No. 13172

Supreme Court of Illinois

Reed

vs.

Wilson

329 – 211

Eph's Rea[illegible]
vs
John S. Wa[illegible]

329

Reed
vs
[illegible]

1859

12172

EZRA C. READ,
et al Appelants,
VS
JOHN L. WILSON,
Appelle.

In Supt. Ct., 3*d Grand Division, April Term, A. D.* 1859.

APPEAL FROM CIRCUIT COURT OF COOK COUNTY.

Replevin for Twenty Gold Watches and Twelve Silver Watches, valued at $2500.

Pages 2 & 3
p 4 Writ issued Dec. 12, 1857, and served Dec. 15, 1857, and property delivered
ps 4-5 plaintiffs.
p 6 Declaration filed Feb. 15, 1858, claiming above property.
Deft. pleads---1st. Property in himself. 2d. That he took the property, as
p 7 Sheriff of Cook County, by virtue of an Execution directed to him from
p 9 Cook Co. Court Com. Pleas, dated Dec. 11, 1857, against R. W. Roath, impleaded with W. Tyler Roath, and property in said Roaths.

Replication. First. That said property was Pffs. Secondly. That Deft. was not Sheriff. Thirdly. That it was the property of plaintiffs and not of Roaths.

ps 11 12 Jury waived; trial by court, and judgement for defendant.
13 14 Bill of Exceptions. Sets out chattel mortgage of property in question, made by the two Roaths to plaintiffs, dated Oct. 23, 1857, duly acknowledged and recorded, Nov. 20, 1857, made to secure a promissory note for $8000, of same date as mortgage given by the Roaths to plaintiffs, due six months after
p 14 its date. Mortgage provides that mortgagers should have possession of property mortgaged for two years from the date of the instrument, and use and enjoy the same according to the usual course of their retail trade, unless mortgagees should deem the property mortgaged in danger of being sold, removed,
p 16 or wasted; then the note secured by said mortgage should become due, and

they might in person, or by their agents, take, and hold posseesion of said property.

p 17 It was admitted this mortgage was executed and recoıded before the execution under which the levy was made by defendant, was delivered to him, in favor of C. V. Wiley vs R. W. Roath, impleaded with W. T. Roath; a valid p 17 judgment on which this Execution was issued also admitted.

ps 17–13 Defendant objected to introduction of mortgage; objection overruled and mortgage admitted, and read in evidence. Exception by defendant.

Plaintiffs then offered R. W. Roath one of the mortgagers as a witness, who testified as follows.

ps 18–19 I know the parties to this suit; plaintiffs live in New York city; I carried on the jewellry business at No. 81 South Clark Street, in the city of Chicago, Illinois, where we had the stock of goods covered by the mortgage made by me and my son to the plaintiffs; about the first of November, 1857, Charles W. May, as agent for the plaintiffs, came from New York city to take possession of the goods, store and business under the mortgage; he remained in Chicago until about the 25th of March, 1858; on his arrival he proceeded to take an inventory of the goods, of all the goods and effects in the store; this was before the issue or levy of the execution of C. V. Wiley against me; May was in the store the day the execution was levied, but had gone to his dinner at the precise time of the levy; the goods in the store were the same included in the mortgage, and were levied on by the Sheriff; after his arrival, Mr. May receivered the proceeds of all the sales made in the store, and they were deposited in the Marine Bank, to the credit of Read, Taylor & Co., these plaintiffs; after his arrival he had the sole control and direction of the business, and forwarded weekly statements of the business to Read, Taylor & Co., at New York; he took and held this possession on account of plaintiffs; at the time of making the mortgage we were indebted to plaintiffs about $8000, and so continued at the time of levying the execution; Mr. May came to Chicago entirely to look after and see to Read, Taylor & Co.'s interest in this property, and to take possession of the same. On cross-examination witness testified that he had done business at 81 Clark Street for one year and a half, under sign of R. W. Roath & Son, on a sign board and clock; did not remove signs after making mortgage; no advertisement of change of possession in papers, subsequent to the execution of the mortgage; myself and two sons were employed in the store prior to the date of the mortgage; no one else; I hired no one else after Mr. May came, and I and my sons remained in possession as before, selling goods under direction of Mr. May; he sold many goods, and we all received money and put in the drawer; we retained of proceeds enough to pay expenses of store and our living, or personal expenses, by consent of May; James and Tyler (my sons) slept at store, and had keys of store; I also had keys; one of my boys was in the store all the time; Mr. May did not sleep in the store; he came there in the morning as soon as I did; did not stay there evenings generally; he sold but few goods in evening; the day before levy was made we sold Mr. Hyatt (attorney for plaintiff in execution, and for defendant in this suit) some goods; a few to settle on account; his account against us was about $80—ours against him between $60 and $70, balance about $22; I think I consulted Mr. May about propriety of paying Hyatt's account before I paid it; Mr. May was not in store when levy was made, he had gone to his dinner; James Roath was there; we had a lease of the store; no transfer was made of it. Re-examined.—Mr. May paid the rent himself, to Dr. Quinlan, our landlord, and had the direction of paying the rent; he paid the rent for November and December for account of Read, Taylor & Co. last, and paid all the other bills against the store; we paid no other debts than to Read, Taylor & Co. after May's arrival, except a few small ones by his consent.

Defendant then called L. H. Hyatt as a witness, who being sworn, testified as follows:—The transaction referred to, took place the day I presented my bill
ps 20–21 to Roath; balance, I think, of $22; he said he had no money, but that if I wanted anything out of the store I could have it; he went to the desk and got ledger; I am perfectly certain he did not leave the show case till after he sold me the goods; I saw Mr. May in the store; he was at the desk; Roath did not consult him. Cross-examined.—After I went in Roath went back to the desk to get his ledger; I cannot state that he did not speak to May; I had presented my bill to him before he went to the desk; I heard that May was there, and went partly to find out how the business was done, but principally to get my pay.

Defendant then offered in evidence, execution from Cook County Court of
p 22 Common Pleas, in favor of C. V. Wiley vs R. W. Roath, impleaded, etc., dated Dec. 11th, 1857, delivered to defendant Dec. 11th, 1857, by virtue of which defendant took property in question, which it is admitted were a part of those mortgaged to plaintiffs by the Roaths.

Plaintiffs offered Replevin writ in evidence, with return thereon. This was all the evidence.

The court found the issues for the defendant, and rendered judgment accordingly; plaintiffs excepted.

Plaintiffs (appelants) assign for error.

The court erred in rendering judgment for defendant.

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Efron C Reed et al
329 vs - 211
John. L. Wilson

abstract.

Filed April 26, 1889
L. Leland
Clerk

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et al Appelants,
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329 – 211

Ezra C. [illegible]

vs

John L Wilson

abstract,

Filed April 29. 1859
L Leland
Clk

EZRA C. READ, ET AL, *Appellants,*
vs.
JOHN L. WILSON, *Appellee.*

POINTS AND AUTHORITIES OF APPELLANTS.

It is admitted that the property in question was mortgaged to plaintiffs by the Roaths for a bona fide indebtedness, and the mortgage properly executed and recorded before the judgment was rendered, in favor of Wiley, on which judgment the execution was issued, by virtue of which defendant levied on the goods mortgaged.

At the time defendant levied on the goods, the mortgage debt was not due, and the mortgage provided that the mortgagors might retain possession of the mortgaged property for two years from date of mortgage, unless, in certain contingencies, in which the mortgagee was authorized to take possession.

Under the mortgage, properly made and recorded, an agent of the plaintiffs took possession of the mortgaged property, about the time it was recorded, very soon after it was executed, before maturity of the mortgage debt, and before there could be any pretence of unreasonable or fraudulent delay, an agent of the plaintiffs (Mr. May,) came on from New York city, expressly to take possion of the mortgaged property under the mortgage.

He at once took possession of the store, was in the store at the time or date of the levy made by defendant, which was known to the witness Hyatt, defendant's attorney,) and so to Wiley, the execution creditor, for whom defendant acted, as it would appear, both from Hyatt's testimony and that of Roath, he proceeded to take an inventory of the mortgaged goods and effects in the store, but continued the sale of them by Roath's assistance, and that of his two boys, who had before been in the store, he received the proceeds of the sales, deposited them in bank to plaintiff's credit, less what was needed for personal expenses and expenses of sale. He did this on account of plaintiffs, paid the rent of the store occupied by the Roaths, where the mortgaged property was situated, for the month

of November, the month he came out, and for December, the month in which the levy was made by defendant, paid all the bills against the store, and, in short, had in person complete dominion over the mortgaged property, and of this dominion or control, and his presence in the store, the execution creditor had notice.

The only possible objection which it would seem could be taken to this possession, is the single one, that the old sign of R. W. Roath & Son, under which Roath had done business, was not taken down by May on his arrival; but when it is considered that this transaction was recent and fresh, that the plaintiffs had used the promptest diligence in taking possession under their mortgage, immediately upon its execution and recording, that the presence of May, their agent, was open and notorious, and that plaintiffs had a large and bona fide claim on these goods, it seems difficult to assign any sufficient reason for holding these open, visible acts, in protection of a large debt, of no avail for want of removing a sign, the first thing almost on May's arrival.

There is no pretence of fraud in fact. The case shows, on the contrary, only an honest, industrious effort to secure an honest debt, and until the rules relating to fraud in law are materially changed we submit there is no reasuming in this case, fraud in law, againt the plaintiff's right.

We ask the Court to compare this case carefully with the case of Powers vs. Green, 14 Ills. 387, and see how much more full, open and complete is the possession taken by the plaintiffs in this case than was upheld as sufficient in that. In the case at bar the plaintiffs did everything *but* remove the sign; in that case he did hardly anything else. In that case he merely came, changed the sign, published an advertisement, and employing his vendor as a clerk, and leasing to him the household furniture which he had just bought of him, returned to that New York.

Yet, because the bona fides of that transaction was approved by the jury, the Court upheld the verdict in that case, and we submit, if that case is worth anything as a precedent and authority, that it controls the present one, and establishes in regard to the question of what is a change of possession, sound rules, which must decide this case in favor of the plaintiffs, and would entitle them to a verdict from any competent jury.

Powers vs. Green, 14 Ills., 387, et seg.

These facts would seem sufficient to uphold an actual sale of the property by all known rules of law, but in this case, being under an authority of deed, being consistent with the provisions of the deed, and bona fide in purpose, we insist upon, as furnishing complete evidence of plaintiff's title to the property.

It will be insisted by the defendant that the mortgage itself is fraudulent, being within the principle of the decision in the case of Davis vs. Rawson, 18, Ill., 396, by reason of the provision that Roath (the mortgagor,) "might use and enjoy the mortgaged property, according to the usual course of their retail trade." See, as to this, page 14 of Record.

This clause in the mortgage does not, in terms, authorize the selling of

the mortgaged property, the mortgagees, who, it appears kept a retail jewelry store. and who might well require the insertion of such a clause to define their rights, as between them and the mortgagees, with whom they had stipulated for a term of credit, six months.

But there is not a syllable of proof in the case, showing that the mortgagees ever sold, except by direction of plaintiff's agent May, any of the goods named in the mortgage. They are not shown to have done anything with the property, under and by virtue of plaintiff's direction, so it cannot be said that this clause was ever construed by either of the parties to warrant any improper delay with the mortgaged property.

Secondly, in the absence of proof of any such construction of the mortgage by the parties or dealing with the property by the parties to it, the court is not allowed to presume it, nor is there any proof that the plaintiffs ever allowed or permitted any sale of any portion of the goods except after their agent May took possession, under the mortgage, and controlled the sales, for plaintiff's account, in the open notorious manner, described in the evidence of Roath & Hyatt.

The mortgage in this case, is not, however, such an instrument as that in the case of Davis vs. Rawson, 18 Ills. 306. The instrument in question in that case, was in fact and form an assignment, with preferences, for the benefit of creditors. It contains substantially all the provisions of an ordinary assignment for that purpose, and ought to have been set aside, for had that instrument not been held void, there would seem to no prevention of any failing debtors assigning to himself, and putting his creditors at defiance.

But in the present case the instrument is in form and substance a mortgage executed and recorded according to the requirements of the statute, made to secure a valid indebtedness, one of a class of securities very much in use, and which sound commercial policy requires should be sustained in a state where there is so great need of securing debts on personal property, especially in our large cities, where many men who have no real estate, but plenty of personal property, have occasion to obtain credit upon it, and when an instrument is honestly and fairly made for that purpose, it ought to be upheld in a case free from fraud.

The provisions of the mortgage in question are usual, wholesome and ample for the security of the creditors, and the protection of the debtor, and are in no way framed to deceive, mislead or delay creditors, the only objectionable clause is the one named above, and when this is construed with the other provisions of the mortgage, together with the evidence that plaintiff took immediate possession under it, and held possession in the face of the world by their agent, and this especially known to the execution creditor, we think the whole case shows that the law and the evidence are with the plaintiffs and entitle them to the security they took, and which defendant has wrongfully interfered with.

SCAMMON & FULLER,
For Appellants.

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Read et al

vs

J. L. Wilson.

Argument for

Appellants.

Filed May 10. 1857.

L. Leland

Clk.

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He at once took possession of the store, was in the store at the time or date of the levy made by defendant, which was known to the witness Hyatt, defendant's attorney,) and so to Wiley, the execution creditor, for whom defendant acted, as it would appear, both from Hyatt's testimony and that of Roath, he proceeded to take an inventory of the mortgaged goods and effects in the store, but continued the sale of them by Roath's assistance, and that of his two boys, who had before been in the store, he received the proceeds of the sales, deposited them in bank to plaintiff's credit, less what was needed for personal expenses and expenses of sale. He did this on account of plaintiffs, paid the rent of the store occupied by the Roaths, where the mortgaged property was situated, for the month

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The only possible objection which it would seem could be taken to this possession, is the single one, that the old sign of R. W. Roath & Son, under which Roath had done business, was not taken down by May on his arrival; but when it is considered that this transaction was recent and fresh, that the plaintiffs had used the promptest diligence in taking possession under their mortgage, immediately upon its execution and recording, that the presence of May, their agent, was open and notorious. and that plaintiffs had a large and bona fide claim on these goods, it seems difficult to assign any sufficient reason for holding these open, visible acts, in protection of a large debt, of no avail for want of removing a sign, the first thing almost on May's arrival.

There is no pretence of fraud in fact. The case shows, on the contrary, only an honest, industrious effort to secure an honest debt, and until the rules relating to fraud in law are materially changed we submit there is no reasuming in this case, fraud in law, againt the plaintiff's right.

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329-211

E. C. Read

vs

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Argument,
for appellants

Filed May 10. 1859.
Leland
Clk.

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The only possible objection which it would seem could be taken to this possession, is the single one, that the old sign of R. W. Roath & Son, under which Roath had done business, was not taken down by May on his arrival; but when it is considered that this transaction was recent and fresh, that the plaintiffs had used the promptest diligence in taking possession under their mortgage, immediately upon its execution and recording, that the presence of May, their agent, was open and notorious. and that plaintiffs had a large and bona fide claim on these goods, it seems difficult to assign any sufficient reason for holding these open, visible acts, in protection of a large debt, of no avail for want of removing a sign, the first thing almost on May's arrival.

There is no pretence of fraud in fact. The case shows, on the contrary, only an honest, industrious effort to secure an honest debt, and until the rules relating to fraud in law are materially changed we submit there is no reasuming in this case, fraud in law, againt the plaintiff's right.

We ask the Court to compare this case carefully with the case of Powers vs. Green, 14 Ills. 387, and see how much more full, open and complete is the possession taken by the plaintiffs in this case than was upheld as sufficient in that. In the case at bar the plaintiffs did everything *but* remove the sign; in that case he did hardly anything else. In that case he merely came, changed the sign, published an advertisement, and employing his vendor as a clerk, and leasing to him the household furniture which he had just bought of him, returned to that New York.

Yet, because the bona fides of that transaction was approved by the jury, the Court upheld the verdict in that case, and we submit, if that case is worth anything as a precedent and authority, that it controls the present one, and establishes in regard to the question of what is a change of possession, sound rules, which must decide this case in favor of the plaintiffs, and would entitle them to a verdict from any competent jury.

Powers vs. Green, 14 Ills., 387, et seg.

These facts would seem sufficient to uphold an actual sale of the property by all known rules of law, but in this case, being under an authority of deed, being consistent with the provisions of the deed, and bona fide in purpose, we insist upon, as furnishing complete evidence of plaintiff's title to the property.

It will be insisted by the defendant that the mortgage itself is fraudulent, being within the principle of the decision in the case of Davis vs. Rawson, 18, Ill., 396, by reason of the provision that Roath (the mortgagor,) "might use and enjoy the mortgaged property, according to the usual course of their retail trade." See, as to this, page 14 of Record.

This clause in the mortgage does not, in terms, authorize the selling of

the mortgaged property, the mortgagees, who, it appears kept a retail jewelry store. and who might well require the insertion of such a clause to define their rights, as between them and the mortgagees, with whom they had stipulated for a term of credit, six months.

But there is not a syllable of proof in the case, showing that the mortgagees ever sold, except by direction of plaintiff's agent May, any of the goods named in the mortgage. They are not shown to have done anything with the property, under and by virtue of plaintiff's direction, so it cannot be said that this clause was ever construed by either of the parties to warrant any improper delay with the mortgaged property.

Secondly, in the absence of proof of any such construction of the mortgage by the parties or dealing with the property by the parties to it, the court is not allowed to presume it, nor is there any proof that the plaintiffs ever allowed or permitted any sale of any portion of the goods except after their agent May took possession, under the mortgage, and controlled the sales, for plaintiff's account, in the open notorious manner, described in the evidence of Roath & Hyatt.

The mortgage in this case, is not, however, such an instrument as that in the case of Davis vs. Rawson, 18 Ills. 306. The instrument in question in that case, was in fact and form an assignment, with preferences, for the benefit of creditors. It contains substantially all the provisions of an ordinary assignment for that purpose, and ought to have been set aside, for had that instrument not been held void, there would seem to no prevention of any failing debtors assigning to himself, and putting his creditors at defiance.

But in the present case the instrument is in form and substance a mortgage executed and recorded according to the requirements of the statute, made to secure a valid indebtedness, one of a class of securities very much in use, and which sound commercial policy requires should be sustained in a state where there is so great need of securing debts on personal property, especially in our large cities, where many men who have no real estate, but plenty of personal property, have occasion to obtain credit upon it, and when an instrument is honestly and fairly made for that purpose, it ought to be upheld in a case free from fraud.

The provisions of the mortgage in question are usual, wholesome and ample for the security of the creditors, and the protection of the debtor, and are in no way framed to deceive, mislead or delay creditors, the only objectionable clause is the one named above, and when this is construed with the other provisions of the mortgage, together with the evidence that plaintiff took immediate possession under it, and held possession in the face of the world by their agent, and this especially known to the execution creditor, we think the whole case shows that the law and the evidence are with the plaintiffs and entitle them to the security they took, and which defendant has wrongfully interfered with.

SCAMMON & FULLER,
For Appellants.

329-211

Ezra C Readchil

vs

John L Wilson

~~Brief~~ on argument.

for appellants

Filed May 10, 1859

L Leland

Clk.

SUPREME COURT.

EZRA C. REED, et al.,
Appellants,
vs.
JOHN L. WILSON,
Appellee.

POINTS AND AUTHORITIES FOR APPELLEE.

There can be only two questions in the case at bar, which are:

1st. Is the Chattel Mortgage, under which the plaintiffs claim, valid in itself, against creditors of mortgagors, without possession by mortgagees, and

2d. Is the possession shown by the evidence sufficient to take the case out of the statute?

With regard to the first point, it is thought only necessary to refer to *Davis vs. Ransom*, 18 *Ill. R.* 396, where the whole case is elaborately argued and decided by his Honor Judge Skinner. In that case the Court says, that a provision similar to the objectionable clause in the mortgage offered in evidence in this case, that the property mortgaged may be used according to the retail trade of the mortgagee, renders the instrument *void* upon its face, and if such be the case, then *no* possession by the plaintiff could make the mortgage valid.

And, secondly, if the mortgage be holden sufficient, provided full, absolute, and undivided possession had been taken by the mortgagees, it is submitted that the testimony does not show such a possession by the mortgagees as will exempt it from the operation of the statute.

For it appears that up to the time of the levy, the mortgagors, Roath & Son, continued in the outward and absolute possession of the goods, in the same manner that they had ever possessed the same, selling the goods, retaining out of the proceeds what they saw fit, for the purpose of defraying their personal expenses and business expenses, and paying such old debts of the mortgage as they chose to pay.

The only pretended change of possession ever made, was the coming to the city of a clerk of the plaintiff's, who spent a portion of the day time in the store of the mortgagors.

It is submitted that the conveyance and possession of the goods in question, was admirably designed to hinder and delay creditors, as it gave the mortgagors (both before and after the pretended taking of possession by the plaintiff,) opportunity to be paying their personal expenses out of the property, and holding their creditors at bay.

L. H. HYATT,

Att'y for Appellees.

329 – 211

Ezra C. Reed et al

vs

John L. Wilson

Defts Brief

Filed May 19. 1859.
L Leland
Clk.

SUPREME COURT.

EZRA C. REED, et al.,
Appellants,
vs.
JOHN L. WILSON,
Appellee.

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L. H. HYATT,
Att'y for Appellees.

329 - 211

Ezra C. Reed et al

vs

John L. Wilson

Defts Brief.

Filed May 19. 1869

L. Leland

Clerk

SUPREME COURT.

EZRA C. REED, et al.,
Appellants,
vs.
JOHN L. WILSON,
Appellee.

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L. H. HYATT,

Att'y for Appellees.

329— 211

Ezra C. Read et als

vs

J. L. Wilson

Defts Brief

United States of America
State of Illinois County of Cook ss

Pleas before the Honorable George Manierre Judge of the seventh judicial circuit of the State of Illinois and sole presiding Judge of the circuit court of Cook county in the State aforesaid at a special term thereof begun and held at the court House in the City of Chicago in said county on fourth Monday (being the twenty eighth day) of June in the year of our Lord One thousand eight hundred and fifty eight and of the Independence of the United States the Eighty second. in persuance of an order made and entered of record at a former term of said court which said order is in the words and figures following = to wit: Ordered that a special term of this the circuit court in and for said county be and the same hereby is appointed to be held at the court House in the city of Chicago on the fourth monday of June in the year one thousand eight hundred and fifty eight for the trial of civil and criminal caus=es and for the disposal of all buissiness properly cognizable at such time whether of a civil or criminal nature and that the clerk of this court give notice of the appointment of said term to the supervisors of said county with a request that the said supervisors select and cause to be summoned a Grand and Petit Jury to attend

the term so appointed.
Present. Honorable George Manierre Judge of the
7th Judicial Circuit. Illinois.
Carlos Haven States Attorney
John L Wilson Sheriff of Cook County
Attest William L Church clerk.

Be it remmembered that heretofore - to wit on the twelveth day of December in the year of our Lord one thousand eight hundred and fifty seven Ezra C Read James B Taylor Daniel H Wickham and Henry Olmstead plaintiffs by Scammon and Fuller their attorneys sued out of the office of the clerk of the court aforesaid, and under the seal of said court the certain writ of Replevin against John L Wilson which is in the words and figures following - to wit:

State of Illinois }
Cook County } ss

The People of the State of Illinois To the coroner of said county. Greeting: Whereas Ezra C Read James B Taylor. Daniel H Wickham and Henry Olmstead plaintiffs complain that John L Wilson defendant unlawfully and wrongfully has taken and does detain the following described goods and chattles - to wit: twenty gold watches and twelve silver watches of the value of twenty five hundred dollars Therefore we command you that if the said

3 plaintiff shall give you Bond with good and
sufficient security in double the value of the
said goods and chattles as required by law
to prosecute their suit in this behalf. to
effect and without delay. and to make ~~the~~
return of the said goods and chattles. if return
thereof shall be awarded and to save and keep
you harmless in reploveying said goods and
chattles. you cause the said goods and chattles
to be replevied and delivered to the said
plaintiff without delay and also that
you summon the said defendant to be
and appear before the circuit court of cook
county on the first day of the next term thereof
to be holden at the court House in the city
of chicago in said county on the first monday
of March next to answer said plaintiff in the
premises. and have you then and there this
writ with an endorsement thereon in what
manner you shall have executed the same
together with the Bond which you shall have
taken from the said plaintiff as before
commanded. before executing this writ.

Witness William L Church
clerk of our said court. and the
seal thereof at chicago in said
county the 12th day of December
1857

Seal

Wm L Church clerk

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And afterwards = to wit: on the fifteenth day of the same month in the year last aforesaid writ was returned into the office of the clerk of the court aforesaid. by said cornoner. endorsed as follows. to wit:

"The plaintiffs having given Bond as hereto annexed I have taken the within decribed property and delivered the same to them as per receipt hereon endorsed and served this writ on the within named defendant this fifteenth day of December 1857 Fees 1 Levy 50. 1 serv 50 1 Bond 50 2 miles 10 ret 10 = $1.70 paid by plaintiffs"

George P Hansen Corroner

And afterwards = to wit: on the fifteenth day of February A D 1858 said plaintiffs by their said attorneys filed in the office of the clerk of said court their certain declaration against the said defendant which is in the words and figures following. To wit:

State of Illinois
County of Cook } ss Cook County Circuit Court of the March Term 1858

John S Wilson the defendant in this suit was summoned to answer Ezra C Read James R Taylor Daniel K Pickham and Henry Olmstead who are copartners under the firm name and style of Read Taylor & Co plaintiffs in this suit of a plea wherefore he took the goods and chattles of the said plaintiffs and unjustly detained the same against sureties and pledges until &c and therefore the said plaintiffs by Scammon and Fuller their attorneys complain. For that the said defendant To wit on the twelveth day of December in the year of our Lord One thousand eight hundred and fifty seven in the city of Chicago in the said County of Cook in a certain store there took the goods and chattles To wit: twenty gold watches twelve silver watches of the plaintiffs of great value To wit: the value of Two thousand dollars and unjustly detained the same against sureties and pledges until &c wherefore the said plaintiffs say that they have sustained damage to the amount of Five hundred dollars and therefore they bring this suit &c

Scammon and Fuller
Plffs Attys

And thereupon afterwards = To wit: on the third day of March in the year last afore=said the said defendant by Messrs. Barker and Hyatt his attorneys filed in said court his certain Pleas to the said plaintiffs declaration which are in the words and figures following = To wit;

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Cook County Circuit Court
Mar Term '58

And the said defendant by Barker and Hyatt his attorneys comes and defends the wrong and injury when &c and says that the said plaintiffs ought not to have or maintain their aforesaid action thereof against him because he says that the property the said goods and chattles or any part thereof at ~~the time~~ in the said declaration mentioned at the time when &c was in him the said defendant without this that the property the said goods and chattles or any part thereof at the time when &c was in the said plaintiffs as by the said declaration is above supposed and this the said defendant is ready to verify. Wherefore he prays judgment and a return of the said goods and chattles together with his damages according to the Statute in such case made and provided to be adjudged to him.

And for further Plea in this behalf by leave of the Court here for this purpose first had and obtained according to the statute in such case made and provided the said defendant says (actio non) because he says that heretofore to wit; upon the eleventh day of December 1857 one Christopher

V Wiley received a judgment in the Cook County Court of Common Pleas by confession against Roswell W Roath who was impleaded with W Tyler Roath for the sum of Eight hundred and seventy dollars and fifty cents damages. and upon the same 11th day of December 1857 the said Wiley caused writ of execution to be issued out of and under the seal of said court of Common Pleas for the sum aforesaid which said writ of execution was directed and delivered the Sheriff of Cook County aforesaid to execute upon the day and year last aforesaid. And the said defendant says that said defendant was upon the said 11th day of December 1857 the Sheriff of said County and that as said Sheriff he did by virtue of said execution upon the twelveth day of December 1857 did levy upon the interest of said R W Roath in and to said goods and chattles in said declaration mentioned. and took the same into his possession And the defendant says that the property of the said goods and chattles in said declaration mentioned at the time when &c was in said R W. Roath and W Tyler Roath and this the said defendant is ready to verify wherefore he prays judgment and a return of the said goods and chattles together with his damages according to the form of the statute in such case made and provided to be

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adjudged to him

Barker and Hyatt
Defts Attorneys.

Whereupon afterwards = to wit: on the sixteenth day of April in the year last aforesaid the said plaintiffs by their said attorneys filed in said court their certain replications to the said defendants Pleas which are in the words and figures following, to wit:

Cook Co Circuit Court

Pleas And the said plaintiffs as to the said of the said defendant by him first above pleaded say that the property of the said goods and chattles in the said declaration mentioned at the time when &c was in them the said plaintiffs and not in the said defendant and this the said plaintiffs pray may be enquired of by the Country &c.

Deft doth the like. Barker & Hyatt. Scammon and Fuller Pelffs Attys

Attys for Deft.

And the said plaintiffs as to the said cognizance of the said defendant saith that the said defendant by reason of anything by him in that cognizance above alledged ought not as Sheriff of said Cook County to acknowledge the taking of said goods and chattles in which &c and justly &c because they say that the said defendant at the time

9 when &c was not the Sheriff of the said County of Cook in manner and form as the said defendant hath above in said cognizance in that behalf alledged. and this the said plaintiff pray may be acquired of by the country &c
Deft doth the like Scammon Ed Fuller
Barker Ed Hyatt. Peffs attys

And the said plaintiffs as to the said plea of the said defendant by him secondly above pleaded say that the goods and chattles at the time when &c were not the property of the said R W Roath and W Tyler Roath but were at that time. to wit: the said twelveth day of December A D 1857 the property of the said plaintiffs and this the said plaintiffs pray may be inquired of by the country &c
Deft doth the like. Scammon Ed Fuller
Peffs attys

And afterwards - to wit: at the April term of said court - to wit: on the 4th day of May in the year last aforesaid the following proceedings among others, were had and entered of record therein in said cause - to wit:

This day comes the said plaintiffs by Scammon & Fuller their attorneys and the said defendant by Barker and Hyatt. his Attorneys also come and issue being joined herein upon agreement of parties in open court this cause is submitted to the court for trial without intervention of a jury. and the court having heard the allegations and proofs submitted and arguments of counsil thereon and not being fully advised in the premises takes its decision under advizement.

And afterwards = to wit: at the same term of said court first aforesaid. to wit: on the 24th day of July in the year first aforesaid the following proceedings among others were had and entered of record therein in said cause. to wit:

This day again come as well the said plaintiffs by Scammon & Fuller their attorneys. as the said defendant by Barker & Hyatt his attorney. and this cause having been at a former term thereof. submitted to the court for trial. To wit: on the 4th day of May last past. and the court then having heard the evidence and arguments of counsil. took said cause under advizement. and being now fully advized in the premises the court finds the issues herein for the defendant.

Therefore it is considered and ordered that the said defendant do have a return of the goods and chattles replevied in this cause. the same to be held by him irrepleviable. and that a writ of Retorno Habendo issue therefor. And it is further considered

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that the said defendant do have and recover of the said plaintiffs his costs and charges by him about his suit in this behalf expended and have execution therefor.

Whereupon the said plaintiffs by their counsel except and pray and appeal to the Supreme Court of the State of Illinois, which is granted by the court on condition that the said plaintiffs within twenty days from this date, shall execute and file with the clerk of this court their appeal Bond herein in the penal sum of One thousand and five hundred dollars conditioned according to law with John Forsythe as surety thereto. And on motion it is ordered that the said plaintiffs have twenty days to file their Bill of Exceptions herein.

And thereupon afterwards = to wit: on the 24th day of July in the year last aforesaid the said plaintiffs by their said attorneys filed in the court aforesaid their certain Bill of exceptions in said cause which is in the words and figures following = To wit:

Cook County Circuit Court
April Term A D 1859

Be it remembered that on the trial of this cause the plaintiffs offered in evidence a chattle Mortgage made to them by R. W.

Roath and W. Tyler Roath as follows.

Know all men by these presents, that we Roswell W Roath and W. Tyler Roath both of the city of Chicago in the county of Cook and State of Illinois in consideration of the sum of Eight thousand ($8000) dollars to us paid by Ezra C Read of New Haven and State of Connecticut James R Taylor of Brooklyn and State of New York and Daniel H Wickham and Henry Olmstead both of the City of New York and State of New York and composing the Firm of Read Taylor & Co of New York the receipt whereof is hereby acknowledged have granted, bargained and sold, and by these presents do grant, bargain, and sell unto the said Ezra C Read. James R Taylor. Daniel H. Wickham and Henry Olmstead, the following decribed goods, and chattles, viz; Gold watches. Silver watches. Gold neck fob and vest chains diamond finger Rings and Breast Pins. Cames Broc-hes Gold and Gold and stone box Broches. Silver ware. Spoons cups &c. Table and Pocket cuttery work bags. Pocket Books &c Brittiania and Plated ware. Gold finger Rings. Guns. Pistols. Fancy Hardware and Fancy Goods. also one Iron safe. and all the fixtures in the store consisting of counter glass cases and side cases. in the Store No 81 South Clark street in the city of Chicago county of Cook ~~and~~

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and State of Illinois. and being the entire stock of Goods contained in said store and now occupied by R. W. Roath & Son, together with all and singular the appurtenances there=unto belonging, or in any wise appertaining. To have and To hold all and singular the said goods and chattles unto the said Ezra C Read, James R Taylor, Daniel H Wickham and Henry Olmstead their executors adminis=strators assignees. to their sole use forever, and the said Roswell W Roath and W Tyler Roath for themselves and for their executors and administrators do covenant and with the said Read. Taylor. Wickham and Olmstead their executors, administrators and assigns that they are lawfully possessed of the said goods and chattles as of their own property. that the same are free from all incumbrances. and that they will. and their executors and administrators shall. warrant and defend the same to the said. Read. Taylor. Wickham. and Olmstead, their executors administrators and assigns against the lawful claims and demands of all persons. Provided. never=theless. that if the said Roswell W Roath and W Tyler Roath their heirs. executors, adminis=trators, or assigns shall well and truly pay unto the said Read. Taylor Wickham and Olmstead. their executors administrators or assigns a certain promissory note of even date herewith made by R. W. Roath & Son for the sum of Eight thousand dollars and payable six months after date to the order of Read. Taylor & Co. then, and from thenceforth these presents and everything therein contained shall cease and be null and void. And Provided also that for the space of two years after the date of this instrument. it shall and may be lawful for the said Roaths their ~~according to the usual course of their retail trade~~ executors or administrators to keep possession of the said granted property and to use and enjoy the same according to the usual course of their retail trade unless the said Read. Taylor Chickam and Olmstead their executors, administrators or assigns shall before the expiration of said two years. at any time after default in the payment of the said promissory note or any part thereof. at the time and in the manner hereinbefore provided. elect to take possession of the said property. And at the expiration of said two years. or at any time after default in the payment of the said note or any part thereof. at the time and in the as hereinbefore provided or any of the costs and charges accruing by virtue hereof. that then and from thenceforth it shall and may be lawful for the said Read. Taylor.

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Wickam and Olmstead, their representatives, assignees, or agent, or any of them at said Roath's costs and charges, with or without process of law, to travel after said property, goods, chattles and effects hereinbefore described wherever the same or any part thereof may be supposed to be, and to enter with or without force any of said Roath's premises, and search for the same, and to take possession of and remove, carry away, and to sell and dispose of the same, or any part thereof at Public Auction after ten days notice either by publication in some newspaper in said Chicago, or by three notices posted up in the vicinity of said sale, or at private sale without notice, for cash, or on credit, as said Read, Taylor, Wickham and Olmstead, their representatives, assignees or agent, or any of them may think proper, and out of the money arising from such sale to retain first, all costs and charges for travelling after, searching, taking, removing, keeping, storing, advertisement, and sale of such property, goods, chattles and effects, and all prior liens thereon, together with the amount due and unpaid upon the said note rendering the overplus of the money arising from such sale (if any there shall be) unto the said Roath's or their assignees, at the office of the said Roath's in Chicago in such funds as

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may be received at such sale And Provided further that in case the said property or any part thereof shall be attached at any time before the payment of the said promissory note by any other creditor or creditors of the said Roswell W Roath and W. Tyler Roath or if the said Roaths or their executors administrators or assigns shall sell, remove or attempt to sell or remove any of the property aforesaid, or suffer any part thereof to be removed or waste for want of proper care, or if the said Read Taylor McKam and Olmstead their representatives or assignee agent or agents or any of them shall at any time before said note shall become due, think the said property described as aforesaid, or any part thereof will be in danger of being sold, removed, or wasted then the said promissory note shall forthwith become due and payable and it shall in such case be lawful for the said Read Taylor McKham and Olmstead their representatives, agent or agents, or any of them, to enter with or without process of law, at said Roaths costs and charges, any of the premises, or wherever the said property described as aforesaid, or any part thereof may be supposed to be and search for and take possession of, and carry away, and hold possession of, or keep in store the whole or any part of the goods, chattles, and effects, and sell and dispose of the same in manner aforesaid,

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In testimony whereof the said Roswell W. Roath and W Tyler W Roath have hereunto set their hands and seals this twenty third day of October in the year Eighteen hundred and fifty Seven.

Signed. Sealed and Delivered in Presence of.

R W Roath (Seal)

W Tyler Roath (Seal)

State of Illinois }
Cook County } ss

I Jasper A Hoisington justice of the Peace in and for said county, do hereby certify that this mortgage was duly acknowledged before me by the above named R. W. Roath and W. Tyler Roath. this 23d day of October A D Eighteen hundred and fifty seven

J. A Hoisington J. P. (Seal)

State of Illinois. Cook County. Filed for record 20th November 1857 and recorded in Book 9 of C. Mortgages page 427

Wm L Church Clerk

which it was admitted was executed and recorded before execution under which levy was made was delivered to defendant. judgment and execution in favor of C. V Wiley v R W Roath impleaded with W Tyler Roath by virtue of which defendant levied on goods was also admitted. to the admission of which said Mortgage defendant by his counsel then and there objected, but the court overruled the objection and admitted it to

be read in evidence to which decision of the court the defendant there excepted. the plain=
=tiff then called R W Roath one of the mort=
=gagors. as a witness who being sworn testified as follows. I know the parties to this suit plaintiffs live in New York City. I carried on the jewelry bussiness at No 81. South Clark Street Chicago Illinois when we had the stock of goods covered by the mortgage made by me and my son to plaintiffs. about the first of November 1857 Charles W May as agent of the plaintiffs came from New York city. to take possession of the goods store and bussiness under the mortgage he remai=
=ned in Chicago until about the 25th of March 1858. on his arrival he proceeded to take an inventory of the goods of all the goods and effects in the store. this was before the issue or levy of the execution of C V Wiley against me May was in the store. the day the execution was levied but had gone to his dinner at the precise time of the levy. the goods in the store were the same included in the mortgage and were levied on by the Sheriff after his arrival Mr May delivered the proceeds of all the sales made in the store and they were deposited in the Marine Bank to the credit of Read. Taylor Co after his arri=
=val he had the sole control and direction

19 of the buissiness. and forwarded weekly statment of the buissiness to Reed. Taylor & Co at New York he took and held this possess=ion on account of plaintiffs. at the time of making the mortgage we were indebted to plaintiffs about $800. and so continued at the time of ~~making~~ executing the execution Mr May came to Chicago entirely to look after and see to Read. Talyor & Co's interest in this property and to take possession of the same on cross exam=ination witness testified that he had done buis=siness at 81. Clark street for one year and a half under sign of R W Roath & Son. on a sign board & clock. did not remove signs after mak=ing mortgage. no advertizement of change of possession in papers subsequent to the execution of the mortgage myself and two sons were employed in the store prior to date of mortgage no one else. I hired no one else after Mr May came and I and my sons remained in possession as before selling goods under directions of Mr May he sold many goods and we all received money and put in the drawer we retained of proceeds enought to pay expenses of store and our living or personal expenses by consent of May. James & Tyler (my sons) slept at store and had keys of store. I also had keys one of my boys was at the store all the time

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Mr May did not sleep in the store he came there in morning as soon as I did did not stay there evenings generally he sold but few goods in evenings. the day before levy was made we sold Mr Hyatt (atty for plaintiffs in execution and for defendant in this suit) some goods. a few to settle an account. his account against us was about $80. ours against him between $60. and $70. balance about $22. I think I consulted Mr May about propriety of paying Hyatts account before I paid it Mr May was not in store when levy was made he had gone to his dinner. James Roath was there we held a lease of the store no transfer was made of it. Re Examined Mr May paid the rent himself to Dr Quinlan our Landlord & had the direction of paying the rent. he paid the rent for Nov Dec for a/c of Read. Taylor & Co. last and paid all the other Bills against the store we paid no other debts than to Read, Taylor & Co after Mays arrival except a few small ones by his consent. L. H Hyatt witness produced & sworn on part of defendant the transaction referred to took place the day I presented my bill to Roath. balance I think of $22. he said he had no money but that if I wanted anything out of the

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store I could have it. he went to the desk and got ledger. I am perfectly certain he did not leave the show case till after he sold me the goods. I saw Mr May in the Store he was at the desk - Roath did not consult him. Cross Examined after I went in Roath went back to the desk to get his ledger. I cannot state that he did not speak to Mr May. I had presented my bill to him before he went to the desk I heard that May was there and went partly to find out how the bussiness was done but principally to get my pay plaintiffs here offered Replevin writ copied above with the Sheriffs return thereon and rested. defendant then offered in evidence the Execution in favor of C. V Wiley against R W and W. T. Roath under which the goods in question were seized as follows:

State of Illinois }
County of Cook } ss

The People of the State of Illinois To the sheriff of said County. Greeting:

We command you, that of the lands and tenements, goods and chattles of Roswell W Roath impleaded with W Tyler Roath defendants in your county you cause to made the sum of Eight hundred and seventy dollars and fifty cents which

Christopher V Wiley plaintiff lately in the cook county court of Common Pleas of said county at a special term thereof begun and held at chicago in said county on the 2ond monday of November A D 1857 last past, recovered against the said defendant and which by the said court was adjudged to the said plaintiff for his damages. = And also the further sum of Four dollars and seventy cents which were adjudged to the said plaintiff for his costs and charges in that behalf expended. whereof the said defendant convicted. as appears to us of record. and have you these moneys ready to render to the said plaintiff for his damages and costs aforesaid. and make a return of said writ with an Endorsement thereon in what manner you shall have executed the same in ninety days from the date hereof.

Witness Walter Kimball. Clerk of our said Court and the seal thereof. at chicago. in said county this 11th day of December A D 1857

Seal

Walter Kimball Clerk

by defendant and rested. It was admitted that the goods levied upon by the defendant were part of those mortgaged to plaintiffs by the Roaths this was all the evidence in

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the cause. The cause was tried by the court (Manierre Judge) without the intervention of a Jury. who found the issues for defendant and rendered judgment accordingly (to which finding) of the Court. and entry of judgment the plaintiffs then and there excepted and prayed that their Bill of exceptions be allowed and sealed which is done

George Manierre (Seal)
Judge 7th Judicial Circuit
Illinois

And afterwards = To wit: on the 2nd day of August in the year last aforesaid the said plaintiffs by their said attorneys filed in the office of the clerk of the court aforesaid their certain appeal Bond in said cause, which is in the words and figures following = To Wit:

Know all men by these presents that we Ezra C Read. James K Taylor Daniel H Wickham Henry Olmstead & John L Wilson of the city of Chicago. and State of New York by Samuel W Fuller their attorney in fact as principal and John Forsyth of the County of Cook and State of Illinois and Samuel W Fuller of the County of Tazwell and State of Illinois as sureties are held and firmly bound unto John L Wilson of the County of

Cook State of Illinois aforesaid in the sum of Fifteen hundred dollars lawful money of the United States for the payment whereof we do firmly bind ourselves heirs executors and administrators firmly by these presents witness our hands and seals this 2nd day of August A D 1858.

The condition of the above obligation is such that whereas the said John S Wilson by consideration of the Circuit Court of Cook County State of Illinois in a certain action of Replevin therein pending wherein the said Ezra C Read and others were plaintiffs & the said John S Wilson defendant the said John S Wilson recovered a judgment in said suit for the sum of one cent damages and for a return of the property in the declaration in that suit described from which judgment the said Read and Taylor at the time of rendering the same prayed an appeal to the Supreme Court of the State of Illinois next to be holden in the Third Grand Division at Ottawa on the First Tuesday after the third Monday of April next.

Now if the said Read Taylor & Co shall pay the amount of said judgment costs interest and damages in case the said judgment shall be affirmed and shall also duly prosecute their said appeal

then this obligation shall be void other-
-wise to remain in full force and effect.

Ezra C Read By his atty in fact Seal
Saml W Fuller Seal
James R Taylor By Seal
his atty in fact Saml W Fuller
Daniel H Wickham Seal
By his atty in fact Saml W Fuller
Henry Olmstead By Seal
his atty in fact Saml W Fuller
Saml W Fuller Seal
John Forsythe Seal

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

I, **WILLIAM L. CHURCH,** *Clerk of the Circuit Court of Cook County, in the State aforesaid, do hereby certify the above and foregoing, to be a true, perfect and complete copy of* the original Writ, pleadings, proceedings had Entries of record, Bill of exceptions & appeal bond *in a certain cause* lately *pending in said Court on the* Common law *side thereof, wherein* Ezra C. Read Ela Wine plaintiffs *and* John L. Wilson was *defendent*

IN WITNESS WHEREOF, *I have hereunto set my hand, and affixed the seal of our said Court at Chicago, this* 21st *day of* March *A. D. 185*9

Fees for Record $6 25

Wm L. Church
Clerk.

In Sup Ct. 3d Grand Division
April T. 1859—

Read Taylor &c appellants
v
John L. Wilson appellee

Appeal from Circuit Court of Cook County.

And now come the said Pffs. (appellants) and say that in the proceedings in the above entitled cause. and the Record thereof. there is manifest error in this. towit.

1. That the Court erred in rendering judgment for the Defendant

2 That the Court erred in not rendering judgment for the Plaintiffs. appellants.

Scammon & Fuller
Attys for appellants

And Defendant says that in the Record of said cause & the proceedings therein, there is no error.

By L. [illegible] Hyatt
His Atty

329-211

Ezra G. Hewitt

v

John L. Wilson

Reed [illegible]

vs

Wilson

Record

Filed April 26. 1859
L. Leland
Clerk

$25 pd. L. by Seaman
& Fuller –

$6 25 Chgs Seaman & Fuller