arguments of counsel. upon their oaths do say. that
they find the issues for the Defendant. and now comes the
said Plaintiff by his attorneys. and moves the Court to set aside
the verdict of the Jury aforesaid and to grant a new trial of this
cause

And afterwards. at said September term of said Court. to wit
on the 25th day of September A. D. 1863. final Judgment
was rendered in this cause by said Court. as appears of record
in words and figure as follows. to wit.

William Brownell

vs

Norval Dixon

In Replevin.

And now at this day again come the
parties hereto by their attorneys. and the motion for a new trial
herein-before entered by said Plaintiff now coming on to be heard
before the Court is argued by counsel. And the Court being
fully advised in the premises. doth consider that said motion be
overruled. It is therefore considered by the Court that said
Defendant be hereof discharged. and that he have a return of
the property heretofore claimed from him by said Plaintiff
to wit. Two Billiard Tables. and that a writ de retorno
habendo issue to compel the return of said property. and
that said Defendant recover of and from said Plaintiff

his costs by him in this behalf expended and that execution
issue therefor. And now comes said Plaintiff by his attor-
ney, and prays an appeal to the Supreme Court of this State,
and the same is granted upon said Plaintiff giving Bond
conditioned as the law directs in the sum of Three Hundred
Dollars, with Elisha B. Steere as security.

And thereupon afterwards, at said September Term of said
Court, to wit, on the 3^d day of October, A.D. 1863, came the
said Plaintiff by his attorney, and filed in this cause his
Bill of Exceptions, which Bill of Exceptions was in words and
figures as follows, to wit.

State of Illinois	}	In the McLean County Circuit Court.
County of McLean		September Term, A.D. 1863.
William Brewster	}	In Replevin.
vs		
Marshall Dixon	}	

Be it remembered, that on the
trial of this cause, on behalf of Plaintiff, Elisha B. Steere
was introduced & sworn, who testified on his direct examination
that on the 20th day of February, A.D. 1863, witness gave as a
present to Mrs. Clarissa F. Gray, wife of B. V. Gray, his witness,
four promissory notes, each for (\$1000) One Thousand Dollars,
dated on said 20th February 1863, & due in four, six, eight &
twelve months, respectively after date, all payable at the
Home Bank in Bloomington, with seven per cent interest
from date. That he paid the first note at maturity at the
Home Bank. That he paid the second note partly before

maturity in taking up bills of Gray's family made with stores &c for family supplies &c. That witness had written authority from Mrs. Gray to do so & it was by arrangement with Mrs. Gray that he should take up these bills in this way, and he paid the bal- of second note at maturity in money. That this money was a gift. That Mrs. Gray was his wife's sister. That B. W. Gray, died on or about the 7th July 1863. & that a few days after Gray's death Mrs. Gray sold the saloon including the property in controversy in this suit, as part thereof to Plaintiff. That witness in connection with Loveland of New-York, also a brother-in-law of Mrs. Gray, acted as agent for Mrs. Gray, in making the sale to Plaintiff & took Plaintiff's notes to Mrs. Gray for about \$1800 - two of which notes have been paid to witness, and he now holds the money subject to Mrs. Gray's order & for her. Plaintiff has had the property in controversy in this suit, in possession ever since the purchase by Plaintiff from Mrs. Gray. That witness was absent in New-York, at the time of the purported sale by Lovell & Thompson, - that witness was occasionally in the saloon prior to the sale by Mrs. Gray to Plaintiff & saw B. W. Gray there, who seemed to have charge & control of matters there.

On cross examination witness testified, I purchased his stock of Goods in Bloomington in _____ for 50¢ on the Dollar. The purchase amounted to \$24000. - first gave Gray my notes for the purchase. Afterwards went to N. Y. and bought up Gray's notes for 40¢ on the Dollar and made the exchange with Gray. After purchasing these goods, they advanced in value & I made a good thing on the purchase. I made to Mrs. Gray - wife of B. W. Gray, who is my sister in law a present of \$4000. I gave her my four notes

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each for \$1000. with 7 per cent. due on time. have paid
two the notes. one at the Bank of Bloomington. all at once
with my check. the other I paid at different times. Gray
bought out the Saloon including the Billiard tables. for
Brownell. - was not present when trade was made - I furnished
Brownell the money to pay the last payment on tables & he has
paid me back. - Gray took possession of the Saloon & carried
it on until he was taken sick immediately before his death.
On the second note made to Mrs. Gray. I paid sums of money.
sometimes to B. W. Gray & sometimes to his wife - don't know
that I ever saw the notes made to Mrs. Gray. in the possession of
B. W. Gray - Gray had not much money at this time. I kept
him in the Store for some time at \$65 per month. but did not
think he was worth it to me. and told him he must leave.
which he did - don't know whether or not I have paid the
whole \$2400. that the goods came to. to Grays creditors. - think
I have. but cannot tell without my books - It would take me
two or three hours to look my books over and find out - Gray
died July - 1863. - We were not on good terms for some time be-
fore he died & I had little or nothing to do with him.
On re-examination. testified.

That witness was residing in a town in Western
New York where witness had been doing business as a merchant
for a number of years. That the first he knew of Grays embarras-
-ment, a messenger came to him from Grays New York City
creditors informing him of Grays condition, to go out to Bloomington
& lay out Grays stock at fifty cents on the Dollar & pay them
the amount - that at first. witness was not inclined to have any
thing to do with the matter. but was afterwards induced to go to

New York and see Grays creditors - That he had a conference with Grays creditors - remained in New York several days, but made no arrangement - finally returned home without any intention of doing any thing in the matter - Shortly after returning home, witness was sent for by Grays New York creditors, and a large majority of them, the creditors, urged witness to come to Bloomington & take the stock of Gray at fifty cents on the Dollar of their cost & pay the creditors the amount - and that witness at the urgent solicitation of said creditors finally consented to do so - did come out to Bloomington - invoice the goods and take them & gave witness' notes to B. W. Gray for the amount, & in a short time witness went on to New York - saw the creditors of Gray - All but two or three of Grays creditors gave up Grays paper & took witness' paper in lieu thereof at 40 cents on the Dollar - That two or three creditors refused to enter into this arrangement - and that witness gave his paper to the other creditors assenting to the full amount of all the purchase money of Grays stock & that witness has since paid off all witness' notes so given - That on witness' return with Grays paper, witness took witness' notes to Gray for the stock therewith, That the trade with Gray was an honest, fair & bona-fide transaction - That he hired Gray to clerk for witness at \$65 per month - That Gray was poor and did not have a dollar besides his salary, so far as witness knew - That owing to the war, the goods purchased of Gray by witness, rose rapidly in value on witness' hands & many of them trebled in value before they were sold - That under these circumstances witness made a good thing out of the trade & made a great deal of money on these goods - That witness became dissatisfied with Grays conduct & refused to keep him any longer in the store - That the family of Gray was

poor & that witness, through Mr. Loveland of New York, who was then on a visit to Bloomington, a Brother in law of Mrs. Gray & who acted for her, made the arrangement with Mrs. Gray & made the gift of the notes before spoken of, to Mrs. Gray & for her benefit & support. That witness was under no obligation to do so, but felt that under the circumstances witness felt able to make the present, having made a large amount of money on the goods.

Plaintiff then introduced as evidence a Bill of sale, or invoice, with the assignments thereon as follows. (no such invoice or Bill of Sale is on file with the papers of this cause) Also a Lease with its enclosures as follows. (no such lease on file or furnished to the clerk. - E. R. Ror. Clerk. by L. R. R. Deputy)

Plaintiff then introduced Joseph Johnson, who being duly sworn testified. - That witness saw the Plaintiff pay over to Dr. Little & Thompson the money for the Goods in the invoice - did not know the exact amount, saw, he thinks, a \$1000. bill & a \$500 bill, and some other money. Witness was Clerk for Dr. Little & Thompson all the time they owned the Saloon. B. it. Gray was the person who seemed most active in making the trade with Dr. Little & Thompson, and said, he, Gray, was making the trade for Plaintiff. Witness has been employed there ever since. Gray hired witness as Clerk for Plaintiff - Gray stayed in the Saloon, Plaintiff was in Stere's store, clocking, but was frequently in the Saloon, and came there almost every night after Stere's store closed. That witness generally left the Saloon at night, about one hour before time for closing it. That whenever witness saw Plaintiff in the Saloon at closing, Plaintiff took the money from the drawer & took charge of it. - Have seen Gray take the money out of the Drawer at night on closing up. - Have

frequently seen Gray show a \$1000 Treasury note at the counter before the Saloon was purchased.

The Plaintiff then introduced Mrs. Gray, after a release from Plaintiff to her, of all liability to Plaintiff on account of the property involved in this suit. Defendant objected to this witness on the ground that the witness is the widow of B. W. Gray, who died about July 7th 1863. which objection was overruled by the Court - Witness was then sworn, and testified that the notes from Steere to her were a present from Steere to witness, that the Saloon was bought with money of witness obtained from Steere on the notes & some \$500 more, which witness had received partly from her mothers estate & partly from Mrs. Wambough, whose son, witness had boarded & nursed through sickness - as a parent - That witness took no part herself in buying the Saloon, but authorized it to be bought for her, as it was bought - That her husband B. W. Gray had no money of his own in the Saloon - That after her husbands death witness sold out the whole establishment to the Plaintiff & took Plaintiffs notes for some \$1800 & two of these notes have been paid by Plaintiff. It was then admitted by Defendant that the property in controversy, was a part of the property described in the invoice & part of the stock of the Saloon, and that when Defendant looked on this property, it was in Plaintiffs possession. That Plaintiff claimed it as his & that Defendant told Plaintiff that the only way by which he could get it, was, by replevying the property out of Defendants hands. Plaintiff here rested.

Defendant then introduced William Doolittle, sworn, who testified that he was one of the firm of Doolittle &

Thompson - that Gray did all the negotiating about buying the Saloon. but said he was buying it for some one else. witness said. he did not care who Gray was buying it for. so the money was paid - that witness supposed he was making the purchase for Plaintiff - That Plaintiff paid the money. about \$1800. Gray was present. - among the money was a \$1000 Green-back - That Gray had shown the bill to witness. or a bill of like amount & kind & also two or three of the notes to Mrs. Gray from Steve. when talking about the trade. and said he. (Gray.) was all right & could pay for Saloon. That Doolittle & Thompson had given a Chattel mortgage on the Billiard Tables to Brunswick & Bro. of Chicago. of whom they. D & T. bought the Tables. to secure the payment of two notes for \$225. each. That a part of the consideration. they were to be taken up - That Gray wanted Brunswick & Bro. to take Plaintiff's notes & a new mortgage. as the notes were not yet due - but finally an arrangement was made - Brunswick & Bro. throwing off \$25 for the payment. - That some delay in the payment of those two notes ^{was} caused by the notes being in Chicago - that when the notes were sent to Bloomington. witness went with Gray to office of M. W. Packard. to whom Gray paid the money & lifted these two notes - Witness was frequently in Saloon. saw Gray there. who seemed to be acting as boss about the Saloon after the sale by Doolittle & Thompson. - Doolittle & Thompson delivered possession of the Saloon to B. W. Gray - Gray taking the key - on cross examination -

stated the Plaintiff was frequently in the Saloon & witness has seen Plaintiff at night. when the Saloon closed take the money from the drawer. & when Plaintiff was in the Saloon he acted as Proprietor & going behind bar.

Thompson. of the firm of Doolittle & Thompson. sworn. on part of Defendant - Stated that Gray was active in buying Doolittle & Thompson out. That Gray acted as proprietor after the purchase - saw seen Plaintiff in the Saloon acting as Proprietor - Witness left Bloomington a few days after Doolittle & Thompson sold out & did not return until after Grays death - Saw Gray have \$1000. Treasury note. frequently before the purchase.

Defendant then introduced S. B. Hance. - sworn. Testified that B. W. Gray applied to Hance & Toms. lessors of Saloon premises & inquired of them if they would be willing for him. Gray, to take the Saloon lease, to which witness assented - Did not know Plaintiffs name until he saw it when the assignment of the lease was brought to witness for approval. Saw Gray afterwards. generally in charge of the saloon. He seemed to have control - Sometimes saw Plaintiff there at night who also seemed to take charge of business.

Defendant then introduced Clarkson Toms. - sworn. One of the firm of Hance & Toms. says. Gray spoke to witness about assignment of lease - dont recollect of hearing Plaintiffs name mentioned - but Gray said he wanted it for a young man or boy that he wanted to give something to do - Hance signed the assignment - Gray seemed to be boss about the saloon. Have seen Plaintiff there behind the bar.

M. W. Packard testified. - Gray paid me the money on the back notes of Doolittle & Thompson as stated by Doolittle. and Brunswick then satisfied the chattel mortgage on the Tables. Brunswick went to Chicago and sent me the notes. I gave them to Doolittle and sent the money to Brunswick.

A short time before this Gray came to my office with Mr. Nightwine and paid some \$200 or \$300. balance on a note due the estate of Mr. McKison. which was a lien by mortgage on his dwelling - Gray then inquired for the other note, held by another party, and was about \$500. & int - and said he had the money & wanted to pay it off. - He then showed a pile of money and said he was all right. Do not know whose money it was that Gray had, only from the fact of its being in his possession.

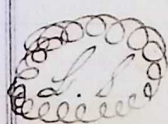
Defendant then introduced Thomas Ashley Jr. - sworn. Stated that B. W. Gray wanted the privilege of his witness' Father, the owner of the house & Plaintiff in Execution, to get another room in the house & to make some alterations in doors &c. saying that he, Gray, was going to make a big thing out of it - Gray paid me the rent of the small room adjoining the Saloon, that Doolittle & Thompson had formerly rented for an Oyster Saloon.

Defendant then introduced Execution to Sheriff of McLean County in favor of Thomas Ashley & against B. W. Gray, as follows.

State of Illinois ^{ss}
 McLean County ^{ss} The People of the State of Illinois.
 To the Sheriff of said County - Greeting.

Whereas by the consideration of our Circuit Court held at Bloomington in and for the County of McLean on the 24th day of March in the year of our Lord One Thousand Eight hundred and Sixty two, Thomas Ashley recovered judgment against Byron W. Gray for the sum of Eighty eight & 1/10 Dollars, damages sustained by the said Thomas

Ashley in a certain action of assumpsit and also the further sum of Seven & 5/100 Dollars. costs in this behalf expended as appears of record. We therefore command you that of the Goods & Chattels. Lands & Tenements of Byron W. Gray. you cause to be made the aforesaid sums of money. Together with interest on said Judgment at the rate of six per centum per annum from the time of recovering the same as aforesaid until paid. and that you have the same ready as soon as may be to render unto the said Thomas Ashley according to law. Hereof fail not & make return of this writ with your doings endorsed thereon within ninety days from the date thereof.



Witness Luman Burr. Clerk of our said Court at Bloomington this 29th day of May 1863. the seal of said Court being heto affixed.

Luman Burr. Clerk.

By George Parke Deputy

Defendant then introduced the Judgment record of the McLean Circuit Court of Judgment in favor of Ashley and against Gray for \$88.12. also the original note - Defendant then proved Judgments against Gray in favor of S. C. Stewart & Co. for \$2000. in favor of Lambert & Co. for \$ - In all about \$6000.

Here Defendant rested.

Plaintiff then recalled E. B. Steere who testified he, witness, loaned to Plaintiff the money \$425. to pay the notes to Burdick & Co. secured by Chattel mortgage.

The above was all the evidence in the cause. and thereupon the Court gave the following instructions for Plaintiff -
1st If the Jury believe from the evidence that Mr. Steere gave

to Mrs. Gray money or notes as a present. Then the money or notes was Mrs. Grays. and if the Jury believe that the property in controversy was bought with this money or notes for Mrs. Gray then the property becomes Mrs. Grays & if they further believe from the evidence that Mrs. Gray sold the property to the Plaintiff. they will find for the Plaintiff.

2^d. If the Jury believe from the evidence that the Property was bought with Mrs. Grays money for her. or was ~~both~~ bought with her money and Plaintiffs money for her and the Plaintiff. and that Mrs. Gray either sold the whole goods. or her interest in them to Plaintiff. then they should find for the Plaintiff.

3^d. If the Jury believe from the evidence that the property in controversy was bought of Dechittle & Thompson with the money of Mrs. Gray & for Mrs. Gray. then the goods were the property of Mrs. Gray. and if they further believe from the evidence that Mrs. Gray sold the property to the Plaintiff. then they will find for the Plaintiff.

4th. A husband may act as agent for his wife in the control and management of personal property of his wife & if the property controlled by the husband is in fact the property of the wife. then such control and management by the husband does not alter the title to the property. and if the Jury believe from the evidence that the property in controversy was the property of Mrs. Gray. then even if Gray did control and manage it. this did not make it the property of Gray.

5th. Fraud cannot be presumed. but must be proven. =
And the following instructions for Defendant.

1st. The Court instructs the Jury that if they believe from the evidence that if the property in question was really the

property of B. W. Gray. the Defendant in the execution. at the time said execution came into the hands of the Sheriff then they were liable to be levied upon by said execution. and the Jury will find for the Defendant.

2^d. That if the ownership of the Goods in question was in fact in B. W. Gray, and the pretended ownership by Brownell or Mrs. Gray was fraudulently claimed for the purpose of carrying up said Goods and keeping them out of the way of the creditors of B. W. Gray - they will find for the Defendant.

3^d. That the possession of personal property is prima facie evidence of ownership - and the term "Personal property" applies as well to notes and money, as to goods and chattels.

4th. That the Plaintiff in order to recover in this case must prove to the Jury by a preponderance of evidence that the property in question was the property of Brownell the Plaintiff.

5th. That fraud may be shown by facts and circumstances proven to the Jury by the evidence.

6th. The Court instructs the Jury, that although the notes given by Steere to Mrs. Gray may have been in fact her own, by a gift from Mr. Steere. yet if the Jury further believe from the evidence that Mrs. Gray gave said notes to her husband, B. W. Gray to trade upon, and expend, and lay out as he thought proper, and that said B. W. Gray bought the Billiard tables in question without any special understanding or agreement with his wife, Mrs. Gray, that the same should be done in her name, then they became the property of B. W. Gray, as far as his creditors are concerned, and were liable to the execution in favor of Ashley and the Jury will find for the Defendant.

To the giving of all which instructions for Defendant. Plaintiff then and there excepted - and Plaintiff then and there particularly excepted to the giving of Defendants 6th instruction. and thereupon the Jury found for the Defendant. and thereupon the Plaintiff moved the Court to set aside the verdict. and grant Plaintiff a new trial. because the Court erred in giving the Instructions for Defendant & particularly erred in giving Defendants 6th instruction. and because the verdict was contrary to the law and the evidence. which motion was overruled by the Court. to which ruling by the Court Plaintiff then and there excepted. and tendered this his Bill of exceptions &c. and prays that the same may be signed. sealed and made a part of the record. which is done in open Court.

John M. Scott. *Seal*

Judge &c.

And thereupon on said 3^d day of October A D. 1863. came said Plaintiff and filed his appeal bond in this cause which Bond was in words and figures as follows. to wit.

Know all men by these presents. that we William Brownell & Elisha B. Steere of the County of McLean and State of Illinois are held and firmly bound unto Norval Dixon in the penal sum of Three Hundred Dollars. for the payment of which well and truly to be made. we and each of us bind ourselves our heirs. executors and administrators. jointly & severally. and firmly by these presents. Sealed with our seals and dated at Bloomington this 3^d day of October Anno Domini. one thousand Eight Hundred and sixty three.

The condition of the above obligation is such. that whereas the

above named Norval Dixon did on the 25th day of September one thousand Eight Hundred and Sixty Three. at a term of the Circuit Court then being holden within and for the County of McLean and State of Illinois. obtain a Judgment against the above bounden William Brownell for costs of suit. and for the return of Two Billiard Tables replevied from the said Norval Dixon by the said William Brownell. from which Judgment. the said William Brownell. has prayed for and obtained an appeal to the Supreme Court of said State.

Now if the said William Brownell shall duly prosecute said appeal. and shall moreover pay the amount of the Judgment. costs interest and damages. rendered. and to be rendered against him. the said William Brownell. in case the said Judgment shall be affirmed in the said Supreme Court. then the above obligation to be null and void. otherwise to remain in full force and virtue.

Taken and entered into before Wm. Brownell.
me and approved this 3^d day of E. B. Steer
of October A. D. 1863.

Luman Bur. Clerk.

State of Illinois

McLean County L. Edward R. Roe. Clerk of the Circuit Court
in and for said County do hereby certify that the foregoing is a true and complete transcript of the records and files of my office pertaining to a certain cause wherein William Brownell is Plaintiff and Norval Dixon is Defendant.



In testimony whereof I have hereto set my hand and seal of office this 19th day of February A. D. 1864.

Edward R. Roe. Clerk.
By Luman Bur Deputy.

43 196 22
18

William Brownell.

15

Nawal. Dixon.

Record.

Filed Sept. 20, 1874.
L. Seland
Clerk.

filed by his transcript
7-10-74
E. K. R.
1874

STATE OF ILLINOIS,
Supreme Court, Third Grand Division.

OTTAWA, APRIL TERM, 1861.

WILLIAM BROWNELL, Appellant, }
—VS.— } Appeal from McLean
NORVAL DIXON, Appellee. } County.

PAGE OF RECORD.

ABSTRACT OF THE RECORD.

2 & 3	Affidavit writ and return of Coroner.
3 & 4	Declaration by plaintiff for two billiard tables.
4 & 5	Order of Court for return of bond on Coroner.
5 & 6	Replevin bond.
6 & 7	Pleas of defendant:
	1st. That the property was not the property of plaintiff.
	2d. Property in one Byron W. Gray and not in plaintiff.
	3d. Avows the taking, as sheriff of McLean county, and detention by virtue of execution from McLean Circuit Court in favor of one Thomas Ashley and against one Byron W. Gray, issued May 29th, 1863, on a judgment in favor of Ashley and against Gray for \$88.12 and costs, in said court.
8	4th. Denies unjust detention.
	Demurrer by plaintiff to defendant's 3d plea.
8 & 9	Order granting leave to defend or amend 3d plea.
9 & 10	Replications to the several pleas and <i>similiters</i> .
10 & 11	Trial and verdict by jury for defendant.
	Motions to set aside the verdict and for a new trial.
11 & 12	Order overruling motions to set aside verdict, and for new trial. Entry of final judgment for defendant. Order allowing plaintiff's appeal.
12 13 14 }	Testimony of E. B. Steere, called for plaintiff. In substance as follows:
15 & 16 }	That on February 20th, A. D. 1863, witness gave as a present to Mrs. Clarissa F. Gray, wife of B. W. Gray, his witness; four promissory notes for \$1,000 each, all dated 20th of February, A. D. 1863, and due in four, six, eight, and twelve months respectively, payable at the Home Bank in Bloomington, with seven per cent. interest from date. Witness has paid two of the notes, one at Bank of Bloomington all at once with witness' check, the other at different times. Gray bought out saloon, including the Billiard tables, for Brownell, plaintiff. Witness was not present when the trade was made. Witness furnished the plaintiff the money to pay the last payment on the tables, and plaintiff has paid witness back. Gray took possession of the saloon and carried it on until taken sick, immediately before his (Gray's) death.
	Witness paid on second note to Mrs. Gray, money sometimes to B. W. Gray, sometimes to Mrs. Gray; don't know that he ever saw the notes in possession of B. W. Gray; Gray had not much money at this time; he clerked for witness for sometime at \$65 per month, but witness deemed him not worth the wages, and told him to leave, which he did. Don't know whether or not witness has paid the whole \$24,000, the goods came to, to Gray's creditors; think I have, but could not tell without my books; would take two or three hours to look my books over and find out. Gray died July —, 1863. We were not on good terms for sometime before he died; had little or nothing to do with him.
	On re-examination testified: Witness was residing in a town in Western

Steere

PAGE OF RECORD. New York, where witness had been doing business as a merchant for a number of years. The first witness knew of Gray's embarrassment, a messenger came to witness from Gray's New York creditors, requesting him to go out to Bloomington and buy out Gray's stock at fifty cents on the dollar, and pay them the amount. At first witness was not inclined to have anything to do with the matter, but was afterwards induced to go to New York and see Gray's creditors, when he had a conference with Gray's creditors; remained in New York several days without any arrangement; finally returned home with no intention of doing anything in the matter. Shortly after returning home witness was sent for by Gray's New York creditors, and a large majority of them urged witness to come to Bloomington and take the stock of Gray for fifty cents on the dollar of their cost, and pay the creditors, and finally, at the solicitation of Gray's creditors, witness consented, came out to Bloomington, invoiced the goods, took them, and gave B. W. Gray witness' notes for the amount, and in a short time witness went to New York, saw the creditors of Gray; all but two or three of Gray's creditors gave up Gray's paper and took witness' paper in lieu thereof, at forty cents on the dollar; two or three creditors refused to enter into the arrangement; that witness gave his paper to assenting creditors to the full amount of all the purchase money of Gray's stock, and that witness has since paid off all of witness' notes so given; that on witness' return with Gray's paper, witness took up notes of witness to Gray therewith; that the trade with Gray was an honest, fair and *bona fide* transaction; that witness knew of no means Gray had besides the salary of \$65. per month paid him by witness; that Gray was poor; that owing to the war the goods purchased by witness of Gray rose rapidly in value on witness' hands, and many of them trebled in value before they were sold; that under these circumstances witness made a good thing of the trade, and made a great deal of money on the goods; that witness became dissatisfied with Gray's conduct and refused to keep him any longer in the store; that the family of Gray was poor, and that witness, through Mr. Loveland, of New York, who was then on a visit to Bloomington, a brother-in-law of Mrs. Gray, and who acted for her, made the arrangement with Mrs. Gray and made the gift of the notes before spoken of, to Mrs. Gray and for her benefit and support; that witness was under no obligation to do so, but felt that under the circumstances he was able to make the present, having made a large amount of money on the goods.

Plaintiff then called Joseph Johnson, who testified in substance as follows:

Witness saw plaintiff pay over to Doolittle & Thompson the money for the goods; did not know the exact amount; thinks he saw a \$1,000 bill and one \$500 bill and some other money; witness was a clerk for Doolittle and Thompson all the while they owned the saloon. B. W. Gray seemed most active in making the trade with Doolittle & Thompson, and said he was making the trade for plaintiff; witness has been employed there ever since; Gray hired witness as a clerk for plaintiff; Gray stayed in the saloon; plaintiff was a clerk in Steer's store, but was frequently in the saloon and came there almost every night after Steere's store closed. Witness generally left the saloon at night about one hour before closing time; that whenever witness saw plaintiff in saloon at closing time, plaintiff took the money from the drawer and took charge of it. Have seen Gray take the money out of the drawer at night in closing up. Have frequently seen Gray show a thousand dollar Treasury note at the counter before the saloon was purchased.

Plaintiff then called Mrs. Gray, widow of B. W. Gray, after a release from plaintiff to her of all liability to plaintiff on account of the property involved in this suit. Defendant objected to this witness on the ground that