

No. 13408

Supreme Court of Illinois

Perkins

vs.

Freeman

STATE OF ILLINOIS

SUPREME COURT,

Third Grand Division.

No. 234.

Perkins

vs

Freeman

13408

Chapman

SUPREME COURT,

THIRD GRAND DIVISION, {
APRIL TERM, A. D. 1861. }

Lemuel Perkins,
Appellant.

v s.

Edmund O. Freeman,
Appellee.

APPEAL FROM COOK CT. COURT.

ABSTRACT OF RECORD.

This was an action of trover, brought by Freeman against Perkins, to Rec. p. 1 the March Term. A. D. 1859, of the Cook Circuit Court.

3-6 The declaration contains one count only, in the usual form in trover, describing a quantity of millinery goods and some few articles of other merchandise.

6 The defendant Perkins plead not guilty.

7 On the 25th day of May, A. D. 1860, the case was tried before the court and a jury; and on said trial the plaintiff, to sustain the issue on his part, called and swore as a witness

12 **EUGENIA FREEMAN, who testified :**

13 That the plaintiff was her father; she had known the defendant for three years; he moved to Tiskilwa, Bureau county, about four years ago, after the first Winter my mother was in the millinery business. In the Spring, or early part of Summer of 1858, a clerk of Fisk & Ripley, of Chicago, came down with a bill against father; mother paid him all the money she had, and gave a note for the balance; she signed the note — signed her name; he promised to send down a small bill of goods, which mother ordered; the goods did not come; soon after, another clerk of Fisk & Ripley came down and wanted the note paid — said it must be paid or he would take the goods; he had an execution, and it was levied; mother said she would go to Chicago in the evening, and sent me round to collect some bills; I called at Mr. Perkins'; he was away, but saw Mrs. Perkins; she said Mr. Perkins would assist mother, if she was in trouble, for she knew Mr. Perkins was owing her a considerable sum; the bill was \$160; Mrs. Perkins said she had no money, but would send Mr. Perkins down; the next day Mr. Perkins came in, and proposed to make a bill of sale, but nothing was concluded on; the goods were put in an upper room; at the time the bill of sale was spoken of, Perkins was to pay off the execution; I think mother and father both signed the bill of sale; it was made out to Perkins and a Mr. Dean; father told Perkins he would not sign the bill of sale unless they would pay off the execution; Perkins said they would pay off the execution, and take the bill of sale as security; after that, when Mr. Dean was not there, Perkins asked if the goods had been inventoried; father said the sheriff had taken no inventory, and Perkins asked him if he was sure, several times; father said he was; Perkins then said, you have it all your own way, for if you can get the goods back into the store, you can divide them; I saw the sheriff talking to Dean; Dean told the sheriff he and Perkins would pay the execution at the end of ten days, if he would let the goods come back; Perkins said he would see the sheriff; the sheriff told Dean he would take his word for it; Perkins told mother, you have it all in your own

hands, for no inventory has been taken; he told her it was best to divide the goods — pick out the more valuable ones and take them away, and fill the shelves with the poorer ones; mother said she was not used to such things and did not like to do it; Perkins said there would be no harm in doing it, as no inventory had been taken, and as Fisk & Ripley had deceived her in getting her to sign a judgment note; he said he would have his wife come down and assist in dividing the goods; she came down, and while there Perkins came in to show how to divide them; I saw them divided, and the good ones were left on the counter in the boxes; I saw Mrs. Perkins take a satchel and put a mantilla and some of the other articles in it, and carry the satchel home; I afterwards saw some of the woollen goods in the attic of our house; I did not see the goods taken away; Perkins said he would send his hired man down with or for the key to his warehouse, and afterwards said he would not send anybody down who could be a witness, but would come himself; I saw

15 father take a trunk away from the house; this was within the ten days after the levy; mother did not go to Chicago to buy goods until after the goods were taken away by the sheriff; on the day before she left, in the evening, Perkins came down to the store and said he would allow her to use his credit to the amount of four hundred dollars, and paid her one hundred and twenty dollars; Perkins advised her to do business in Mrs. Perkins' name, to make him more secure and make folks believe that the goods were his goods; she then got between three and four hundred dollars' worth; I saw one bill of seventy-five dollars from Keith & Faxon, and another of five dollars, purchased on the Perkins credit; she bought about three hundred dollars' worth of goods that came down the next day; the goods were directed to Mrs. L. Perkins; about the time the goods arrived, Perkins came into the store and told mother he would send his hired man down for the goods, and go himself and pay the freight; he paid it, and mother paid the amount to him; the sheriff sold most of the poorer goods that were set aside; as to the goods

16 that were taken away, I do not know what became of them; at the time the execution was to be paid, Perkins was not there, and the sheriff took the goods; afterwards the business was done in Mrs. Perkins' name; the goods were sold by the sheriff in July; Perkins said he had ordered the sheriff to let mother have all the goods she should bid off at the sale, and he would pay for them; after the sale Perkins came and presented

17 the bill, and mother paid it; it was \$147.00. The store was shut up on

a Saturday afternoon about the 1st of September or last of August, 1858; I think it was shut up by father, and he began to pack up the goods; mother saw Perkins about it; he told her that if the creditors knew that the goods were not his, they would levy upon them, and only a few debts would be paid, and if father took possession of them they would be levied on; afterwards he said he saw Mr. Stipp, and he advised that the sheriff levy on all the goods; the goods were levied on by the sheriff, and mother showed him where the goods were; Perkins and Stipp told him if the sheriff would not levy on the goods because the business was done in Mrs. Perkins' name, to pay half the costs, and he said he would, after the levy, put in a claim of property, and Freeman could not testify; afterwards he spoke of the trial of right of property, which came off in August or September; before the trial came off, Mr. Stipp came in and said if Perkins would consent to have father examined, the sheriff would consent to have mother examined. On the day of the trial, my father and Perkins were together, and father said he wanted to know how the matter stood, *and asked Perkins what he intended to do with the goods in case he succeeded*; he said *he did not care about the goods, but was careful about his reputation with Mr. McCormick*. On the evening before the trial, Perkins told me if he did not hold the goods, he knew what would, and said that a judgment note would.

19 On the trial, the goods were awarded to Perkins; afterwards I heard Perkins say the goods should come back; I never heard him say that he had them; I know of goods being purchased, and saw the bills that came with them; some were paid; do not know the amount; mother sent \$75 by Perkins to pay at Faxon's. I saw an inventory of the goods claimed by Perkins; it was taken about the time of the trial of right of property; heard father tell the sheriff he must take an inventory; Mr. Smith, the sheriff, took the goods; Perkins was not there when the goods were taken; Perkins asked mother to go down and assist in taking an inventory on the goods he claimed, and wanted her to set a price on them as low as possible; I afterwards saw the inventory, and mother showed the price. [The witness was here shown a book containing an inventory of certain millinery goods, such as are described in the declaration.] I have seen this book frequently; it was made out by my father; he was present at taking the inventory; I think my father afterwards had this book, and was talking with Perkins and my mother about the articles

awarded to Perkins; I recollect that father asked Perkins if this inventory agreed with the one he and my mother had taken; he said it did.

After the trial, Perkins came to the house, *and father asked him what he intended to do with the goods; Perkins said he did not care anything about the goods, and that father might have them, but he preferred to wait until the time for an appeal had passed.*

21 He then wanted to wait until the excitement had passed away, and said he did not want the public to know how the thing had been managed. Father presented him a bill, but he did not read it; *said he thought he had all the goods, but would send his wife down to see about it, and what she said would be right. His wife came down and said she had had all the goods, and asked us to charge another dress that she had taken out of the goods that had been awarded to Perkins by the jury.* Perkins said, *when the bill of Keith & Faxon was paid he would send the goods back.* After father showed him the bill, he said "this would bring me in debt." Father replied, that he had always been in his debt. The \$75.00 was charged on the bill and credited to Perkins. I don't recollect any other conversation at that time. I saw them talking together; *at the time father showed him the bill, father said he wanted him to bring the goods back. Perkins said he should have them; but he never brought them back, that I know of.* Witness further stated that she had looked over the inventory taken by her father, and that the goods were worth eleven hundred dollars.

22 Upon cross-examination, said witness further stated: The bill of sale was made after the first levy and before the goods came back to the store; I am sure there was a bill of sale signed by my father and mother; it was a bill of sale of the stock of millinery goods to Perkins & Dean, and they agreed to pay off the execution and take the bill of sale as security; I think Perkins took it. The execution on which the goods were taken, and under which the trial of the right of property was had, was in favor of Harmon, Aikin and Gale. I was there when the sheriff came; it was on Monday. On the Saturday previous, father had commenced boxing up the goods; I did not see him at work on Sunday—I was at church—did not come back till dark; afterwards ascertained that he had

been boxing up the goods on Sunday; don't recollect that Perkins was there when the goods were taken. Father told the sheriff that if he was going to take the goods he had boxed up he might as well take those mother had; mother showed the sheriff where the goods were at Perkins' request. Perkins was not there, but mother saw him on Sunday evening.

23 My father took the trunk away at the time the goods were separated after the levy of the Fisk & Ripley execution; it contained goods; do not know that they ever came back. The conversation about the bill was after the trial of the right of property; I had been away on a visit and returned. *The demand was made after showing the bill—Perkins did not refuse; Perkins said when the bill was paid father could have the goods.*

24 Perkins did not claim all of the goods that were taken on the Harmon, Aikin and Gale execution; he told mother he must not claim any goods father could testify to. The inventory included those that Perkins claimed and kept; Perkins told mother that if he claimed any goods that were not his or bought in his name he would lose the whole.

25 Here the plaintiff rested his case.

The defendant, to sustain the issue on his part, introduced as a witness

H. B. SMITH, who testified as follows :

26 I reside at Tiskilwa, Bureau county—was deputy sheriff in that county in the year 1858; know the parties, and heard the testimony of Eugenia Freeman on this trial—heard her testify about the levy under the Harmon, Aikin and Gale execution; I had that execution and made the levy; I was instructed to make the levy by the plaintiffs in the execution and their attorney; had no talk with Mr. Perkins about the goods until after the levy. On the day of the levy I went to see Mr. Freeman on some business of my own; went to his office and he was not in—he came in whilst I was there, in a good deal of a flurry; he said his wife had abused him and taken some papers from him, and asked me to go out with him.

We went out back on to the platform, and Mrs. Freeman came out. There was a box of goods standing on the platform. Mrs. Freeman said
 26 that Mr. Freeman was boxing up the goods to ship them off, to which he replied that she was trying to hide the goods from him. I think this was in September, 1858. Fisk & Ripley's execution was the oldest, and Harmon, Aikin and Gale bought it and controlled both executions. The
 27 first sale was made on the Fisk & Ripley execution; on that sale some of the goods were bought in and put back in the store. I took possession of the box I saw on the platform, and Freeman then said I might as well take the goods his wife had hid away, and we commenced hunting up the goods. We found some in the cellar, some in closets and some in the garret. I got the goods together about 4 o'clock, P. M., and took them away to another building. The box I had taken away before. Up to this time, I had had no communication with Mr. Perkins or any one for him respecting the levy. I had heard that Mr. Perkins claimed a part of the goods, and soon after the levy went to inform him of the fact, but he was not at home—saw him soon afterwards and told him of the levy.

The next day Mr. Miller, the attorney of Mr. Perkins, handed me a notice of a claim of property to part of the goods made by Mr. Perkins. After the case was fixed for trial, I notified the attorney for the plaintiffs in the execution and the plaintiffs themselves, or one of them, and the parties agreed before the trial that the goods should be divided, and the case was continued to give time; and during that time I and my brother and Freeman and his wife and Perkins went and divided the
 28 goods; those that Perkins did not claim were set aside and there was no dispute about them; they were sold on the execution.

The trial of the right of property was about the other lot of goods; attorneys were there to represent the plaintiffs in the execution; Mr. Stipp appeared for Perkins. The jury was sworn in the usual way. Mrs. Freeman was sworn on that trial with reference to the goods in dispute; she swore that the goods belonged to Mr. Perkins, were bought with his money and on his credit. Mr. Freeman was also sworn as a witness. I presided at the trial. Mr. Freeman said he did not know much about the goods, but he believed that what Mrs. Freeman had sworn to was correct. The jury awarded the property in dispute to Mr.

Perkins, and I delivered it to him—a Mr. Searle was with him; they put the goods in Perkins' warehouse—I delivered to Perkins the same goods that were set apart and awarded to him; the value of them might have been \$200. I saw the property frequently and became familiar with it.

29 The next time I saw the goods I went with Mr. Kelly, a constable, who had a search warrant, and found the goods in possession of Freeman in his store; I found them under a counter fifteen or sixteen feet long, ceiled up all around. *I easily identified the property; it was taken from there to the Court House in Princeton and delivered to the sheriff, Waldron; whilst it was there, Freeman wanted me to levy on it under an execution against him and his wife in favor of John H. Weber, supposing I had the execution, but I had delivered the execution over to the sheriff; it was about the time the new sheriff got his commission. I directed Freeman to the new sheriff, Mr. Norton, and he made the levy under said execution.*

On cross examination said witness further testified in substance:

The inventory was taken about a week after the levy; myself, brother, Mr. and Mrs. Freeman and Perkins were present. I don't recollect that Freeman said he wanted an inventory when the goods were levied on; think he did say so when the inventory was taken—I think I took down the inventory; Mrs. Freeman handled most of the goods; Mr. Perkins was along. My brother and Mrs. Freeman handled the goods principally, but Perkins, Freeman and I handled some; Freeman followed round and took an inventory for himself in a small book; he might have copied mine or made use of his own; he was in the room all the time.

31 I was for many years a clerk in a dry goods store, and sold millinery goods. When I next saw the goods, I was in company with Constable Kelly; I knew the goods by familiarity with them, having seen them so often—also, some of the boxes were numbered by my brother. The constable had a search warrant; I think Perkins sued it out; they were in the same room where they had been kept by Mr. Freeman; they were nailed up under the counter. *They were taken by myself and Mr. Kelly*
32 *in a wagon to Princeton and delivered to the sheriff of Bureau county.*

Mr. and Mrs. Perkins were held to bail by the magistrate at Princeton. I was present at the examination before Justice Ide; it lasted four or five days.

32

GEORGE SEARLE testified as follows :

I know the parties ; live in Tiskilwa ; was present at a settlement between Mr. Perkins and Mrs. Freeman, in April, 1858, at Perkins' house ; saw settlement going on ; each had account books ; heard the amount named after they got through ; it was fifteen dollars ; I collected the money to pay the balance ; it was paid ; I was in the employ of Perkins ; this was about the 24th or 25th of April, 1858. The conversation at the settlement was about goods at Mrs. Freeman's store. I knew there was a trial of right of property, as spoken of. After the trial, Perkins and I took the goods and carried them to his warehouse ; it was raining at the time, and we re-packed them in the lower story of the warehouse, then took them into an upper room and nailed up the boxes, put a lock on the door and locked them up. The goods were afterwards missing ; I saw that they were gone ; there was a window in the room.

HENRY KELLY, being sworn, testified as follows :

34

I am the person named by witness Smith as having the search-warrant. I had a search-warrant delivered to me on or about the 28th day of October, 1858 ; the warrant was sued out by Mr. Perkins ; I went with it to Freeman's house ; saw Freeman and read a part of the warrant to him, and handed it to Mrs. Freeman ; they both said they had no such goods in their possession, and that I might search ; I did so ; I first found two pieces of lace under the bolster of the bed ; in searching the bed, I found a new shawl in the straw tick ; Mr. and Mrs. Freeman were present ; one remarked that the shawl did not belong to Perkins ; I found some bonnets in a shoe-box covered over with carpet rags ; I then went into the store-room ; I caught hold of the counter, and found it fast ; in looking around, I saw a shoe-string sticking out of a crack ; Mr. and Mrs. Freeman were there ; I found an axe and broke open the counter, and there I found the goods. I then shut up the house, and told Mr.

and Mrs. Freeman to go with me to the Justice's office. They were arrested. I took the goods into my charge, and took Mr. and Mrs. Freeman to Princeton. *I delivered the goods to the sheriff; they were afterwards levied on by the sheriff under an execution against Freeman.* After I found the goods I went to Perkins' warehouse; there were empty boxes there; the goods had been in the main building of the warehouse; the window of the room, in which they had been, opened out on to a shed roof; the window had been forced down, and there were tracks upon the shed roof. I have seen many such goods, and seen such goods sold. They appeared to have been very much injured by being forced under the counter; the boxes were muddy; they might have brought \$100 or \$150 at auction. Both Mr. and Mrs. Freeman said, when I went there, that they had no such goods there as were described in the warrant, and no goods belonging to Perkins; the store-room was locked, and they said the key was lost; I saw a key in another door, tried it, and opened the door.

Before the goods were found, Mr. and Mrs. Freeman accused Perkins of stealing the goods out of his own warehouse.

JAMES A. SEWALL testified as follows :

I was one of the jury upon the trial of the right of property referred to. Mr. and Mrs. Freeman were there and sworn on that trial; Mrs. Freeman was sworn first; she said the goods were bought with Perkins' money and on his credit. Freeman was called and sworn as a witness; he said so far as he knew, what his wife swore to was correct. The jury made a verdict in writing and signed it, giving the goods to Perkins.

The defendant then introduced in evidence, the record of judgment obtained in the Circuit Court of Cook County, in favor of *John H. Weber et al. vs. Edmund O. Freeman et al.* on the 30th day of June, 1858, for the sum of \$163.61; also, a record of judgment in the Cook County Court of Common Pleas, November 16th, 1858, for the sum of \$142.42, in favor of Edward Bolton and against the same defendants; also, executions in due form issued on both, directed to the sheriff of Bureau

County, upon which was endorsed levies upon the goods in controversy. The levies upon both executions were made January 22, 1859.

The defendant here rested his case. The plaintiff recalled said

Eugenia Freeman, who testified thus :

38 I was not present at the settlement spoken of by the witness Searle ; I only know the amount of the claim against Perkins, by the bills ; knew of Mrs. Perkins coming to the store and getting things frequently ; I heard Mr. Perkins and Mr. and Mrs. Freeman talking about the bills ; Perkins said there was nothing on the bill his wife had not had, but his wife knew about it. The same bill was presented to Mrs. Perkins, and she said it was all right.

39 **FIELDER A. PARISH was called,**

And sworn as a witness for plaintiff, and testified that he was one of the sheriff's jury. Freeman said he did not know whose goods they were ; he had been trying to investigate the matter, and the more he investigated it the less he knew about it ; that he had been kept in the dark in reference to the arrangement between Mrs. Freeman and Mr. Perkins relative to the business she had done as the agent of Mr. Perkins.

39 The foregoing is all the evidence given on said trial.

The Court, at the request of the plaintiff's counsel, instructed the jury as follows :

1. If the jury believe, from the evidence, that the goods in question were the goods of the plaintiff, and that the defendant took the goods wrongfully from the possession of said plaintiff, then the law is for the plaintiff.

40

2. Although the sheriff's jury awarded the goods to Perkins under the claim of property therein, such award or verdict vested no legal title in him as against the plaintiff, but simply operated to defeat the execution creditors, and the right and title to the property in question was as much in the plaintiff Freeman, legally and rightfully, as they were before they were seized and taken in execution. If, therefore, the jury believe, from the evidence, that Freeman was the real owner of the goods at the time of the levy, they should find for the plaintiff, notwithstanding the property on that trial was found to be in Perkins, the defendant.

To the giving of which said instructions, and each of them, the counsel for the defendant then and there excepted.

The defendant's counsel thereupon requested the said Court to instruct the jury as follows :

41

That although the jury believe, from the evidence, that the plaintiff demanded the goods in question of defendant, and that defendant had the possession of the same at the time, and that the plaintiff was, in fact, the owner of said goods, and defendant refused to deliver the same to plaintiff, but plaintiff, before the commencement of this suit, repossessed himself of said goods, and, after he was so repossessed, the same went into the possession of the sheriff of Bureau county, and were held by such sheriff until after the commencement of this suit, by virtue of any of the executions against the plaintiff, given in evidence, or otherwise, then in such case the fact that plaintiff repossessed himself of such goods should be considered in mitigation of damages, and the plaintiff would be entitled to recover only such damages as he is shown to have sustained by reason of the detention by defendant of said goods from the time defendant so refused to deliver them until the plaintiff became so repossessed of said goods.

Which said instructions the said Court refused to give, and to such refusal the defendant's counsel then and there excepted.

The defendant's counsel further asked the Court to instruct the jury as follows :

42 If the jury believe, from the evidence, that the goods in question were levied upon by an execution in favor of Harmon, Aikin and Gale, against Freeman, and that after such levy the defendant Perkins put in a claim of property to said goods, and that before the trial of such claim of property the plaintiff was present and assisted in selecting and setting apart certain of the goods so levied upon, for the purpose of distinguishing them as Perkins' goods; and that he also, on such trial, testified before the jury, in substance, that the goods so put in question were the property of Perkins, and did not then make a claim to them as his property, he is not warranted afterwards, as between him and Perkins, in claiming that said goods were, in fact, at that time, the property of him, said Freeman.

Which said instruction the court then and there refused to give as asked, but gave the same modified as follows :

42 "If the jury believe from the evidence that the goods in question were levied upon by an execution in favor of Harmon, Aikin and Gale against Freeman, and that after such levy the defendant Perkins put in a claim of property to said goods, and that before the trial on such claim of property the plaintiff was present and assisted in selecting and setting apart certain of the goods so levied upon for the purpose of distinguishing them as Perkins' goods, and that he also, on such trial, testified before the jury in substance that the goods so put in question were the property of Perkins, and did not then make a claim to them as his property, *then these circumstances tend to raise a strong presumption that the goods were in fact at that time the property of him, said Perkins.*"

And to the refusal of said court to give said instruction as asked, and modifying the same as aforesaid, the said defendant, by his counsel, then and there excepted.

42 The jury found the defendant guilty and assessed the plaintiff's damages at three hundred and ninety-five dollars.

10 The defendant thereupon filed his motion to set aside the said verdict and for a new trial in said cause, which motion the court overruled, and the defendant then and there excepted, and judgment was rendered upon the verdict and appeal prayed, &c.

43 The defendant filed his bond according to order of court.

 The defendant aforesaid assigns for error the following :

47 1. The court erred in giving the said several instructions on behalf of the said plaintiff.

 2. The court erred in refusing and modifying the said instructions asked in behalf of the defendant.

 3. The court erred in denying the motion, made by the defendant, to set aside the verdict aforesaid and for a new trial in said cause.

 4. The court erred in rendering judgment for the plaintiff below.

SCATES, McALLISTER & JEWETT,

Attorneys for Appellant.

254

Kennel & Johns

no

Edmund C. Freeman

Abstract

Filed Apr. 17, 1861

A. Keland

Clerk

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, and at a term thereof begun, and held at the Court House in the City of Chicago, in said County, on the Fourth Monday, (being the Twenty Eighth day) of May in the year of our Lord one thousand eight hundred and Seventy four and of the Independence of the said United States the Eighty fourth

Present, Honorable George Manierre Judge of the 7th Judicial Circuit of the State of Illinois.

Charles Warren States Attorney.

John Gray Sheriff of Cook County.
Attest, William L. Church Clerk.

Be it remembered, that heretofore to-wit: on the Seventh day of February, in the year of our Lord One thousand eight hundred and Seventy nine there was filed in the Office of the Clerk of the Court aforesaid, a certain precept, in the words and figures following. to-wit:

Books County Circuit Court
Of the April Term A.D. 1859

State of Illinois }
County of Cook }

Edmund Freeman

Edmund Perkins

} Action TROVER & CONVERSION
Dues \$1000.00

Will Clerk issue summons in the above entitled Suit

Page 1

returnable at the April term of said court, directed
to the Sheriff of Cook County, and oblige,

Wm. L. Hall

Atty for Jeff

J. M. L. Church

Feb 17, 1859, Clerk of said court

And of records, to-wit: on the
same day and year last aforesaid, there was issued out
of the Office of the Clerk of the Court aforesaid, and
under the seal thereof, the People writ of summons
directed to the Sheriff of said County to Execute
and doth in the words and figures following, to-wit:

State of Illinois }
County of Cook } p.

The People of the State of Illinois, to
the Sheriff of said County, greeting,

We command you that you summon Edmund Perkins
if he shall be found in your County, personally 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 Chicago, in said County, on
the first Monday of March next, to answer unto
Edmund Freeman, in a plea of Trover to the
damage of the said plaintiff, as is said in the sum of
One thousand dollars; And have you have this
writ, with an endorsement thereon, in what manner
you shall have executed the same,

2

Deal

Witness William L. Church Clerk of
Our said court and the seal thereof
at Chicago aforesaid this seventeenth
day of February. A. D. 1859.
Wm L Church Clerk

And afterwards to-wit: on the
Twenty fifth day of February in the year last aforesaid
said writ was returned into the court aforesaid by
said Sheriff. Endorsed as follows to-wit:—

"Served by reading to the
within named Emanuel Perkins the 17th day of February
1859.
John Bray. Sheriff

W^h pd by p^{er}ff—

By F Sumner Deputy

And afterwards to-wit: on the
Twenty Eighth day of February in the year last
aforesaid said plaintiff by Wilson and Brett his
attorneys filed in the court aforesaid his certain declaration
in the words and figures following to-wit:

"State of Illinois }
Cook County }

In the Cook County Circuit Court
April Term A. D. 1859

Edmund Freeman

Edmund Perkins

Edmund Freeman, plaintiff in
 this suit by Winslow and Knott his Attorneys, complains of
 Edmund Perkins defendant in this suit, who has been sum-
 moned of a Plea of Trespass on the case — For that
 whereas the said plaintiff heretofore to-wit on the fifth
 day of September in the year of Our Lord one thousand
 Eight hundred and fifty Eight, at the County of
 Bureau, to-wit at the said County of Leok was law-
 fully possessed, as of his own property of certain Five
 pair white silk thread gloves — Nine pair silk gloves — Twenty-
 three pair colored silk thread gloves — Twenty three pair
 cotton gloves — sixteen pair of short Mitts — Twelve pair
 of long Mitts — Six lithograph Pictures — One Box of Ribbons
 (10 balls) One Box Ribbons (25 Balls) One Box Ribbons
 (18 balls) One box Ribbons (10 balls) One box Ribbons
 (24 balls) Four pair cuffs and collars — nine sets of
 brass hoops — Two double shawls — One silk shawl —
 One small blue shawl — One box of Embroidery patterns
 Five yards pink crape — Eight yards blue crape — Six
 and one half yards of Muslin — Five pair of crape Vests —
 one piece brown lining — Two boxes of Flowers — One Box
 containing fifteen feathers — One box containing six feathers

Three boxes of Rouge — Two boxes of Elastic — Twenty one
 pair of Stockings — One dozen Childrens socks — One box of Tape —
 One box of thirteen balls of Cross Cotton — One large box of
 Silk Ribbon — One Cloak — Seven veils — Thirteen head
 dresses — Two box of felt fringe — One box of Sewing
 silk — Nineteen Cards of Embroidery — Three gross of
 Hooks and Eyes — One package of Pins — Two
 Sewing birds — Two boxes of Lunders — Two boxes of
 One box of Rugs — One box of Combs — Six heads of
 Combs — One bunch of grass combs — Three quarters
 of a yard of Oil silk — One bunch of shoe laces —
 Six dozen Leather Belts — One roll of Crinoline —
 One box of two dozen Colored thread — One box of
 four dozen Edging — One box of Blank and Lunders —
 Twenty eight velvet Bonnets — Six silk Bonnets — Three
 Childrens Bonnets — Thirty seven lace Bonnets — Six
 Flatts — One box of Bonnets — Two nests of Band
 Boxes — One box of ten Caps — One bunch of Cotton yarn
 One set of Hoops — Two pair of Leggings — One box
 of mollen goods — One bunch of cords and tassels —
 Three doll heads — Twelve pieces of mollen goods —
 Six pair of Boys shoes — Twelve pair of Ladies shoes —
 Two Chenille scarfs — Six and a quarter yards of Ladies
 Flannel — One hundred and three yards of ^{also seven} ~~detent~~
 Twenty eight yards of paper muslin — Fourteen yards
 prints — Two remnants prints — Twenty five yards of

5- Poplin - Thirty nine yards of Calico - Nine Summer dress patterns - Fifty one yards of plaid of great value to-wit of the value of One thousand dollars. and being so possessed, the said Plaintiff afterwards to-wit: on the day and year first above mentioned at the County of Cook aforesaid, casually lost the said goods and Chattels out of his possession, and the same afterwards to-wit: on the day and year first aforesaid, at the County of Cook aforesaid came to the possession of the said defendant by finding - Met the said defendant well knowing the said goods and Chattels to be the property of the said Plaintiff and of right to belong and appertain to him.

But contriving and fraudulently intending, craftily and subtly to deceive and defraud the said Plaintiff in this behalf hath not yet delivered the said goods and Chattels or any or either of them, or any part thereof, to the said Plaintiff altho after requested so to do, and hath hitherto wholly refused so to do, and afterwards, to-wit: on the day and year last aforesaid, at the County of Cook aforesaid, converted and disposed of the said goods and Chattels to his own use - To the damage of the said Plaintiff of One thousand dollars, and therefore he brings this Indictment, Winslow & Knott, Attys for plff dated Feb 26th 1859

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Edmund Perkins

ada

And the said defendant, by Deane

Beate. W. Allister & Sonnet

And plaintiff doth the like

Elam Mott

Atty for Jeff

7
And afterwards, to-wit: at the April
Term of said Court, to-wit: on the Twenty-fifth day of May
in the year of Our Lord One thousand Eight hundred & fifty
the following proceedings, among others, were had and Entered of
record, to-wit:

16752
" Edmund Freeman }
" Edmund Perkins } Jurors

This day comes the said plaintiff, by
Winslow and Knott his Attorneys, and the said defendant, by
Beals, McAllister and Serrett his Attorneys also come,
and issue being joined herein, it is ordered that a jury come
Whereupon come the Jurors of a Jury of good and lawful
men, to-wit: W. O. Keeler, Luther Burley, John King, Esq.,
J. B. Sawyer, E. Bellows, Hamilton Barnes, Dennis Dodge,
D. A. Fiske, John L. Kellogg, James L. Cunningham, H. M.
Hanks, and E. L. Mearcy, who being duly elicited tried
and sworn, well and truly to try the issue joined aforesaid
and a true verdict render according to the law and the
Evidence, the hour of adjournment having arrived, it is ordered
that said jury have leave to separate to meet the Court at
the coming in thereof tomorrow morning at nine o'clock

And afterwards, to-wit: at the
same Term of said Court last aforesaid, to-wit: on the 26th
day of May in the year last aforesaid, the following

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Among other proceedings, were had and Entered of
Record. to-wit:

Edmund Freeman

16752
Emanuel Perkins

} Trover

This day again come the said parties
by their attorneys, and the jurors of the jury aforesaid also
come, and having now heard all the Evidence offered in
said cause, the arguments of counsel as well on the
part of the plaintiff as of the defendant and instruction
from the Court, retire to consider of their verdict, and
afterwards return into Court and say. "That the jury find
the defendant guilty, and assess said plaintiffs damages
to the sum of Three hundred and ninety five dollars.

Whereupon the defendant by his
counsel moves the Court for a new trial of said cause

And afterwards, to-wit: on the
Twenty ninth day of May in the year last aforesaid, said
defendant by his counsel, filed in said Court his certain
motion for new trial in said cause, in words and figures
following. to-wit:

Emanuel Perkins

ads
Edmund Freeman

Book's County Circuit Court

} The said def comes and moves to

set aside the verdict, and for a new trial on the grounds following,

1st It appeared that at the time of the demand made for the goods, there was an Execution in being which had been levied on the same goods, and the plff was not at the time of such demand Entitled to the possession of them. The Warrant. Tiken and Hale Ex r the Pick & Ripleys as appeared by plffs own showing it does not appear that this levy had at that or any other time been abandoned,

3^d The Court erred in refusing the instruction as to the re-possession of the goods by plff after demand being admissible in mitigation of damages.

2^d The Court should have admitted the record in the Ripleys suit in Evidence for if taken by a writ of Ripleys. Error would not lie

4th The Court erred in giving instructions on the part of plff and in modifying instructions asked for by the deft —

5th The verdict of the Jury is against the law and the Evidence —

6th The plff was not entitled to the possession of the property in question.

Beats. McAllister & Ferritt
Deft Attys

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And afterwards, to-wit: at the
 May Term of said Court, to-wit: on the Twenty-first
 day of June in the year last aforesaid, the following, among
 other proceedings, were had and entered of record to-wit:

Edmond. Freeman }
 Samuel Perkins } Taver

1675

This day again came as well the
 said plaintiff by Winston and Knott his attorneys, as the
 said defendant by Coats, McAllister and Corbett his
 attorneys, and counsel having been heard as well in support
 of the Motion of the defendant heretofore Entered for a
 new trial of said cause, as in opposition thereto, and the
 Court being now fully advised in the premises, doth order
 that said motion be and the same hereby is overruled, to
 which ruling of the Court in overruling said motion for a
 new trial, the defendant by his counsel now here Excepts

Therefore it is considered by the
 Court, that said plaintiff do have and recover of the
 said defendant his damages of Three hundred & ninety-five
 dollars in form as aforesaid by the jury aforesaid assessed
 together with his costs and Charges by him about his
 suit in his behalf expended and have Execution
 therefor

Whereupon the said defendant

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by his counsel excepts, and prays an appeal to the
Supreme Court of the State of Illinois, which is granted
by the Court upon condition that the defendant, shall
within thirty days from this date, execute and file
with the clerk of this Court his appeal bond herein
in the penal sum of seven hundred and ninety dollars
conditioned according to law, with good and sufficient
surety thereto, to be approved by said clerk by consent
of said parties,

And on motion, no objection
being made thereto it is ordered that the time for the
defendant to file his Bill of Exceptions in said Cause
be extended thirty days, and the same hereby is ex-
tended accordingly —

And afterwards, to-wit: on the 5th
day of July in the year last aforesaid, said defendant by
his counsel filed his certain Bill of Exceptions, in said Court
in words and figures following. to-wit —

"book. County Circuit Court
"Edmund Freeman }
"Emanuel Perkins } Over

Be it remembered, that on the
trial of this cause on the 21st day of May A.D. 1860

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that being one of the days of the April Term A D 1860 of
said Court before the Honorable George Manierre Judge of
said Court, the plaintiff in order to sustain the issues on
his part called as a witness,

Eugenia Freeman,

who being first duly sworn deposed
as follows. to-wit:—

I know the parties to this suit, — the plaintiff is my Father
— have known defendant for three years — We moved
to Pickitwa Bureau Co., about four years ago after the
first winter my Mother was in the Millinery business
— For two years Father worked on a farm part of the
time and a part of the time at his trade as a Carpenter —
Mother continued in the Millinery business until a
year ago last fall — For the last year or two of our
residence in Pickitwa — Father was agent of the Wm
Lewis and Police Justice — In the spring or early in the
summer of 1858 a clerk of Fisk and Ripley of Chicago came
down with a Bill against Father. Mother paid him
all the money she had and gave a note for the balance —
— She signed the note — signed her name — He promised
to send down a small bill of goods which Mother ordered
The goods did not come — Som after another Clerk of
Fisk and Ripley came down and wanted the note paid
— Said it must be paid or he would take the goods —
— He had an Execution and it was levied — Mother

said she would go to Chicago the Evening and sent me round to collect some bills — I called at defendants — her was away — but Sam Mers Perkins — She said Mers Perkins would assist Mother if she was in trouble for she knew Mers Perkins was owing her a considerable sum — The Bill was \$160 — Mers Perkins said she had no money but would send Mers Perkins down — The next day Mers Perkins came in and proposed to make a Bill of Sale — but nothing was concluded on — The goods were put in an upper room — at the time the bill of sale was spoken of Perkins was to pay off the Execution — I think Mother and Father both signed the bill of sale — It was made out to Perkins and a Mer. Dean — Father told Perkins he would not sign the bill of sale unless they would pay off the Execution — Perkins said they would pay off the Execution and take the Bill of sale as security after that when Mer. Dean ^{was not} there Perkins asked if the goods had been inventoried — Father said the Sheriff had taken no inventory, and Perkins asked him if he was sure several times — Father said he was — Perkins then said you have it all your own way for if you can get the goods back in the store you can divide them and put the good ones away and let the Sheriff take the poor ones — This was addressed to Mother and I think Father was not present when he spoke of

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dividing the goods — I saw the Sheriff talking to Dean —
Dean told the Sheriff he and Perkins would pay the
Execution at the end of ten days if he would let the goods
come back — Perkins said he would see the Sheriff —
The Sheriff told Dean he would take his word for
it — Perkins told Mother you have it all in your
own hands for no inventory has been taken — He told
her it was best to divide the goods pick out the more
valuable ones and take them away and fill the
shelves with the poorer ones — Mother said she was
not used to such business and did not like to do it
Perkins said there would be no harm in doing it as
no inventory had been taken and as Fisk and Ripley
had deceived her in getting her to sign a judgment note —
He said he would have his wife come down and
assist in dividing the goods — She came down and
whilst there Perkins came in to them how to divide them
— I saw them divided and the good ones were left
on the counter in the boxes — I saw Mrs Perkins take
a satchel and put a Mantilla and some other
articles in it and carry the satchel home — I afterwards
saw some of the Wollen goods in the attic of our house —
I did not see the goods taken away — Perkins said
he would send his hired man down with or for the
Key to his warehouse and afterwards he said he
would not send any body down who could be a witness

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but would come himself - I saw Father take a
Trunk away from the house - This was within the ten
days after the levy - Mother did not go to Chicago
to buy goods until after the goods were taken away
by the Sheriff - On the day before she left in the Evening
Perkins came down to the store and said he would
allow her to use his credit to the amount of \$400. and
paid her One hundred and twenty dollars - Perkins
advised her to do business in Mrs Perkins name to
make him more secure and make folks believe the
goods were his - she then had ~~between~~ \$300 & \$400
- I saw one bill of \$75.00 from Keith and Hason
and another one of about \$5.00 purchased on the
Perkins credit - all the other bills were receipted
- she bought about \$300 worth of goods that
came down the next day - The goods were directed
to Mrs S Perkins - About the time the goods arrived
Perkins came into the store and told Mother he
would send his hired man down for the goods and would
go himself and pay for the freight bills - He went down
and came back with the freight bill receipted and my
Mother paid him the amount - The Sheriff sold most
of the poorer goods that were set aside as I have
before stated - as to the goods that were taken away
I do not know what became of them - Perkins came
for the Key and I recollect now he said he would

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leave the door of the Warehouse open and would
come for the Key — at other times Mrs Perkins took
away other goods within the ten days, and at one time
some jewelry was put in — At the time the Execution
was to be paid — Perkins was not there and the
Sheriff took the goods — The business afterwards
went on as usual and no distinction was made
between old bills and new Except the business was
done in Mrs Perkins name — The goods were sold by
the Sheriff about July — Before that time Perkins
came to the Store and wanted to borrow some money
Mother told him she could not spare any for he
wanted to buy in the goods at the Sheriffs sale. —
Perkins said he would advance the money on a
note of a Mr Sheldon of \$75 or \$80 if Mrs Alma
would sign it and took the note and \$20 — He
afterwards said that he had seen Mrs Alma
and that he would sign the note the next time he
saw him, and then he would pay the money on it —
Perkins said he had ordered the Sheriff to let
Mother have all the goods she should bid off
at the sale, and he would pay for them — After
the sale Perkins came in and presented the bill paid
for and Mother counted over the money and
disagreed about the amount, they re-counted it and
agreed and Mother handed it to him — There

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\$147.00 - "He said" I must not take it from you
we must be careful about it. for you may be put
under oath at some future time" - She said she thought
that was the last of it - Perkins told her to put down
the money on the counter and he would pick it up
- She did so and turned away and Perkins put the
Money in his wallet - When Mother went to Chicago
Perkins told her she had better bring down a lot of
Empty Boxes so that the people of the place might
think that she had bought a large amount of goods
in the name of Mrs Perkins so that the goods that were
taken away might be brought back without exciting
suspicion - at the time Mother paid the \$147. Perkins
told me that I could not swear that she paid him
the money because Mother laid it on the counter and
he took it up - The store was shut up on a Saturday
afternoon about the 1st of September or last of August
1858 - I think it was shut up by Father and he began
to pack up the goods - Mother saw Perkins about it
- He told her that if the creditors knew that the
goods were not his they would levy upon them and
only a few debts would be paid and if Father took
possession of them they would be levied on - Afterward
he said he saw Mr Stipp and he advised that the
Sheriff levy on all the goods - Perkins advised that
Father be kept in ignorance of it and that if Father

Know about it the creditors would get the goods and
nothing would be realized from them. He told her
to have all the goods levied on. The goods were
levied on by the Sheriff and Mother showed him where
the goods were. Perkins and Slipp told him if the
Sheriff would not levy upon the goods because the business
was done in Mrs Perkins name to pay half of the costs
and he said he would after the levy put in a claim for
the property and Freeman could not testify because
he did not see the money paid back. Afterwards
he spoke of the trial of the right of property which
came off in August or September. Afterwards and before the
trial came off Mrs Slipp came in and said if he would
consent to have Father examine the Sheriffs Larry would
consent to have Mother examined. On the day of the
trial my Father and Perkins were together and Father
said he wanted to know how the matter stood and asked
him what he intended to do with the goods in case he
succeeded. He said he did not care about the goods
but was careful about his reputation with Mr
Mc Cormick. On the Evening before the trial Perkins
told me if he did not hold the goods, he knew what
would, and said that Judgment notes would and
handed me two judgment notes to be signed by my
Mother. I got the notes signed by my Mother
and handed them to him. She signed her name

and Father, all was done as he requested. On the trial the goods were awarded to Mer Perkins, afterwards I heard Perkins say that the goods should come back — I never heard him say that he had them — I was at home all the time and was employed in the Millinery Store — I know of goods being purchased and saw the Bills that came with the goods — Some were paid — do not know the amount — Think Mother generally sent the money to pay the Bills — I think the \$75 at Keith and Faras was all the credit — Before the sale Perkins came in and said he was going to Chicago and wanted to know if Mother had any business to do there — He said he would like to have him pay a bill at Keith & Faras and handed him \$75.00 — I saw an inventory of the goods claimed by Perkins — It was taken about the time of the trial of the right of Property — I heard Father tell the sheriff he must take an inventory — Other with the sheriff took the goods — Perkins was not here when the goods were taken — Perkins asked Mother to go down and assist in taking an inventory of the goods he claimed and wanted her to set a price upon them as low as possible so as to give him more — I afterwards saw the inventory and Mother showed me another one which showed the price of the goods —

The witness was here shown a book containing an inventory of certain Millinery goods

such as are described in the declaration and in reply
to interrogatories said -

I have seen this Book frequently
it was ^{made} ~~not~~ by my Father - He was present at the taking
of the inventory - I think my Father afterwards had this
Book and was talking with Perkins and my Mother
about the articles awarded to Perkins - I recollect more
father asked Perkins if his inventory agreed with the one
he and my Mother had taken - He said it did or if
there was any difference it was very little not more than
a dollar or two - After the trial Perkins came to the
house and Father asked him what he intended to do
with the goods - Perkins said he did not care anything
about the goods and that Father might have them
but he preferred to wait until the time for an appeal
had passed - He then wanted to wait until the Ex-
citation Excitement had passed away and said he
did not want the public to know how the thing had been
managed - Father presented him a bill - but he did
not read the bill - said he thought he had had all
the goods but would send his wife down to see about
it and what she said would be right - His wife
came down and said she had had all the goods and
asked us to charge another dress that she had taken
out of the goods that had been awarded to Perkins
by the jury - Perkins said when the bill of Keith and

*

Father was paid he would send the goods back, after Father showed him the bill he said this would bring me in your debt. Father replied that he always had been in his debt. The \$75.00 was charged on the bill and credited to Perkins. I do not recollect any other conversations at that time. I saw them talking together afterwards but did not hear it. At the time Father showed him the bill Father said he wanted him to bring them goods back. Perkins said he should have them, but he never brought them back that I know of.

I have looked over the inventory taken by my Father. (meaning the inventory contained in the book above referred to) — I am acquainted with the prices at which the goods sold, have been connected with Millinery business since my Mother commenced at Tiskelwa. The goods in the inventory were worth over \$1100.00. The last time the goods were taken they were taken from the store. The \$120 was given by Perkins to my Mother she gave him a receipt for it. She paid him some money during the summer.

Upon Cross Examination the witness testified as follows

The Bill of Sale was made after the first levy and before the goods came back to the store. I am sure there was a bill of sale.

signed by my Father and Mother - It was a bill of
 sale of the stock of Millinery goods to Perkins & Dean
 and they agreed to pay off the Execution and take the
 bill of sale as security - I think Perkins took it - The
 Execution upon which the goods were taken and under
 which the trial of the right of Property was had was
 was in favor of Harmon Hiken and Hale - I was there
 when the Sheriff came - It was on Monday - On
 the previous Saturday Father had begun boxing up the
 goods - I did not see him at work on Sunday - I
 was at Church next day at 10 1/2 O'clock A.M. returned
 at noon and went back at 1. O'clock P.M. and
 did not come back till dark - Afterwards I
 ascertained that he had been boxing up the goods on
 Sunday - I don't recollect that Perkins was there when
 the goods were taken - Father told the Sheriff that
 if he was going to take the goods he had boxed up he
 might as well take them Mother had - Mother showed
 the Sheriff where the goods were at Perkins request -
 Perkins was not there, but Mother saw him on Sunday
 Evening at his house and afterwards at our house -
 I went with my Mother and heard the conversation -
 My Father did not know about the conversation - I never
 told him about it -

My Father took a trunk away at
 the time the goods were separated after the levy of

the Fisk and Ripley Execution - it contained goods do not know that they ever came back - I did not hear on a former trial in the Superior Court that they did come back in small lots - When the money was paid by my Mother to Perkins for the goods bid off at the Sheriffs sale I stood at the foot of the stairs there was a curtain but it was ~~down~~ drawn - I had just come in from out doors and saw Perkins and Mother talking about the money and so stopped and listened - I was ~~present~~ on this point in the case in the Superior ^{Court} I think I then stated I was standing by the stairs, my hand said I was leaning - If I so recollect I so stated - did not say I was slowly walking thro the room - I may have said I was on the stoop for I was there before I came in, the stairs were on one side of the room and the counter on the other - I recollect that I was standing by the stairs as well as I recollect some other things - The conversation about the bill was after the trial of the right of property - I had been away on a visit and returned - The demand was made after phoning the Bill - Perkins did not refuse - Perkins paid when the bill was paid Father could have the goods - After the bill was phoned Perkins said "this brings me in your debt - I never saw the goods in the shop after that time and have no reason to think that they came back

I went away from home I recollect of carrying some goods to
Newark in the evening - I got them at Mrs Perkins
house - That was after the goods were in Perkins Warehouse
Several weeks after - cannot say whether it was in Sep-
tember or October - I left home about middle of October
cant state the time exactly - I returned to attend a
trial about November - I came home and staid about
a week - It was perhaps four weeks before I returned
finally - I have testified several times in relation
to these transactions - The money handed by mother to
Mrs Perkins to pay Rent and Fares was \$75. I
heard Mother say it was \$75 - I think I proved
it was \$75 on a former trial - I saw Mother count it
the Bills were put in an Envelope - I do prove on
a former trial -

The account between Mother and
Perkins commenced soon after Mother commenced
business in the Spring of 1856, It kept on till the goods were
taken the last time - When I went to Mrs Perkins for
money it was in March or April 1858 - I do not know
where the account book is - I could probably find it
- Part of the account was in the book and part on pieces
of paper - On a former trial I was asked whether Mother
kept Books and was allowed to explain - I said that
when Mother commenced business she did not intend to
keep Books, but that some of her friends wanted credit

for a few days and so she commenced accounts - I wrote
 to an account the other day, some of the items were noted
 down by me and some by my Mother - I don't remember
 what I did swear to on the former trial - I think
 a part of Perkins account is now in a Book - They were
 not entered at the time - I collected the papers together
 and put the items in a Book for fear the papers would
 get lost - I think some of them were written in a Book
 prior to 25 April 1858 some were pinned into a Book
 on pieces of paper, and others pinned to the wall near
 the desk - I recollect a suit between Perkins and
 the Sheriff of Bureau County as to the title to them
 goods - I and my Father were present and were
 sworn on the trial - Mr Perkins did not claim all
 the goods that were taken on the Harmon Hiken and
 Gale Execution - He told Mother he must not claim
any goods Father could testify to - The inventory included
 those that Mr Perkins claimed and kept -

On Examination by plaintiffs
 counsel the witness stated that Mr Perkins told her
 Mother that if he claimed any goods which were not
 his or bought in his name he would lose the whole

The plaintiff here rested and the
 defendant for the purpose of sustaining the issues on his

part, introduced as a witness one
W B Smith.

When being first duly sworn deposed as follows
I reside at Tiskilwa Bureau County Illinois - I was
deputy Sheriff of said County in the year 1858. I know
the parties - I have heard the testimony of Eugenia Freeman
on this trial - I heard her testify about the levy under
the Warman Aiken and Hale Execution - I had that
Execution and made the levy - I was not applied to
by Perkins or by any one on his behalf to make that
levy - I was instructed to make the levy by the plain-
tiffs in the Execution or their attorney - I had no
talk with Mer Perkins about the goods until after
the levy - On the day of the Levy I went to see Mer
Freeman on some business of my own - I went to his
office and he was not in - he came into his office
while I was there, in a good deal of a flurry - He
said his wife had abused him and taken some papers
from him, and asked me to go out with him, we
went back onto the platform and Mer Freeman
came out - There was a box of goods ^{standing} on the platform
- Mer Freeman said that Mer Freeman was boxing
up the goods to ship them off - to which he replied
that he was trying to hide the goods from him - I
think this was in September 1858 - Fisk and Ripleys
Execution was the eldest and Warman Aiken and

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Sale bought and controlled both Executions, the first sale was made on the Fisk and Ripley Execution at that sale some of the goods were bought in and put back in the store — I took possession of the box I

3 I saw on the platform and Freeman then said I might as well take the goods his wife had hid away, and we commenced hunting up the goods, we found some in the cellar, some in closets, and some in the garret — I got the goods together about 4 O'clock P.M. and took them to another building — The Box I had taken away before up to this time I had had no communication with Mr Perkins or any one for him respecting the levy — I had heard that Mr Perkins claimed a part of the goods, and soon after I had made the levy — I went down to inform him of the fact, but he was not at home

I saw him soon afterwards and told him I had levied on the goods which I supposed he claimed

The next day Mr Miller the attorney of Mr Perkins handed me a notice of a claim of property to part of the goods, made by Mr Perkins — After the case was fixed for trial I notified the Attorneys for the plaintiffs in the Execution and the plaintiffs themselves or one of them — And the parties agreed before the trial that the goods should be divided, and the case was continued to give time and during that time I and my Brother and Freeman and his wife and Perkins

ment and divided the goods - Those that Perkins did not claim were set aside and there was no dispute about them - They were sold on the Execution - The trial of the right of Property was about the other lot of goods, The trial was before a Justice of the Peace and a Jury, Attorneys were there to represent the plaintiffs in the Execution - Other Steps appeared for Mr Perkins - The Jury was sworn in the usual way - Mr Freeman was sworn upon that trial as a witness with reference to the goods in dispute - He swore that the goods belonged to Mr Perkins and were bought with his money and on his Credit - Mr Freeman was also sworn as a witness - I presided at the trial - Mr Freeman said he did not know much about the goods, but he believed that what Mr Freeman had sworn to was correct - The Jury awarded the property in dispute to Mr Perkins and I delivered it to him - a Mr Seale was with him - They put the goods in Mr Perkins warehouse - I delivered to Mr Perkins the same goods that were set apart and awarded to him, the value of them might have been \$2000 I saw the property frequently and became familiar with it -

The next time I saw the goods I went with Mr Tilly, a constable who had a search warrant, and found the goods in possession of Freeman in his store - I found

them under a counter 15 or 16 feet long ciled up all around - I easily identified the property - It was taken from there to the Court House in Princeton and delivered to the Sheriff Waldron, whilst it was there Freeman wanted me to levy on it under an Execution against him and his wife in favor of John W. Weber supposing I had the Execution but I had delivered the Execution over to the Sheriff - It was about the time the new Sheriff got his commission - I directed Freeman to the new Sheriff Oliver Norton and he made a levy under said Execution.

On cross Examination the witness testified as follows -

It was in September 1858 that I saw Freeman at his Office - don't recollect of seeing him before I saw him at his Office - I went on my own business - he was acting as Police ~~Justice~~ Magistrate - his office was in the rear end of the building - he first said his wife and daughter were abusing him - do not recollect that any thing was said about Perkins - there might have been - Think he said he intended to know how Matter stood about those goods - don't recollect that Perkins name was mentioned - I recollect he said he had no objections to my levying upon the goods, he was willing the creditors should have the goods - I think ~~he~~ I took the box and sent it away - I did not leave the premises except to get a box or two until I had the goods

together & away - do not recollect of being Perkins before
levying upon the goods - I recollect being Perkins the week
before the levy. Might have seen him the morning of the levy
but do not remember it - Nothing was said about the
Execution against Freeman or the goods - The inventory
was taken about a week after the levy - Myself and
My Brother, Mr. Mr. Freeman and Mr. Perkins
were present I think - do not recollect that Freeman
said he wanted an inventory, when the goods were
levied on - Think he did say so when the inventory
was taken - I think I took down the inventory, Mr.
Freeman handled most of the goods - Mr. Perkins was
along at the same time - My Brother Mr. Freeman
handled the goods principally - But Mr. Perkins
Freeman and I handled some - I think Freeman
followed round and took an inventory for himself -
I think in a small book - he might have copied
mine or made one of his own - He was in the room all
the time - I should think the goods were worth about
£200⁰⁰. There were shawl goods, gloves, cheap jewelry
artificial, feathers for bonnets, bonnets, de Saives, dress
patterns, shawls, a roll of pictures - ribbons, don't remem-
ber how many - embroideries in a small box - don't
recollect the number of Bonnets - don't recollect about
the prices - If I asked about the prices, I asked
Mr. Freeman - did not think the price material in the

matter — after the trial I think Perkins gave my wife a bonnet
 out of the goods awarded to him — There was some velvet
 about it, but I don't recollect whether it was a velvet
 bonnet, or velvet trimmings — I was for many years a clerk
 in a dry goods store and have sold Millinery goods —
 When I next saw the goods I was in company with Constable
 Kelly — I knew the goods by my familiarity with them —
 having seen them so often, also some of the Boxes were numbered
 by my brother — The constable had a search warrant
 I think Mr Perkins showed out the warrant — They were
 in the store in the same room where they had been kept
 by Mrs Freeman — They were nailed up under the counter
 — The goods were taken by myself and Mr Kelly
 in a wagon to Princeton and delivered to the Sheriff of
 Bureau County — Mr and Mrs Freeman were held to
 Bail by the Magistrate at Princeton — I was present
 at the Examination before Justice Ide — It lasted four
 or five days, — On the trial of the right of Property, Freeman
 said he did not know where the goods were, but believed
 what Mrs Freeman swore to was correct — He swore to that
 in substance — I am not as positive of that as I am of any
 thing else I have sworn to — Might be mistaken — On cross
 Examination I think he said he was in a fog — That Perkins and
 his wife had kept him in the dark and that he did not
 know where the goods were —

The defendant next introduced as a witness

on his part
George Beards,

who being first duly sworn testified as follows —
I know Mer and Mrs Freeman, I live in Tiskit-na. I
was present at a settlement between Mr Perkins and Mrs
Freeman in April 1858. It was at Mr Perkins house — I
was in the house at the time Mrs Freeman came there —
I afterwards went into the room where she was — I saw a
settlement was going on — They each had account books —
I heard the amount named after they had got through —
It was \$15⁰⁰ Mr. Perkins claimed an allowance for some
thing done by her for Mrs Freeman amounting to six or
seven dollars — It was allowed — I collected the money to
pay the balance and it was paid — I was in the employ
of Perkins at the time — This was about the 24 or 25 of
April 1858 — The conversation at the settlement was about
goods got at Mrs Freemans store — I know there was a
trial of the right of property, as spoken of by the other
witnesses — After the trial Mr Perkins and I took the
goods and carried them to his warehouse — It was
raining at the time and we repacked them in the lower story
of the Warehouse — and then took them into an upper
story Room and railed up the boxes, put a lock on the
door and locked them up — the goods were afterwards
missing — I saw that they were gone — There was a window
in the room —

On cross Examination the witness testified as follows,

The settlement was in April about the 25^d or 24th. They were in the sitting room. I came in from the Kitchen, Mrs Freeman and Mr and Mrs Perkins were present, - don't think Eugenia Freeman was there. Saw the account book and saw they were settling by the books. - Suppose the books or some of them were Mrs Freeman's because she was sitting by them. - Mrs Perkins was in the room. - I heard no conversation about tearing out leaves of the books or passing over the accounts. - I think I was there half an hour. did not hear any items called off. - I heard nothing said about a dress pattern. - I recollect it particularly because a day or two before Mr & Mrs Perkins told me that Mrs Freeman wanted a settlement and that they expected her up soon. - They said the amount was small and wanted me to collect some money to pay it. -

Being ^{re}examined by defendants counsel the witness stated - I distinctly remember the amount that was paid to be due upon the settlement. -

The defendant further to sustain the issues on his part next called as a witness Henry Kelly

Who being first duly sworn testified as follows I was constable in the town of Pickelma in 1858 and an

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the person named by the witness Smith as having the search
warrant. I had a search warrant delivered to me on
or about 28th day of October 1858 the warrant was sued
out upon the Oath of Mr Perkins. — I went with it to
Freeman's house — I saw Freeman and read a part of the
warrant to him and then handed it to him — He read it
to and handed it to Mrs Freeman — They both said
they had no such goods in their possession, and that I might
search — I did so — I first found two pieces of lace
under the bolster of the ^{bed} head — In searching the bed I
found a new shawl in the straw tick — Mr and Mrs
Freeman were both present, one remarked the shawl
did not belong to Mr Perkins — I found some bonnets
in a shoe box covered over with carpet rags — I then
went into the store room — I caught hold of the counter
and found it fast in looking around I saw a shoe
string sticking out of a crack — Mr and Mrs Freeman
were there — I found an Aie and broke open the
counter and there I found the goods, — I then shut
up the house and told Mr and Mrs Freeman
to go with me to the Justice Office — They were arrested
— I took the goods into my charge and took Mr & Mrs
Freeman to Princeton — I delivered the goods to the Sheriff
They were afterwards levied on by the Sheriff under
an Execution against Freeman, after I found the
goods I went to Perkins Warehouse — There more

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Empty boxes there, & The goods ^{had been} ~~was~~ in the main building of the warehouse - The window of the room in which they had been, opened out onto a shed roof - The window had been forced down and there were tracks upon the shed roof - I have seen many such goods and have seen many such sold - They appeared to have been very much injured by being forced in under the counter - The boxes were muddy, - They might have brought \$1.00 or \$1.50 at auction - Both Mr and Mrs Freeman said, when I went to the house, that they had no such goods there as were described in the warrant and no goods belonging to Sam Perkins - The store room was locked and they said the key was lost - I saw a key in another door, tried it and opened the door -

On Cross Examination the witness testified as follows -

The warrant was procured by Mr Perkins - I first saw Freeman down stairs and asked him where Mrs Freeman was - He said she was up stairs - I replied that I wanted to see them both together and he and I and Mr Perkins went up stairs I began to read the warrant and then handed it to Freeman and he handed it to his wife - Not much was said about the plunder when I went back there - Freeman did not say much - Before the goods were

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found Mr and Mrs Freeman accused Perkins of stealing the goods out of his own Warehouse — at the time the Grand Jury found Freeman was present — he was in the room and was close to us — I was a small room — I was a witness on the trial of the Malicious prosecution case, a year ago in the Superior Court — I then stated that I met Freeman first and Enquired for Mrs Freeman —

The defendant further to sustain the issues on his part next introduced as a witness

James Aberrall, who being duly sworn deposed as follows.

I was one of the jury upon the trial of the Right of Property referred to by the other witnesses — Mr and Mrs Freeman were there and were sworn as witnesses on that trial — Mrs Freeman swore that a part of the goods belonged to Mr Perkins — She was sworn first she said the goods were bought with Mr Perkins money and on his credit — Freeman was present, and was called on the other side — He said so far as he knew, what his wife said was true correct — The jury made a verdict in writing and signed it, giving the goods to Mr Perkins —

On cross Examination the witness testified as follows,
— I was on the jury — I only heard that

testimony given on the trial — Mrs Freeman was sworn first and then Mrs Freeman ^{more} that what his wife said was correct so far as he knew — He said something about his being in the dark about it, but that so far as he knew what Mrs Freeman said was correct — I was about four feet from him —

The defendant in order further to sustain the issue on his part next introduced in Evidence the record of judgment obtained in the Circuit Court of Cook County in favor of John W. Weber Esq against Edmund Freeman Esq on the 50th day of June 1858 for the sum of \$195⁶⁴ — Also a record of a judgment obtained in the Cook County Court of Common Pleas November 16th 1858 for the sum of \$142⁴⁰ in favor of Edward Bollot and against the same defendants — also Executions in due form issued on both of said judgments directed to the Sheriff of Bureau County upon which was Endorsed levies upon the goods in controversy — The levies upon both Executions were made January 22^d 1859

The defendant there rested his case, and the Plaintiff thereupon called the witness —
Eugenia Freeman

who testified as follows,
I was not present at the settlement spoken of by the witness

Mrs. Seab, I only know of the amount of the claim against
 Mrs. Perkins from the bill — I know of Mrs. Perkins
 coming to the store and getting things frequently — I heard
 Mrs. Perkins and Mr. and Mrs. Freeman talking about
 the bill — Mr. Perkins said there was nothing on the bill
 his wife had not had, but his wife knew about it
 — The same bill was presented to Mrs. Perkins and
 she said it was all right and told us to charge another
 dress — I saw the goods at Princeton, on the trial of a
 suit there between Perkins and Norton — There were a
 quarter less goods than were taken by Perkins — The
 bill shown me is the bill presented by my father
 to Mrs. Perkins after the store was ^{shut} up all the items
 were on it then except one, which was the dress for
 \$4.00 put on at the request of Mrs. Perkins — I think
 the credit of \$15.00 was on it then — It is the same
 bill shown to Mrs. Perkins — I know the bill
 by copying it 6 or 7 times —

On cross examination the witness
 stated as follows,

I have ^{not} looked for the Books
 since the adjournment of Court — There is no date to the
 credit of \$15.00 — It was paid in the Spring —

The Plaintiffs counsel in order to —

further sustained the issues on his part, next introduced and read to the jury the deposition of Felder A Parish, as follows —

I was one of the sheriffs jury before whom the trial of the right of property was had in September 1858 at Niskilwa — The property in question had been levied on vs E. O. Freeman and was claimed by Emanuel Perkins — Freeman said he did not know where goods they were — he had been trying to investigate the matter and the more he investigated it the less he knew about it — He said he had been kept in the dark in reference to the arrangement between Mr Freeman and Mr Perkins relative to the business he had been doing as the agent of Mr Perkins —

The foregoing is all the testimony introduced upon the trial of said cause and thereupon the counsel for the plaintiff asked the court to instruct the Jury as follows —

1st If the jury believe from the evidence that the goods in question were the goods of the plaintiff and that the defendant took the goods ~~in question~~ wrongfully from the possession of said plaintiff, then the law is for the plaintiff —

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Although the Sherriffs Jury awarded the goods to Perkins under the claim of property therein such award or verdict of itself, vested no legal title in him as against the plaintiff but simply operated to defeat the Execution creditors, and the right and title to the property in question, was as much in the plaintiff Freeman legally and rightfully as they were before they were seized and taken in Execution. If therefore the jury believe from the Evidence, that Freeman was the real owner of the goods at the time of the levy, they should find for the plaintiff, notwithstanding the property on that trial was found to be in Perkins the defendant.

Both of which said instructions so asked for by the plaintiffs counsel, were given by the Court, and to the giving of said instructions & each of them separately, the defendant by his counsel here and there Excepted.

The defendant thereupon asked the Court to instruct the jury as follows -

That although the jury believe from the Evidence, that the plaintiff demanded the goods in question of defendant, and that the defendant had the possession of the same at the time, and that the plaintiff was in fact the owner of said goods and the

defendant refused to deliver the same to plaintiff, but plaintiff before the commencement of this suit, repossessed himself of said goods, and after he was so repossessed the same went into the possession of the Sheriff of Bureau County and were held by such Sheriff until after the commencement of this suit. By virtue of any of the Executions against the plaintiff given in Evidence or otherwise then in such case the fact that plaintiff repossessed himself of such goods should be considered in mitigation of damages, and the plaintiff would be entitled to recover only such damages as he is shown to have sustained by reason of the detention by defendant of said goods from the time defendant so refused to deliver them until the plaintiff became so repossessed of said goods.

Which said instruction so asked for the defendant, was refused by the Court, and to the refusal of the Court to give such instruction, the defendant by his counsel then and there Excepted

The counsel for the defendant further asked the Court to instruct the Jury as follows
If the jury believe from the Evidence, that the goods in question were levied upon by an Execution in favor of Harmon Riken and Gale against

Freeman, and that after such levy, the defendant Perkins put in a claim of property to said goods, and that before the trial on such claim of property, the plaintiff was present and assisted in selecting and setting apart certain of the goods so levied upon for the purpose of distinguishing them as Perkins goods, and that he also on such trial testified before the jury in substance, that the goods so put in question were the property of Perkins, and did not then make a claim to them as his property, he is not warranted afterwards as between him and Perkins in claiming that said goods were in fact at that time the property of him, said Freeman

The Court refused to give the instruction aforesaid as asked by the depts Counsel but modified and gave the same as follows -

If the jury believe from the Evidence that the goods in question were levied upon by an Execution in favor of Warman Aiken and Gale against Freeman, and that after such levy the defendant Perkins put in a claim of Property to said goods and that before the trial on such Claim of Property the plaintiff was present and assisted in selecting and setting apart certain of the goods so levied upon for the purpose of distinguishing them as Perkins goods, and that he also on such trial testified before the jury in substance that

the goods so put in question were the property of Perkins and did not then make a claim to them as his property. then these circumstances tend to raise a strong presumption that the goods were in fact at that time the property of him said Perkins —

And to the refusal of the Court to give said instructions as asked, and to the modification thereof as aforesaid, the defendant by his counsel then and there Excepted —

The Jury thereupon retired to consider of their verdict, and afterwards returned into Court with a verdict finding the defendant guilty and assessing the damages at the sum of Three hundred and ninety five dollars — The defendant then filed his motion to set aside said verdict, and for a new trial in said cause; which said motion was overruled by the Court and Judgment Entered upon said verdict; and to the decision and opinion of the Court in overruling said motion the defendant by his counsel then and there Excepted —

The defendant thereupon prayed an appeal to the Supreme Court; and because the Exceptions so made and taken as aforesaid to the opinions and decisions of the Court do not appear of Record

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in this cause; therefore the Judge of the said Court. up on
the prayer of the said defendant by his counsel hath
to this Bill of Exceptions set his hand and seal
According to the Statute in such case made & provided
this 5th day of July A.D. 1860

George W. Manwire Doct
Judge of the Judicial Circuit
Illinois

It is hereby stipulated that the foregoing Bill of
Exceptions is correct and is to be deemed the Bill of
Exceptions in the foregoing cause. Elam Holt

Atty for Plff
Eaton, McAllister & Correll
Atty for Deft

And afterwards, to-wit: on the 20
day of July in the year last aforesaid, said defendant
filed in the Court aforesaid, his certain appeal bond
in words and figures following, to-wit:

I now call men by these presents
that are Samuel Perkins and E. D. Herrick of Bureau
County in the State of Illinois and are
held and firmly bound unto Edmund A. Freeman
of the City of Chicago in the County of Cook and

State of Illinois in the penal sum of Seven hundred and ninety dollar lawful money of the United States for the payment of which, well and truly to be made, we bind ourselves, our heirs, Executors and administrators, jointly severally and firmly by these presents, Witness our hands and seals this the 26th day of June A D 1860.

The condition of the above obligation is such, That whereas above named Edmund O. Freeman did at the June term A D 1860 of the Cook County Circuit Court, to-wit: on the 21st day of June A D 1860 that being one of the days of said Term, by the consideration of said Court, recovered a judgment against the above bounden Edmund Perkins for the sum of Three hundred and ninety five dollars. \$395⁰⁰ damages besides costs of suit in a certain action of Trover then pending in said Court in favor of the said Edmund O. Freeman and against the said Perkins, from which said Judgment the said Edmund Perkins has prayed an appeal to the Supreme Court of Illinois and which said appeal has been allowed,

Now if the said Edmund Perkins shall duly prosecute his said appeal, and shall well and truly pay the Judgment, costs, interest and damages, in case the Judgment aforesaid shall be affirmed in and by the said Supreme Court, then the

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above obligation to be void, otherwise to remain
in full force and virtue

Approved this 20th day
of July A.D. 1866

Edmund Perkins, Seal
E. O. Bennett Seal

Wm L Church clerk

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 All papers & all proceedings Entered of
Record in a certain cause lately pending in said Court
on the Common Law side thereof, wherein Edmund O
Freeman was plaintiff and
Samuel Perkins Defendant.

In Witness Whereof, I have hereunto set my hand,
and affixed the Seal of said Court at Chicago, this
fourth day of March
A. D. 1867

Wm L Church Clerk.



Supreme Court, State of Illinois
 Samuel Perkins

vs
Edmond A Freeman

And now comes the said plaintiff
 in person before the Justices of said Court
 at the Court House in the City of Ottawa
 by Scates McAllister and Jewett his attorneys
 and says, that in the record and proceed-
 ings aforesaid and in giving the judgment
 aforesaid there is manifest error in
 this to-wit. The Court erred in giving
 the instructions aforesaid on the behalf of
 the said Edmond A Freeman and in refusing
 and modifying the said several instructions
 asked on behalf of the said Samuel Per-
 -kins

The Court erred in refusing to set
 aside the verdict aforesaid and to
 grant a new trial in said cause.

The Court aforesaid rendered
 judgment in favor of the said
 Freeman and against the said
 Perkins whereas by the law of the
 land judgment should have been
 given by the said Court in favor
 of said Samuel Perkins and

against the said Freeman
Whip for the runs of record
and other runs in the record and
proceedings of record the said Samuel
Perkins pray judgment and that
the said judgment be reversed
&c
Scales M. Waller & Son
Atty for Plaintiff

Supreme Court State of Illinois
Edmund A. Freeman
vs

Samuel Perkins

And now comes the said
defendant in now and joins
in now and says there is no now
in said record of proceedings and
he asks to have said judgment
affirmed with his costs

Walter J. Torne - & Knott

Atty for defendant in
now

Supreme Court
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Samuel Perkins
234 vs app't
Edward C. Freeman
appellee

Transcript
+ copy of records
Fees \$18.00

Filed April 17. 1861
L. Leland
Clerk