

13144

No. _____

Supreme Court of Illinois

Wheeler

vs.

McCorristen, who sues

STATE OF ILLINOIS
SUPREME COURT.
Third Grand Division.
No. 23.
1860

Wheeler
vs.
Carnahan

SUPREME COURT, OF THE STATE OF ILLINOIS.

THIRD GRAND DIVISION.

OZIAS WHEELER, Plaintiff in Error.

VS.

APRIL TERM, A. D. 1859.

MARG'T MCCORRISTEN, Def't. in Error.

POINTS AND AUTHORITIES ON THE PART OF PLAINTIFF IN ERROR.

I. The Court erred in excluding the deposition of James Dalrymple. (Record p. 23, abst. p. 3.)

(1.) The evidence of Wm. George McCorristen, shows the property was in the possession of Wm. McCorristen; and his statements in regard to ownership while he was in possession, should have been received as part of the RES GESTÆ.

II. The Court erred in excluding the chattel mortgage offered in evidence, as part of the res gestæ, the mortgages having been executed upon the property while in the possession of Wm. McCorristen.

III. The first instruction on the part of the Plaintiff below, was erroneous, because it limits the enquiry by the jury, to the question as to whether the Piano was the property of P. M. Kilduff—and the 4th, 5th, 7th, 9th and 10th, instructions on the part of the Plaintiff below, are subject to the same objection, whereas the material issues presented by the 3rd and 4th pleas are, as to whether the Piano in question was the property of the Plaintiff. 1 Gilman, 365—4 Seam. 440. *2 Gilman 20, 8563*

9, Map 104, 263 P. Carter 54
IV. The declarations of Kilduff made subsequent to the levy, and the time of the commencement of the suit, are incompetent to effect the rights of the Defendant below; hence, the 2nd, 3rd, 9th and 10th instructions on the part of Plaintiff below, were erroneous.

V. The 3rd instruction on part of Plaintiff below is erroneous, as being indefinite in its application and calculated to mislead the jury. The evidence shows that the bill of sale was not executed until after the levy, and after the commencement of the suit, and consequently it could not effect the right of the Defendant below in any respect.

VI. The admission of the Defendant below, made at the request of Plaintiff below, that he took the property in question on an execution vs. P. M. Kilduff, on the 10th of February, 1857, as Sheriff of Lee County, (Record p. 17, abstract p. 2,) entitled the Defendant below to question the bona fides of the transaction, and to show that it was fraudulent as against the creditors of Kilduff, hence the 5th and 6th instructions were erroneous. *1. Gilman 20, 8186, 205*

VII. The Plaintiff was bound to show her title to the property in question, and recover if at all, upon the strength of her own title, or if the Defendant could show title in any one other than the Plaintiff, under the issues

in this cause he was entitled to a verdict; and the Court erred in refusing to give the 1st and 2nd instructions, asked by the Defendant below. 1 Gilm. 365—12 Wen. 30—21 do. 205—1 John. 380—1 Black. 291—20 Conn. 364—1 Carter, (Ind.) 54.

VIII. If Wm. McCorristen purchased the Piano with his own means and mortgaged it, and Kilduff purchased it on the sale under such mortgage, it thereby became liable to levy and sale under the execution vs. Kilduff, because if Wm. McCorristen gave the property to defraud his creditors, the gift was void as against his creditors; and if he afterwards mortgaged it to secure a debt owing by him, the mortgage would be valid as against the Plaintiff below; and the title of Kilduff to the property under the mortgage sale, was good; hence, the bona fides of the transactions, and the question of solvency or insolvency of Wm McCorristen became material, and the 3rd and 5th instructions asked for by Defendant below should have been given.

IX. The bill of sale in question being directly from Kilduff to Wm. McCorristen, necessarily showed title in Wm. McCorristen, if in any one, and showed title out of the Plaintiff below; and the 10th instruction asked for by Defendant below, should have been given.

CHUMASERO & ELDREDGE.

Attorney's for Plaintiff in Error.

Ozias Whalen
 12029
 Margt. McCorristen
 Ponts &c

STATE OF ILLINOIS, } ss. The People of the State of Illinois,
SUPREME COURT,

To the Clerk of the See Circuit Court for the County See Greeting:

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

plaintiff, and Ogus Wheeler

defendant, it is said mani-
fest error hath intervened, to the injury of the aforesaid Defendant

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

Witness, The Hon. John D. Caton, Chief
Justice of our said Court, and the Seal
thereof, at Ottawa, this 1st day of
March in the Year of Our Lord
our thousand eight hundred and fifty-nine

L. Deland

Clerk of the Supreme Court

by J. M. Rice Deputy

²⁹
Ozias Wheeler
vs
William Cornister
Writ of Error

Filed March 1st 1859
L. Leland
clerk



1
Wheeler
vs
Margaret McCourter

No 29 -

This case differs essentially from number 28 - in this that in this case - ~~no~~ proof was offered execution was offered in evidence by defendant -

The defendant admitted the taking - that he took the property, on an execution vs Kilduff - on the 10th of Feb 1857 -

Plaintiff a girl of seventeen years of age proved by her brother - that her grandmother left his sister ^{to buy her a piano &} money - with which - her father did buy her a piano & afterwards her father ^{for the sister} exchanged the first piano - for the one in question - & that this exchange was made in Chicago with Reed & Watkins & that these two pianos were all the pianos ever in his father's house -

A cross-examination of the boy showed that he never saw the money left by the grandmother - never saw her will - was not present when the ^{first} piano was bought - nor when the exchange was made - but that all he knew about it was that he

heard from his father & mother that the
Grandmother had left means for that
purpose for his sister - that afterwards
his father brought from the post office
an envelope & money said to have
come from that source & for ~~the~~
~~Sisters~~ - that afterwards a piano
was brought home by his father - as ~~the~~
Margaret's piano - that it was treated
& called hers - and after while the
father with the avowed purpose
of exchanging this piano for another
took the first one away & after
while the second one arrived & was
put up instead of the first - as the
piano of Margaret - & so continued
until taken by the Sheriff Feb-10-
1857 -

Wheeler to defeat this title proved
that this piano ~~in fact~~ came from Reed
& Watkins - instead of being exchanged
of being procured from Reed &
Watkins by Exchange - was bought
from them by the father - on a credit
of six months & that he gave his note
for it & it was shipped in his name
Now it seems to me - that this does
not affect the question in this case at all

It don't Contradict the boy as to his birth
 fulness - It only shows that the mode
 in which the exchange was effected was not
 known to the boy - The second piano became
 & was as effectually the property of the
 daughter - When it was put up in her
 father's house - as if it had been directly
 Swapped for at Watkins & Reed in her
 name - even though the father
 may have taken the old one on his
 own account. & bought the second
 one - for her - I suppose that if Judge Caton should
 give me \$10.00 to buy him a pair of boots in Chicago & I should
 go to the boot store & buy them in my name & give my wife for
 Wheeler further to defeat the daughters little
 proved that One Foot as a constable
 on 9th Aug. 1856 - sold this property - at
 public auction by virtue of a mortgage purported
 to have been made by the father to Oscar Peatt
 dated May 4th 1855 - That the same was
 struck off to Kilduff - that witness rec^d
 the money (he does not say from whom) & put
 the same over to Peatt's attorney -

That the father afterwards moved
 to Dixon & in shipping this with other goods
 said they belonged to Kilduff -

Not one word of testimony that either
 Margaret the pl^{ff} or Kilduff the purchaser
 had any knowledge of this mortgage or
 of this sale

Now give to the judge - the woman has a pretty good idea of the facts - & they are
 without false here say that he has \$10.00 in cash for them

Then + spend the money for my own use - but I may have the boots sold

Def't offered to prove - by secondary other mortgages by the father - but of which plaintiff had no knowledge - & the court properly excluded them for a thousand reasons - too tedious to write here

Plaintiff then introduced a paper from Kilduff disclaiming all title to this piano - saying it was bid off in his name without his knowledge or consent - & transposing all interest he may have by such sale to him - This paper was dated Feb 2 - 1857 - but def't proved it was made but a few weeks before the trial - & that when the paper was presented for him to sign - Kilduff said he had no claim to the property & never had -

Let it be remembered in this case that Wheeler does not come representing a creditor of any body or a purchaser of any body - for he shows no authority & offers none - but takes the property as a stranger - On the pleadings & on the evidence this ^{practically} case is limited to the question of whether Kilduff had acquired title as against the plaintiff - The declarations of Kilduff disclaiming all interest are incompetent - against himself & all others who desire to avail themselves of his supposed rights - Wheeler is a stranger - he takes my

property & tries to excuse himself from
returning it upon the allegation that
some other man owns it - I ask
is not the declaration of that other
man disclaiming title good against
a stranger who has no right ^{of his own} under that
supposed title - If he defends with Kilduff's
shoes - he must take them as Kilduff
would have to take them & whatever is
evidence against Kilduff is against whomever
on that point -

Again Kilduff's declarations & disclaim-
ers are evidence in the same
manner that the receipt of a third
party in such cases is evidence upheld
by our Supreme Court -

Bearing these features of the
case in mind - the rulings in
the instructions are tenable

L. Lyle Dickey
for Margaret

1.29 = 19

Wheeler

v.s

Margaret McConister

Ducky's argument
in favor of the
girl keeping her
piano. —

STATE OF ILLINOIS, } ss. The People of the State of Illinois,
SUPREME COURT,

To the Sheriff of the County of Lee

Greeting :

Because, In the record and proceedings, and also in the rendition of the judgment of a plea which was in the circuit Court of Lee County, before the Judge thereof, between Margaret McCorister who sues by her next friend John Dement plaintiff, and Ozias Wheeler

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

Defendant

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

Margaret McCorister & John Dement her next friend

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

Witness, The Hon. JOHN D. CATON, Chief Justice of our said Court, and the Seal thereof, at Ottawa, this 1st day of March in the Year of Our Lord One Thousand Eight Hundred and Fifty-nine.

S. Leland
Clerk of the Supreme Court.

by J. B. Rice Deputy

Feb 29
 O'Neil Wheeler
 in
 Margaret McConsten
 & John Dement
 are not paid
 Ser-far

Filed March 30, 1858
 Leland & Co

~~Margaret McConsten~~
~~& John Dement her agent~~
~~James O'Neil~~
~~O'Neil Wheeler~~
~~Ser-far~~

Served the within by reading the same
 to John Dement & Margaret McConsten
 this 10 day of March 1859

Served 1,00
 Travel 15
 Ret'n 10
 1,25

Lester Harding Shff of Saco
 By E. A. Snow Deputy

Supreme Court of the State of Illinois
Third Grand Division

Ozias Wheeler
vs. Plaintiff in Error

Margaret McCorristen
vs. Defendant in Error

No. 29

Argument for Plaintiff
in Error -

This was an action of Replevin
commenced in the Circuit Court
and tried at the June Term of said
Court 1858, before Justice Judge and
Jury. The suit was brought to recover
the possession of a Piano & growth
of the same transaction which gave
rise to the case of Wheeler vs. McCorristen
(No 28) the Piano in question being
a portion of the property levied on
by the writ as above and claimed
by the Plaintiff below a daughter of
Jm McCorristen. The Plaintiff below
in case No 29, the main features
of the case are in so many aspects
similar as to render it unnecessary
to go over the ground at great length
and we beg leave to refer the Court
to the argument filed in No 28
& the authorities therein cited so far
as applicable to this case - the issues
~~are~~ are substantially the same
as in No 28.

The first witness introduced by the
Plff, is Douglas McConiston, from his
testimony, it appears that his Grand
Mother left some money to his
Sister money to buy a Piano with,
that witness Father got a Piano
with it ~~the~~ the witness further states
that that Piano was exchanged
by his Father for the one in
question with A. W. Sade & Co
of Chicago, but the Court will
observe that on his cross exam the
witness states that he knows nothing
about the exchange of Piano's except
what his Father told him
We particularly call the attention
of the Court the testimony of this
witness (see abt pages 142) which
seems to be a round-about imprecise
- and on credit statement

And now let us say, that the
testimony of this witness shows
no title in the Dept, in favor
Margaret McConiston to the
Piano in question in this suit
Conceding for the purposes of the
argument, (which is not shown to be
true in point of fact) that Margaret

was the Owner of the first Piano.
 There is no Evidence - or anything
 tending to show - that she was the
 owner of the Piano in question - there
 is no Evidence that the first Piano was
 exchanged for the Piano in question;
 On the contrary, the Deposition of C. L.
 Watkins (Abit. p 2, Rec 3 p 18), ^{shows} that
 the Piano in question was purchased
 by Mrs M Bonister the Father of
 the Puff below, for \$350. on six
 months time, for which he gave his
 own note upon which note has been
 paid \$54, & the balance is still
 due, Now, the Court will observe that
 the witness Geo M Bonister put in that
 the Piano in question came from
 Watkins & Co. & that these 2 Pianos
 are the only Pianos which have
 ever been in ~~Puff~~ his Father's House
 & so show by Watkins how this Piano
 was obtained by Mrs M Bonister - not
 by exchange for the one ~~also~~ claimed
 by Margaret, but by purchase made
 by her Father, hence the legal title to
 the Piano in question, rested in
 Mrs M Bonister & not in the Puff
 below - as there is nothing showing
 a transfer of the title to the Piano

from him to Margaret. The Piff
below was but 17 years of age when
this suit was tried and this ~~the~~ Piano
was purchased several years before
that.

We further show, by the Deposition
of Mrs V Foot ^{that} she sold this Piano
to under a Chattel mortgage given
upon it by Mr McConiston to Oscar
H. Pratt. This mortgage was dated
May 4, 1858, & this sale was made
on the 9th August 1856, at Mr Mc-
Coniston's. no claim was set up by Piff
below to this Piano then.

In connection with this testimony, we
offer to show, that the sworn state-
ments of Mr McConiston made in
the U. S. Court in Jan'y 1857 as a
part of the no gift, he being then
in possession of the property which
evidence the Court excluded & we
think erroneously - we show the
depositions of the Piano by the Messrs
Matlocks, by the Mr McConiston
on account of P. W. Kilduff
in Jan'y 57. & we further offer
to show, the execution of other
mortgages upon this Piano, while

the Piano was in his possession
which was excluded, as we think
erroneously, because the acts of
McComiston while in possession
of the property are proper to be
shown as a part of the registered
In abt p 3 & 4 Recd p 29, 35, 36,

The Plff ^{below} further to maintain the
issue made in evidence the Bill
of sale mentioned in the other case
No 28. which is from John Kilduff
to Wm McComiston & embraces the
Piano in question. and certainly
tends to show that, as coming
from the Plff below shows title
out of John Kilduff, it is true
that Kilduff has embodied in the
Bill of sale a statement that
it was sold off in his name
without his knowledge or consent
but we submit that his declaration
could not be made available to
the Plff as against us, & this
disclaimer of ownership by
Kilduff in this way, cannot
avail the Plaintiff & militate
against the Dept below, the introduc-
-tion of this bill of sale was objected
to & should have been excluded

as the declarations of Kilduff made
in this manner could not effect
the Dept. below; but, the Bill of
Sale having been admitted, we
insist that as coming from the
Plff, ^{below,} it should be out of the
hands the Court erroneously excluded
the 10th Inst. asked for by Dept
below - see abst p 6, Rec p 44 -
To say the least, this testimony was
irrelevant & improper for the Plff
to introduce & should not have
gone to Jury for the purpose of
showing that Kilduff had
no title to the property - by his declara-
tions made after the suit was
commenced & for the purpose of
being used in this suit. as appears
from the testimony of Mr Witt - who
swears that about 2. weeks before
the trial he took this bill of sale
to Kilduff at Peru that it was
then unsigned (this was in Jan. 1858)
& asked him to sign it but Kilduff
said he did not like to sign
it dated so far back, viz July 25.
a few days before the commencement
of this suit) as it might compromise
him but he would think of it

He did not sign it at that time but upon the trial but this bill of sale turns up signed by Kelduff - (see abstr Recd p 36-639.)

Now this property, the Witness Geo McConiston testifies was not removed by the Dept below, (see abstr p 2. Recd p 16) but Dept below admitted that he took the property under an Assentment as Kelduff & this admission was made at the request of Plff below, this admission was a part of ^{the} Case & gave us the right to show attack the bonafides of Plffs claim to the property -

We do not desire to add much to the what is contained in the brief filed in regard to the instructions, but we desire to ^{particularly} call the attention of the Court to a few points in the instructions ^{for Plff below}

The first instruction ^{for Plff below} ~~shows~~ limits the issue to the question ~~as to whether~~ of title to the property to Kelduff, whereas the evidence tends to show that it was the property of Wm McConiston & if the title was in either Kelduff or Wm McConiston the Plff could not legally recover, & hence the instruction was

No 2nd & 3 Instructions for plff below
are obviously Erroneous. The
4. Instruction also limits the issue
under the 3 & 4th pleas to Dept
below or Relduff - The 5 & 6th Instruc-
tions are clearly erroneous for the
reasons stated in brief filed Re
authorities therein cited -

See 4 Cases 416

The 7th Instruction is not supported
by any facts appearing in the case
& is erroneous. The 8th likewise & the
9th for the reasons before stated
And the Court we claim clearly
erred in refusing to give the 1, 3rd
5 & 10th Instructions on the part
of Dept below for the reasons stated
in the printed brief filed.

The Court should have granted
the motion for a new trial because
the verdict is unwarranted by
the evidence. no alibi being shown
in the plff below to the property
is questioned & for the errors &
two otherwise noticed

In this case also the Evidence
 Shows that there was no removal
 of the property - at the request
 of the Pff below the defl admits
 admitted that he took the property
 by virtue of an Ex or Seizure
 but there was no removal in
 point of fact hence there was
 no Caption which would sustain
 the action - a more technical taking
 is not sufficient at the time of
 the ~~beginning~~ commencement of this
 suit the property was in pffs
 possession - there never was a
 removal in point of fact

Chambers & Eldred
 Atty for pff in Error

Supreme Court
 of the State of Illinois
 - Third Grand Division

Ozias Wheeler
 pff in Error

Margaret M. Crisler
 Defl in Error

Argument on pffs
 pff in Error

No 29

Filed April 24, 1860
 L. Deland
 Clerk

Chambers & Eldred
 Atty for pff in Error

SUPRME COURT, OF THE STATE OF ILLINOIS.

THIRD GRAND DIVISION.

OZIAS WHEELER, Plaintiff in Error.

VS.

APRIL TERM, A. D. 1859.

MARG'T. MCCORRISTEN, who sues by her
next friend John Dement, Def't in Error.

ERROR TO LEE.

ABSTRACT OF THE RECORD.

RECORD

This was an action of Replevin commenced in the Lee Circuit Court, by the Defendant in Error, against Ozias Wheeler, Sheriff of Lee County; and was tried at the June term, A. D. 1858, of said Court, before Hon. J. V. Eustace, and a jury; and a verdict found for Defendant in Error, and damages assessed against Plaintiff in Error, at ten dollars, a motion for a new trial was made and over-ruled; and a bill of exceptions was signed and sealed by the Judge, and made part of the record.

Page 11.

The Declaration consists of one count, alledging that the Plaintiff in Error, on the 10th day of April, 1857, in Dixon, in Lee County, in a certain dwelling-house, there took a certain piano-forte of said Plaintiff, and unjustly detained the same, &c.

p. 12, 13.

The Defendant filed to this Declaration four pleas, viz:—

- 1st. Non Cepit.
- 2nd. Non Detinet.
- 3rd. Property in Defendant.
- 4th. Property in Patrick M. Kilduff.

Page 14.

To the first and second pleas, the Plaintiff took issue to the country.

To the third and fourth pleas, the Plaintiff replied property in the Plaintiff, and tendered an issue to the country. To which Defendant added a Semilitir.

The Plaintiff in the Court below, to maintain the issues on her part; introduced as a witness Wm. George McCorristen, who testified as follows:—The Plaintiff is my sister, I knew the piano in the spring of 1857, was my sisters—my grand-mother in Chicago, gave my sister money to buy her a Piano, and my father bought a Piano with the money. The Piano then bought was not the Piano in controversy now. The first Piano was bought five years ago. Sister requested my father to exchange it for another; my father took it to Chicago and did exchange it for another one—I never knew on what terms my father exchanged Pianos; he exchanged it with Reed & Watkins of Chicago. My sister has always lived at home. The Piano has always been at my father's house, where my sister lived. Know P. M. Kilduff, the bill of sale shown me is signed by him.

Page 15.

On cross examination, witness stated:—My grand-mother died in Chicago a number of years ago; don't recollect how long ago—she gave my sister money enough to get her a Piano, I did not see the money given to my sister by my grand-mother. My grand-mother willed it to her, it was left to her; she got it after grand-mother's death. I was in Galena and so was my sister, when grand-mother died; I never saw her will. The property my grand-mother left was sold after her death, and the proceeds of the sale were sent to my sister to buy a piano with; it came to my sister by mail

RECORD

from Chicago to Galena in an envelope—I saw no letter; the envelope was addressed directly to my sister—it was remitted by some person in Chicago by mail—the envelope contained money in currency, there was no letter in the envelope that I recollect. I suppose my father took it out of the post-office. The estate consisted of a building—the money came to my sister in 1849, she is now near seventeen years old; don't know how much was sent to her, or what kind of currency it was—the way I know it came from my grand-mother was, I was told so by my mother. I don't know whether my grandmother made a will or not. My father kept the money and bought a Piano with it—I was not with him when he bought it—he and my mother told me he bought it—it was bought a long time after the money came. We moved from Galena to St. Louis, don't remember how long we lived there—one or two years. Moved to Peru in July 1852; father bought the first Piano, about a year after we moved to Peru. I know he took the money to buy the Piano because, father and mother told me so; I was not present when the exchange of Pianos was made, it was made with Reed & Watkins, of Chicago—my father and mother told me it was made. I was at home when the Piano came home—I think it came by Railroad. The Piano was made by A. W. Ladd & Co., Boston; there never was any other Pianos in our house, except the two Pianos since we moved to Peru. I was not in Peru in August 1856, was in Dubuque. My grand-mother's name was Catherine Boyne, she had two names. When the Piano was levied on, it was at father's house; it was never moved from our house—Grand-mother was quite old, and lived by herself in Chicago. Mother was in Peru when the first Piano was purchased, and when it was exchanged for the second Piano. The Defendant here admitted, at the request of the Plaintiff below.

Page 17.

That he took the piano in question on an execution against P. M. Eilduff, on the 10th day of February, A. D. 1857, as the Sheriff of Lee County. The Plaintiff here rested.

Page 18.

The Defendant introduced and read the deposition of Chauncey L. Watkins, who testified that he was dealer in Pianos, in Chicago. That he was acquainted with Wm. McCorristen—that on the 28th of June, 1854, he witness, sold to Wm. McCorristen a Piano Forte for \$350, on six months time. That he witness shipped the Piano directed to Wm. McCorristen, Peru, Ill.; and that he acknowledged the receipt of it. That he did not say for whom he purchased it; and witness supposed he purchased it for himself. The Piano has not been paid for. There has been \$54 paid, and the balance is yet due and unpaid. Was a rosewood piano, round corners, sliding desk, harp pedal, seven octaves, made by A. W. Ladd & Co., Boston, Massachusetts.

Page 19.

The Defendant then introduced and read in evidence the following note.
\$350. CHICAGO, June 28, 1854.
Six months after date, I promise to pay to the order of Reed & Watkins, at Marine Bank, three hundred and fifty dollars, for value received.

WILLIAM MCCORRISTEN.

Page 20.

The Defendant introduced and read the deposition of Wm. H. Foot, who testified that he was a constable, that he knew Plaintiff, but did not know Defendant—that he knew William McCorristen, had known him five or six years in Peru, and that he now lived in Dixon. The paper marked and attached to the depositions as exhibit A, was delivered to me, by D. M. Hulett, Attorney for Oscar H. Pratt, the mortgagee, to collect the amount thereof. I called upon Wm. McCorristen with the paper, and demanded the property described in the mortgage, at the house of Wm. McCorristen in Peru; he showed me the property and turned it out to me. I took possession of it.

RECORD

and advertised and sold it, as will appear by the several endorsements on the back of said mortgage; which endorsements are in my hand-writing, and signed by me the day they bear date. McCorristen and his family were present on the day of the sale. The property was sold to Patrick M. Kilduff, for \$338 62. I received the money and paid it to D. M. Hulett, Attorney for mortgagee, and took his receipt for the same, endorsed on back of mortgage.

Page 21.

Page 22.

The paper marked, exhibit A. above referred to, is a chattel mortgage, given by Wm. McCorristen to Oscar H. Pratt, to secure \$850, is dated 4th May 1858, and is on the property sued for, viz: the said Piano and other property therein described; said mortgage was acknowledged and recorded as required by law.

The endorsements referred to by the witness Foote, are:

1st. An endorsement of levy on the goods described in the mortgage, dated July 22, 1856.

2nd. An endorsement under date July 23rd, 1856, of the posting of notices to sell on 4th August, 1856.

3rd. An endorsement under date August 4th, of adjournment of sale 9th August.

4th. The following—"August 9th, 1856, sold the above described property to P. M. Kilduff, he being the highest and best bidder for the sum of \$338 62.

WILLIAM H. FOOT, Constable.

5th. The following receipt—"Peru, August 9th, 1856. Received of Wm. H. Foot, \$328 62; proceeds of sale of property under within.

D. M. HULETT.

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The Defendant then offered to read in evidence, the deposition of James Dalrymple, who testified in substance as follows:—That he was acquainted with Margaret McCorristen and William McCorristen. That he was present in the Court Room of the United States Circuit Court for the Northern District of Illinois, in January 1857, when McCorristen was testifying under oath in a certain proceeding against him in said Court, and heard him testify in said case. That he heard him testify relative to a Piano and the household furniture, then in his possession. That at that time, said McCorristen stated, that the Piano and household furniture were in his possession, and that they had been sold to Patrick M. Kilduff, and that Kilduff then owned them; and that Kilduff purchased at a sale under a mortgage, given by him to Oscar H. Pratt.

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To the reading of which deposition the Plaintiff objected, and the objection was sustained; to which decision of the Court the Defendant then and there excepted.

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The Defendant then introduced the deposition of F. W. Mattocks, who testified that he knew Wm. McCorristen; that witness was a livery stable keeper; that witness in fore part of January 1857, took some household furniture, carpets, bedding; crockery &c., to Illinois Central Railroad Depot in La Salle, from the residence of McCorristen in Peru, on my wagons; the Piano was taken on a dray; the goods were directed to J. Burdine, Dixon, Illinois; they were shipped on the account of, and the receipt taken in the name of Patrick M. Kilduff, by directions of the said McCorristen.

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The Defendant then offered to read in evidence, a certified copy of certain mortgages, after having made the necessary proof, and which are to be found on pages 29, 30, 31, 32, 33 and 34 of the Record; the first of which mortgages bears date 8th Sept., 1853, and was given by Wm. McCorristen to Oscar H. Pratt, and recites indebtedness of \$850, and is upon a Piano and other property.

The second is between the same parties, for the same consideration, on the same property, and bears date 14 July, 1852.

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To the introduction of which two mortgages, the Plaintiff objected, and the Court sustained the objection, to which the Plaintiff then and there excepted.

The Defendant here rested.

The Plaintiff introduced and read to the jury a bill of sale from P. M. Kilduff, for the property in question, purporting to have been executed 2nd of February, 1857, and which is as follows:

"PERU, February 2, 1857.

Wm. McCorristen. Bought of P. M. Kilduff, the following described goods and household furniture, now in the possession of the said McCorristen, at Dixon Illinois, to-wit:—(here follows personal property to the amount of \$170.); also all the right title and interest, which I may have in and to one certain Piano Forte, now also in the possession of said McCorristen, and called the property of Margaret McCorristen, being all the interest I acquired in the same, by virtue of a sale made under a chattel mortgage, given by said McCorristen to O. H. Pratt, and sold by Wm. H. Foote, and bid off in my name, without my knowledge or consent. Received payment in full.

P. M. KILDUFF."

The Defendant then called Mr. Witt, who testified that he had seen the bill of sale, about two weeks since; that at that time it was not signed by Kilduff; that witness took it to Peru and asked Kilduff to sign it; that Kilduff said he did not like to sign it, when it was dated so far back, as it might compromise him, but he would think of it; he did not sign it at that time.

On cross examination, witness stated: that Kilduff said he had no claims to the property in dispute; and that he never had any claim to said property.

This was all the evidence in the case. The Plaintiff asked the following instructions, which were given by the Court.

1st. That if the jury believe from the evidence, that the property in question was purchased by the Plaintiff's father, and was given to her, and she had it in her possession as such gift, and the Defendant, without right, took the Piano in question from the Plaintiff's possession; and the Piano was not the property of Kilduff, they should find the issues for the Plaintiff.

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2nd. That the statements of Kilduff called out by the Defendant, from the witness Witt, are evidence to prove that he has and had at the time of the

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taking of the property by the Defendant, no interest in the property in question.

3rd. That the bill of sale offered in evidence made by Kilduff, is of itself prima facie evidence, that said Kilduff has no claim to the property in question.

4th. That the actual possession of the property in question, by the Plaintiff with a claim of right and title, is sufficient to authorize her to recover in this case; unless a higher or better title had been proved to be either in Kilduff or the Defendant, Wheeler.

If the jury believe from the evidence that the Piano in controversy was in the possession of Margaret McCorristen, under a claim of title; and that it was taken from her possession by Defendant Wheeler, she is entitled to a verdict under the pleadings and evidence in the case; unless the Defendant, Wheeler, has shown a better title in himself or in Kilduff; and has also in some way connected himself with Kilduff's title.

Page 40.

5th. That the question of solvency or the insolvency of Wm. McCorristen, or the solvency of Kilduff; or the question whether the Defendant Wheeler, had an execution in his hands, under which he claimed the property, is not in issue in this case; the only question being, had the Plaintiff a right and title to the property as against Kilduff or Wheeler.

6th. That the question of bona fides or good faith, of the Plaintiff's title, or whether her possession was fraudulent as to the creditors of either her father or of Kilduff, is not in issue in this case.

7th. That unless the jury believe from the evidence, that either the Defendant or Kilduff had a title to the Piano in question, which they had a right to enforce against the possession of the Plaintiff, they should find for the Plaintiff if she has shown possession of said property, claiming title, and with the consent of the actual purchaser.

8th. That the admission of the Defendant that he took the property in question, by virtue of an execution against Kilduff, is not, under the issues, evidence to prove that the Defendant is justified in his taking by virtue of such execution.

Page 41.

9th. The Court is requested to instruct the jury on the part of the Plaintiff, that under the issues in this case, the admissions of Kilduff as to the property in controversy, are conclusive evidence as to the right of Kilduff to said property as far as Kilduff is concerned.

10th. That under the issues in this case, the admissions of Kilduff as to the property in controversy, are proof as to right of Kilduff to said property.

To the giving of which and each of which, the Defendant then and there excepted.

The Defendant then asked the following instructions; when the Court refused to give the instructions, numbered 1, 2, 3, 5 and 10.

1st, The Defendant by his 3rd and 4th pleas, having denied the allegations in the Plaintiff's declaration, that the Piano Forte in question is the property of the Plaintiff, the burden of proving the title to the property in question is upon the Plaintiff; and if the jury find from the evidence, that the Piano in question was taken by the Defendant; but that at the time it was taken, it was the property of Patrick M. Kilduff or Wm. McCorristen, or any other person other than the Plaintiff, they should find for the Defendant.

Page 42.

2nd. The Plaintiff, to entitle her to a verdict, must establish her title to the property in question, upon the strength of her own title; and if the jury should find from the evidence, that the Defendant took the property in question, and that at the time of taking, the property was in the possession of the Plaintiff; such possession alone and of itself, is not such evidence of the Plaintiff's title to the property, as will entitle her to a verdict.

3rd. If the jury believe from the evidence that the Piano in question was purchased by Wm. McCorristen with his own means, and upon his

RECORD

own credit, he has a right to execute a mortgage upon the same, and that a title in the purchase under such mortgage would be good, and the Defendant in this case must recover, unless it has been shown satisfactorily to the jury, that said William McCorristen had parted with his title to said property, prior to said mortgage to Plaintiff, for a good and valuable consideration; and that said mortgage and sale under the same, was made without the permission or assent of the Plaintiff.

Page 43.

4th. The Plaintiff in this case, being the daughter of Wm. McCorristen, if the jury believe from the evidence that she was living with the said Wm. McCorristen; and that the Piano in question was in the possession of the said Wm. McCorristen, and that he mortgaged the same, with the permission or assent of the Plaintiff; a sale under said mortgage would vest the title in the purchaser, even if the Plaintiff was the actual owner of the property.

5th. If the jury believe from the evidence that Wm. McCorristen purchased the property in question, and gave the same to the Plaintiff, for the purpose of protecting the same from his creditors; such gift created no title in the property in the Plaintiff, as against the creditors of Wm. McCorristen, and he had a right to mortgage the same, and a sale under such mortgage would vest the title in the purchaser, and they must find for the Defendant.

6th. It is incumbent on the Plaintiff to establish on the trial of this cause, either that there was an unlawful taking of the Piano, the property of the Plaintiff, or a demand of the property of the Defendant, and refusal to deliver the same to the Plaintiff, prior to the commencement of this suit, and in the absence of any evidence showing either such unlawful taking, or demand and refusal to deliver prior to the commencement of this suit, the jury should find for the Defendant.

Page 44.

7th. If the jury find from the evidence, that the Piano in question was purchased by Wm. McCorristen, and retained in possession of Wm. McCorristen, and used by the different members of his family, that no presumption arises from such possession solely that the Piano is the property of Margaret McCorristen.

8th. The jury are not bound to believe all the testimony that may be given by witnesses; they are the judges of the credit, to which a witness is entitled, and they have the right to judge of said fact, from the appearance and behavior of the witness on the stand; and if they are satisfied that the witness has not testified fairly, they may discredit all of the testimony given by such witness.

9th. If a witness is contradicted in any material statement, the jury may disregard all of the evidence given by such witness, and in the event that the witness makes improbable statements, they may disregard such testimony; they are not bound to believe a witness because he testifies under oath.

10th. The bill of sale introduced in evidence by the Plaintiff, if it shows title in any one to the Piano in question, it shows title in Wm McCorristen and not in the Plaintiff.

To all of which refusals of the Court the Defendant then and there excepted.

The jury found a verdict for the Plaintiff, and assessed the damages at ten dollars, which Plaintiff remitted down to one cent.

The Defendant moved the Court for a new trial, which motion was overruled by the Court; judgment was rendered by the Court, on the verdict, to which over-ruling of said motion and rendering of said judgment, the Defendant then and there excepted.

CHUMASERO & ELDREDGE.

Attorney's for Plaintiff in Error.

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M^r E. Corruken
abstract,

Filed April 20. 1857
J. Leland
Clerk

SUPRME COURT, OF THE STATE OF ILLINOIS.

THIRD GRAND DIVISION.

OZIAS WHEELER, Plaintiff in Error.

VS.

APRIL TERM, A. D. 1859.

MARG'T. MCCORRISTEN, who sues by her
next friend John Dement, Def't in Error.

ERROR TO LEE.

ABSTRACT OF THE RECORD.

RECORD

This was an action of Replevin commenced in the Lee Circuit Court, by the Defendant in Error, against Ozias Wheeler, Sheriff of Lee County, and was tried at the June term, A. D. 1858, of said Court, before Hon. J. V. Eustace, and a jury; and a verdict found for Defendant in Error, and damages assessed against Plaintiff in Error, at ten dollars, a motion for a new trial was made and over-ruled, and a bill of exceptions was signed and sealed by the Judge, and made part of the record.

Page 11.

The Declaration consists of one count, alledging that the Plaintiff in Error, on the 10th day of April, 1857, in Dixon, in Lee County, in a certain dwelling-house, there took a certain piano-forte of said Plaintiff, and unjustly detained the same, &c. &c.

p. 12, 13.

The Defendant filed to this Declaration four pleas, viz:—

1st. Non Cepit.

2nd. Non Detinet.

3rd. Property in Defendant.

4th. Property in Patrick M. Kilduff.

Page 14.

To the first and second pleas, the Plaintiff took issue to the country.

To the third and fourth pleas, the Plaintiff replied property in the Plaintiff; and tendered an issue to the country. To which Defendant added a Semilitir.

The Plaintiff in the Court below, to maintain the issues on her part; introduced as a witness Wm. George McCorristen, who testified as follows:—The Plaintiff is my sister, I knew the piano in the spring of 1857, was my sisters—my grand-mother in Chicago, gave my sister money to buy her a Piano, and my father bought a Piano with the money. The Piano then bought was not the Piano in controversy now. The first Piano was bought five years ago. Sister requested my father to exchange it for another; my father took it to Chicago and did exchange it for another one—I never knew on what terms my father exchanged Pianos; he exchanged it with Reed & Watkins of Chicago. My sister has always lived at home. The Piano has always been at my father's house, where my sister lived. Know P. M. Kilduff, the bill of sale shown me is signed by him.

Page 15.

On cross examination, witness stated:—My grand-mother died in Chicago a number of years ago; don't recollect how long ago—she gave my sister money enough to get her a Piano, I did not see the money given to my sister by my grand-mother. My grand-mother willed it to her, it was left to her; she got it after grand-mother's death. I was in Galena and so was my sister, when grand-mother died; I never saw her WILL. The property my grand-mother left was sold after her death, and the proceeds of the sale were sent to my sister to buy a piano with; it came to my sister by mail

RECORD from Chicago to Galena in an envelope—I saw no letter; the envelope was addressed directly to my sister—it was remitted by some person in Chicago by mail—the envelope contained money in currency, there was no letter in the envelope that I recollect. I suppose my father took it out of the post-office. The estate consisted of a building—the money came to my sister in 1849, she is now near seventeen years old; don't know how much was sent to her, or what kind of currency it was—the way I know it came from my grand-mother was, I was told so by my mother. I don't know whether my grandmother made a will or not. My father kept the money and bought a Piano with it—I was not with him when he bought it—he and my mother told me he bought it—it was bought a long time after the money came. We moved from Galena to St. Louis, don't remember how long we lived there—one or two years. Moved to Peru in July 1852; father bought the first Piano, about a year after we moved to Peru. I know he took the money to buy the Piano because, father and mother told me so; I was not present when the exchange of Pianos was made, it was made with Reed & Watkins, of Chicago—my father and mother told me it was made. I was at home when the Piano came home—I think it came by Railroad. The Piano was made by A. W. Ladd & Co., Boston; there never was any other Pianos in our house, except the two Pianos since we moved to Peru. I was not in Peru in August 1856, was in Dubuque. My grand-mother's name was Catherine Boyne, she had two names. When the Piano was levied on, it was at father's house; it was never moved from our house—Grand-mother was quite old, and lived by herself in Chicago. Mother was in Peru when the first Piano was purchased, and when it was exchanged for the second Piano. The Defendant here admitted, at the request of the Plaintiff below.

Page 17. That he took the piano in question on an execution against P. M. Kilduff, on the 10th day of February, A. D. 1857, as the Sheriff of Lee County. The Plaintiff here rested.

The Defendant introduced and read the deposition of Chauncey L. Watkins, who testified that he was dealer in Pianos, in Chicago. That he was acquainted with Wm. McCorristen—that on the 28th of June, 1854, he witness, sold to Wm. McCorristen a Piano Forte for \$350, on six months time. That he witness shipped the Piano directed to Wm. McCorristen, Peru, Ill.; and that he acknowledged the receipt of it. That he did not say for whom he purchased it; and witness supposed he purchased it for himself. The Piano has not been paid for. There has been \$54 paid, and the balance is yet due and unpaid. Was a rosewood piano, round corners, sliding desk, harp pedal, seven octaves, made by A. W. Ladd & Co., Boston, Massachusetts.

Page 19. The Defendant then introduced and read in evidence the following note.
\$350. CHICAGO, June 28, 1854.

Six months after date, I promise to pay to the order of Reed & Watkins, at Marine Bank, three hundred and fifty dollars, for value received.

WILLIAM MCCORRISTEN.

The Defendant introduced and read the deposition of Wm. H. Foot, who testified that he was a constable, that he knew Plaintiff, but did not know Defendant—that he knew William McCorristen, had known him five or six years in Peru, and that he now lived in Dixon. The paper marked and attached to the depositions as exhibit A, was delivered to me, by D. M. Hulett, Attorney for Oscar H. Pratt, the mortgagee, to collect the amount thereof. I called upon Wm. McCorristen with the paper, and demanded the property described in the mortgage, at the house of Wm. McCorristen in Peru; he showed me the property and turned it out to me. I took possession of it.

RECORD

and advertised and sold it, as will appear by the several endorsements on the back of said mortgage; which endorsements are in my hand-writing, and signed by me the day they bear date. McCorristen and his family were present on the day of the sale. The property was sold to Patrick M. Kilduff, for \$338 62. I received the money and paid it to D. M. Hulett, Attorney for mortgagee, and took his receipt for the same, endorsed on back of mortgage.

Page 21.

Page 22.

The paper marked, exhibit A. above referred to, is a chattel mortgage, given by Wm. McCorristen to Oscar H. Pratt, to secure \$850, is dated 4th May 1858, and is on the property sued for, viz: the said Piano and other property therein described; said mortgage was acknowledged and recorded as required by law.

The endorsements referred to by the witness Foote, are:

1st. An endorsement of levy on the goods described in the mortgage, dated July 22, 1856.

2nd. An endorsement under date July 23rd, 1856, of the posting of notices to sell on 4th August, 1856.

3rd. An endorsement under date August 4th, of adjournment of sale 9th August.

4th. The following—"August 9th, 1856, sold the above described property to P. M. Kilduff, he being the highest and best bidder for the sum of \$338 62.

WILLIAM H. FOOT, Constable.

5th. The following receipt—"Peru, August 9th, 1856. Received of Wm. H. Foot, \$328 62; proceeds of sale of property under within.

D. M. HULETT.

Att'y for Mortgagee."

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The Plaintiff introduced and read to the jury a bill of sale from P. M. Kilduff, for the property in question, purporting to have been executed 2nd of February, 1857, and which is as follows:

"PERU, February 2, 1857.

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This was all the evidence in the case. The Plaintiff asked the following instructions, which were given by the Court.

1st. That if the jury believe from the evidence, that the property in question was purchased by the Plaintiff's father, and was given to her, and she had it in her possession as such gift, and the Defendant, without right, took the Piano in question from the Plaintiff's possession; and the Piano was not the property of Kilduff, they should find the issues for the Plaintiff.

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RECORD

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If the jury believe from the evidence that the Piano in controversy was in the possession of Margaret McCorristen, under a claim of title; and that it was taken from her possession by Defendant Wheeler, she is entitled to a verdict under the pleadings and evidence in the case; unless the Defendant, Wheeler, has shown a better title in himself or in Kilduff; and has also in some way connected himself with Kilduff's title.

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5th. That the question of solvency or the insolvency of Wm. McCorristen, or the solvency of Kilduff; or the question whether the Defendant Wheeler, had an execution in his hands, under which he claimed the property, is not in issue in this case; the only question being, had the Plaintiff a right and title to the property as against Kilduff or Wheeler.

6th. That the question of bona fides or good faith, of the Plaintiff's title, or whether her possession was fraudulent as to the creditors of either her father or of Kilduff, is not in issue in this case.

7th. That unless the jury believe from the evidence, that either the Defendant or Kilduff had a title to the Piano in question, which they had a right to enforce against the possession of the Plaintiff, they should find for the Plaintiff if she has shown possession of said property, claiming title, and with the consent of the actual purchaser.

8th. That the admission of the Defendant that he took the property in question, by virtue of an execution against Kilduff, is not, under the issues, evidence to prove that the Defendant is justified in his taking by virtue of such execution.

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own credit, he has a right to execute a mortgage upon the same, and that a title in the purchase under such mortgage would be good, and the Defendant in this case must recover, unless it has been shown satisfactorily to the jury, that said William McCorristen had parted with his title to said property, prior to said mortgage to Plaintiff, for a good and valuable consideration; and that said mortgage and sale under the same, was made without the permission or assent of the Plaintiff.

4th. The Plaintiff in this case, being the daughter of Wm. McCorristen, if the jury believe from the evidence that she was living with the said Wm. McCorristen; and that the Piano in question was in the possession of the said Wm. McCorristen, and that he mortgaged the same, with the permission or assent of the Plaintiff; a sale under said mortgage would vest the title in the purchaser, even if the Plaintiff was the actual owner of the property.

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6th. It is incumbent on the Plaintiff to establish on the trial of this cause, either that there was an unlawful taking of the Piano, the property of the Plaintiff, or a demand of the property of the Defendant, and refusal to deliver the same to the Plaintiff, prior to the commencement of this suit, and in the absence of any evidence showing either such unlawful taking, or demand and refusal to deliver prior to the commencement of this suit, the jury should find for the Defendant.

7th. If the jury find from the evidence, that the Piano in question was purchased by Wm. McCorristen, and retained in possession of Wm. McCorristen, and used by the different members of his family, that no presumption arises from such possession solely that the Piano is the property of Margaret McCorristen.

8th. The jury are not bound to believe all the testimony that may be given by witnesses; they are the judges of the credit, to which a witness is entitled, and they have the right to judge of said fact, from the appearance and behavior of the witness on the stand; and if they are satisfied that the witness has not testified fairly, they may discredit all of the testimony given by such witness.

9th. If a witness is contradicted in any material statement, the jury may disregard all of the evidence given by such witness, and in the event that the witness makes improbable statements, they may disregard such testimony; they are not bound to believe a witness because he testifies under oath.

10th. The bill of sale introduced in evidence by the Plaintiff, if it shows title in any one to the Piano in question, it shows title in Wm McCorristen and not in the Plaintiff.

To all of which refusals of the Court the Defendant then and there excepted.

The jury found a verdict for the Plaintiff, and assessed the damages at ten dollars, which Plaintiff remitted down to one cent.

The Defendant moved the Court for a new trial, which motion was overruled by the Court; judgment was rendered by the Court, on the verdict, to which over-ruling of said motion and rendering of said judgment, the Defendant then and there excepted.

CHUMASERO & ELDREDGE.

Attorney's for Plaintiff in Error.

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abstract.

Filed April 19, 1857

L. Belmont
Clerk

SUPRME COURT, OF THE STATE OF ILLINOIS.

THIRD GRAND DIVISION.

OZIAS WHEELER, Plaintiff in Error,

VS.

MARGT. MCCORRISTEN, who sues by her
next friend John Dement, Def't in Error.

APRIL TERM, A. D. 1859.

ERROR TO LEE.

ABSTRACT OF THE RECORD.

RECORD

This was an action of Replevin commenced in the Lee Circuit Court, by the Defendant in Error, against Ozias Wheeler, Sheriff of Lee County, and was tried at the June term, A. D. 1858, of said Court, before Hon. J. V. Eustace, and a jury; and a verdict found for Defendant in Error, and damages assessed against Plaintiff in Error, at ten dollars, a motion for a new trial was made and over-ruled, and a bill of exceptions was signed and sealed by the Judge, and made part of the record.

Page 11.

The Declaration consists of one count, alledging that the Plaintiff in Error, on the 10th day of April, 1857, in Dixon, in Lee County, in a certain dwelling-house, there took a certain piano-forte of said Plaintiff, and unjustly detained the same, &c.

p. 12, 13.

The Defendant filed to this Declaration four pleas, viz:—

1st. Non Cepit.

2nd. Non Detinet.

3rd. Property in Defendant.

4th. Property in Patrick M. Kilduff.

Page 14.

To the first and second pleas, the Plaintiff took issue to the country.

To the third and fourth pleas, the Plaintiff replied property in the Plaintiff, and tendered an issue to the country. To which Defendant added a Semilitir.

The Plaintiff in the Court below, to maintain the issues on her part; introduced as a witness Wm. George McCorristen, who testified as follows:—The Plaintiff is my sister, I knew the piano in the spring of 1857, was my sisters—my grand-mother in Chicago; gave my sister money to buy her a Piano, and my father bought a Piano with the money. The Piano then bought was not the Piano in controversy now. The first Piano was bought five years ago. Sister requested my father to exchange it for another; my father took it to Chicago and did exchange it for another one—I never knew on what terms my father exchanged Pianos; he exchanged it with Reed & Watkins of Chicago. My sister has always lived at home. The Piano has always been at my father's house, where my sister lived. Know P. M. Kilduff, the bill of sale shown me, is signed by him.

Page 15.

On cross examination, witness stated:—My grand-mother died in Chicago a number of years ago; don't recollect how long ago—she gave my sister money enough to get her a Piano, I did not see the money given to my sister by my grand-mother. My grand-mother willed it to her, it was left to her; she got it after grand-mother's death. I was in Galena and so was my sister, when grand-mother died; I never saw her will. The property my grand-mother left was sold after her death, and the proceeds of the sale were sent to my sister to buy a piano with; it came to my sister by mail

RECORD from Chicago to Galena in an envelope—I saw no letter; the envelope was addressed directly to my sister—it was remitted by some person in Chicago by mail—the envelope contained money in currency, there was no letter in the envelope that I recollect. I suppose my father took it out of the post-office. The estate consisted of a building—the money came to my sister in 1849, she is now near seventeen years old; don't know how much was sent to her, or what kind of currency it was—the way I know it came from my grand-mother was, I was told so by my mother. I don't know whether my grandmother made a will or not. My father kept the money and bought a Piano with it—I was not with him when he bought it—he and my mother told me he bought it—it was bought a long time after the money came. We moved from Galena to St. Louis, don't remember how long we lived there—one or two years. Moved to Peru in July 1852; father bought the first Piano, about a year after we moved to Peru. I know he took the money to buy the Piano because, father and mother told me so; I was not present when the exchange of Pianos was made, it was made with Reed & Watkins, of Chicago—my father and mother told me it was made. I was at home when the Piano came home—I think it came by Railroad. The Piano was made by A. W. Ladd & Co., Boston; there never was any other Pianos in our house, except the two Pianos since we moved to Peru. I was not in Peru in August 1856, was in Dubuque. My grand-mother's name was Catherine Boyne, she had two names. When the Piano was levied on, it was at father's house; it was never moved from our house—Grand-mother was quite old, and lived by herself in Chicago. Mother was in Peru when the first Piano was purchased, and when it was exchanged for the second Piano. The Defendant here admitted, at the request of the Plaintiff below.

Page 17. That he took the piano in question on an execution against P. M. Kilduff, on the 10th day of February, A. D. 1857, as the Sheriff of Lee County. The Plaintiff here rested.

The Defendant introduced and read the deposition of Chauncey L. Watkins, who testified that he was dealer in Pianos, in Chicago. That he was acquainted with Wm. McCorristen—that on the 28th of June, 1854, he witness, sold to Wm. McCorristen a Piano Forte for \$350, on six months time. That he witness shipped the Piano directed to Wm. McCorristen, Peru, Ill.; and that he acknowledged the receipt of it. That he did not say for whom he purchased it; and witness supposed he purchased it for himself. The Piano has not been paid for. There has been \$54 paid, and the balance is yet due and unpaid. Was a rosewood piano, round corners, sliding desk, harp pedal, seven octaves, made by A. W. Ladd & Co., Boston, Massachusetts.

Page 19. The Defendant then introduced and read in evidence the following note.
\$350. CHICAGO, June 28, 1854.
Six months after date, I promise to pay to the order of Reed & Watkins, at Marine Bank, three hundred and fifty dollars, for value received.

WILLIAM MCCORRISTEN.

The Defendant introduced and read the deposition of Wm. H. Foot, who testified that he was a constable, that he knew Plaintiff, but did not know Defendant—that he knew William McCorristen, had known him five or six years in Peru, and that he now lived in Dixon. The paper marked and attached to the depositions as exhibit A, was delivered to me, by D. M. Hulett, Attorney for Oscar H. Pratt, the mortgagee, to collect the amount thereof. I called upon Wm. McCorristen with the paper, and demanded the property described in the mortgage, at the house of Wm. McCorristen in Peru; he showed me the property and turned it out to me. I took possession of it.

RECORD

and advertised and sold it, as will appear by the several endorsements on the back of said mortgage; which endorsements are in my hand-writing, and signed by me the day they bear date. McCorristen and his family were present on the day of the sale. The property was sold to Patrick M. Kilduff, for \$338 62. I received the money and paid it to D. M. Hulett, Attorney for mortgagee, and took his receipt for the same, endorsed on back of mortgage.

The paper marked, exhibit A. above referred to, is a chattel mortgage, given by Wm. McCorristen to Oscar H. Pratt, to secure \$850, is dated 4th May 1858, and is on the property sued for, viz: the said Piano and other property therein described; said mortgage was acknowledged and recorded as required by law.

The endorsements referred to by the witness Foote, are:

1st. An endorsement of levy on the goods described in the mortgage, dated July 22, 1856.

2nd. An endorsement under date July 23rd, 1856, of the posting of notices to sell on 4th August, 1856.

3rd. An endorsement under date August 4th, of adjournment of sale 9th August.

4th. The following—"August 9th, 1856, sold the above described property to P. M. Kilduff, he being the highest and best bidder for the sum of \$338 62.

WILLIAM H. FOOT, Constable.

5th. The following receipt—"Peru, August 9th, 1856. Received of Wm. H. Foot, \$328 62; proceeds of sale of property under within.

D. M. HULETT.

Att'y for Mortgagee."

The Defendant then offered to read in evidence, the deposition of James Dalrymple, who testified in substance as follows:—That he was acquainted with Margaret McCorristen and William McCorristen. That he was present in the Court Room of the United States Circuit Court for the Northern District of Illinois, in January 1857, when McCorristen was testifying under oath in a certain proceeding against him in said Court, and heard him testify in said case. That he heard him testify relative to a Piano and the household furniture, then in his possession. That at that time, said McCorristen stated, that the Piano and household furniture were in his possession, and that they had been sold to Patrick M. Kilduff, and that Kilduff then owned them; and that Kilduff purchased at a sale under a mortgage, given by him to Oscar H. Pratt.

To the reading of which deposition the Plaintiff objected, and the objection was sustained; to which decision of the Court the Defendant then and there excepted.

The Defendant then introduced the deposition of F. W. Mattocks, who testified that he knew Wm. McCorristen; that witness was a livery stable keeper; that witness in fore part of January 1857, took some household furniture, carpets, bedding, crockery &c., to Illinois Central Railroad Depot in La Salle, from the residence of McCorristen in Peru, on my wagons; the Piano was taken on a dray; the goods were directed to J. Burdine, Dixon, Illinois; they were shipped on the account of, and the receipt taken in the name of Patrick M. Kilduff, by directions of the said McCorristen.

The receipt was given to Wm. McCorristen; he directed me to take the receipt in the name of P. M. Kilduff, and then give it to him which I did; McCorristen told me at the time that I took the goods &c. up, that that they belonged to Patrick M. Kilduff.

The Defendant then read in evidence a mortgage, given by Wm. McCor-

RECORD

risten, in substance as follows:—"That Wm. McCorristen had sold for consideration of one dollar, to Oscar H. Pratt, a certain Piano, then in his McCorristen's dwelling-house and possession at Peru, upon condition, that whereas he was indebted to said Pratt in \$850, and had given a chattel mortgage on a Piano and other property, dated Sept. 8th, 1853; and has sold the Piano so mortgaged. This sale is for the purpose of securing the payment of said indebtedness, to be paid when the same is payable &c; and also on condition that I shall remain in possession of said Piano, until default be made in the payment of said \$300; said mortgage contains the usual power of sale, and bears date 16th day of January, 1855.

p. 29 to 35.

The Defendant then offered to read in evidence, a certified copy of certain mortgages, after having made the necessary proof, and which are to be found on pages 29, 30, 31, 32, 33 and 34 of the Record; the first of which mortgages bears date 8th Sept., 1853, and was given by Wm. McCorristen to Oscar H. Pratt, and recites indebtedness of \$850, and is upon a Piano and other property.

The second is between the same parties, for the same consideration, on the same property, and bears date 14 July, 1852.

Page 36.

To the introduction of which two mortgages, the Plaintiff objected, and the Court sustained the objection, to which the Plaintiff then and there excepted.

The Defendant here rested.

The Plaintiff introduced and read to the jury a bill of sale from P. M. Kilduff, for the property in question, purporting to have been executed 2nd of February, 1857, and which is as follows:

"PERU, February 2, 1857.

Wm. McCorristen. Bought of P. M. Kilduff, the following described goods and household furniture, now in the possession of the said McCorristen, at Dixon Illinois, to-wit:—(here follows personal property to the amount of \$170.); also all the right title and interest, which I may have in and to one certain Piano Forte, now also in the possession of said McCorristen, and called the property of Margaret McCorristen, being all the interest I acquired in the same, by virtue of a sale made under a chattel mortgage, given by said McCorristen to O. H. Pratt, and sold by Wm. H. Foote, and bid off in my name, without my knowledge or consent. Received payment in full.

P. M. KILDUFF."

The Defendant then called Mr. Witt, who testified that he had seen the bill of sale, about two weeks since; that at that time it was not signed by Kilduff; that witness took it to Peru and asked Kilduff to sign it; that Kilduff said he did not like to sign it, when it was dated so far back, as it might compromise him, but he would think of it; he did not sign it at that time.

On cross examination, witness stated: that Kilduff said he had no claims to the property in dispute; and that he never had any claim to said property.

This was all the evidence in the case. The Plaintiff asked the following instructions, which were given by the Court.

1st. That if the jury believe from the evidence, that the property in question was purchased by the Plaintiff's father, and was given to her, and she had it in her possession as such gift, and the Defendant, without right, took the Piano in question from the Plaintiff's possession; and the Piano was not the property of Kilduff, they should find the issues for the Plaintiff.

Page 39.

2nd. That the statements of Kilduff called out by the Defendant, from the witness Witt, are evidence to prove that he has and had at the time of the

RECORD

taking of the property by the Defendant, no interest in the property in question.

3rd. That the bill of sale offered in evidence made by Kilduff, is of itself prima facie evidence, that said Kilduff has no claim to the property in question.

4th. That the actual possession of the property in question, by the Plaintiff with a claim of right and title, is sufficient to authorize her to recover in this case; unless a higher or better title had been proved to be either in Kilduff or the Defendant, Wheeler.

If the jury believe from the evidence that the Piano in controversy was in the possession of Margaret McCorristen, under a claim of title; and that it was taken from her possession by Defendant Wheeler, she is entitled to a verdict under the pleadings and evidence in the case; unless the Defendant, Wheeler, has shown a better title in himself or in Kilduff; and has also in some way connected himself with Kilduff's title.

Page 40.

5th. That the question of solvency or the insolvency of Wm. McCorristen, or the solvency of Kilduff; or the question whether the Defendant Wheeler, had an execution in his hands, under which he claimed the property, is not in issue in this case; the only question being, had the Plaintiff a right and title to the property as against Kilduff or Wheeler.

6th. That the question of bona fides or good faith, of the Plaintiff's title, or whether her possession was fraudulent as to the creditors of either her father or of Kilduff, is not in issue in this case.

7th. That unless the jury believe from the evidence, that either the Defendant or Kilduff had a title to the Piano in question, which they had a right to enforce against the possession of the Plaintiff, they should find for the Plaintiff if she has shown possession of said property, claiming title, and with the consent of the actual purchaser.

8th. That the admission of the Defendant that he took the property in question, by virtue of an execution against Kilduff, is not, under the issues, evidence to prove that the Defendant is justified in his taking by virtue of such execution.

Page 41.

9th. The Court is requested to instruct the jury on the part of the Plaintiff, that under the issues in this case, the admissions of Kilduff as to the property in controversy, are conclusive evidence as to the right of Kilduff to said property as far as Kilduff is concerned.

10th. That under the issues in this case, the admissions of Kilduff as to the property in controversy, are proof as to right of Kilduff to said property. To the giving of which and each of which, the Defendant then and there excepted.

The Defendant then asked the following instructions, when the Court refused to give the instructions, numbered 1, 2, 3, 5 and 10.

1st, The Defendant by his 3rd and 4th pleas, having denied the allegations in the Plaintiff's declaration, that the Piano Forte in question is the property of the Plaintiff, the burden of proving the title to the property in question is upon the Plaintiff; and if the jury find from the evidence, that the Piano in question was taken by the Defendant; but that at the time it was taken, it was the property of Patrick M. Kilduff or Wm. McCorristen, or any other person other than the Plaintiff, they should find for the Defendant.

Page 42.

2nd. The Plaintiff, to entitle her to a verdict, must establish her title to the property in question, upon the strength of her own title; and if the jury should find from the evidence, that the Defendant took the property in question, and that at the time of taking, the property was in the possession of the Plaintiff; such possession alone and of itself, is not such evidence of the Plaintiff's title to the property, as will entitle her to a verdict.

3rd. If the jury believe from the evidence that the Piano in question was purchased by Wm. McCorristen with his own means, and upon his

RECORD

own credit, he has a right to execute a mortgage upon the same, and that a title in the purchase under such mortgage would be good, and the Defendant in this case must recover, unless it has been shown satisfactorily to the jury, that said William McCorristen had parted with his title to said property, prior to said mortgage to Plaintiff, for a good and valuable consideration; and that said mortgage and sale under the same, was made without the permission or assent of the Plaintiff.

Page 43.

4th. The Plaintiff in this case, being the daughter of Wm. McCorristen, if the jury believe from the evidence that she was living with the said Wm. McCorristen; and that the Piano in question was in the possession of the said Wm. McCorristen, and that he mortgaged the same, with the permission or assent of the Plaintiff; a sale under said mortgage would vest the title in the purchaser, even if the Plaintiff was the actual owner of the property.

5th. If the jury believe from the evidence that Wm. McCorristen purchased the property in question, and gave the same to the Plaintiff, for the purpose of protecting the same from his creditors; such gift created no title in the property in the Plaintiff, as against the creditors of Wm. McCorristen, and he had a right to mortgage the same, and a sale under such mortgage would vest the title in the purchaser, and they must find for the Defendant.

6th. It is incumbent on the Plaintiff to establish on the trial of this cause, either that there was an unlawful taking of the Piano, the property of the Plaintiff, or a demand of the property of the Defendant, and refusal to deliver the same to the Plaintiff, prior to the commencement of this suit, and in the absence of any evidence showing either such unlawful taking, or demand and refusal to deliver prior to the commencement of this suit, the jury should find for the Defendant.

Page 44.

7th. If the jury find from the evidence, that the Piano in question was purchased by Wm. McCorristen, and retained in possession of Wm. McCorristen, and used by the different members of his family, that no presumption arises from such possession solely that the Piano is the property of Margaret McCorristen.

8th. The jury are not bound to believe all the testimony that may be given by witnesses; they are the judges of the credit, to which a witness is entitled, and they have the right to judge of said fact, from the appearance and behavior of the witness on the stand; and if they are satisfied that the witness has not testified fairly, they may discredit all of the testimony given by such witness.

9th. If a witness is contradicted in any material statement, the jury may disregard all of the evidence given by such witness, and in the event that the witness makes improbable statements, they may disregard such testimony; they are not bound to believe a witness because he testifies under oath.

10th. The bill of sale introduced in evidence by the Plaintiff, if it shows title in any one to the Piano in question, it shows title in Wm McCorristen and not in the Plaintiff.

To all of which refusals of the Court the Defendant then and there excepted.

The jury found a verdict for the Plaintiff, and assessed the damages at ten dollars, which Plaintiff remitted down to one cent.

The Defendant moved the Court for a new trial, which motion was overruled by the Court; judgment was rendered by the Court, on the verdict, to which over-ruling of said motion and rendering of said judgment, the Defendant then and there excepted.

CHUMASERO & ELDREDGE.

Attorney's for Plaintiff in Error.

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no.

M - M Corristen

abstract.

Filed April 19, 1859

Leland
Clerk

SUPREME COURT, OF THE STATE OF ILLINOIS.

THIRD GRAND DIVISION.

OZIAS WHEELER, Plaintiff in Error.

VS.

APRIL TERM, A. D. 1859.

MARG'T MCCORRISTEN, Def't. in Error.

POINTS AND AUTHORITIES ON THE PART OF PLAINTIFF IN ERROR.

I. The Court erred in excluding the deposition of James Dalrymple. (Record p. 23, abst. p. 3.)

(1.) The evidence of Wm. George McCorristen, shows the property was in the possession of Wm. McCorristen; and his statements in regard to ownership while he was in possession, should have been received as part of the RES GESTÆ.

II. The Court erred in excluding the chattel mortgage offered in evidence, as part of the res gestæ, the mortgages having been executed upon the property while in the possession of Wm. McCorristen.

III. The first instruction on the part of the Plaintiff below, was erroneous, because it limits the enquiry by the jury, to the question as to whether the Piano was the property of P. M. Kilduff—and the 4th, 5th, 7th, 9th and 10th, instructions on the part of the Plaintiff below, are subject to the same objection, whereas the material issues presented by the 3rd and 4th pleas are, as to whether the Piano in question was the property of the Plaintiff. 1 Gilman, 365—4 Scam. 440. *2. Enleaf Ev 5863 reasons cited*

P. Mass 104-265, Carter 54
IV. The declarations of Kilduff made subsequent to the levy, and the time of the commencement of the suit, are incompetent to effect the rights of the Defendant below; hence, the 2nd, 3rd, 9th and 10th instructions on the part of Plaintiff below, were erroneous:

V. The 3rd instruction on part of Plaintiff below is erroneous, as being indefinite in its application and calculated to mislead the jury. The evidence shows that the bill of sale was not executed until after the levy, and after the commencement of the suit, and consequently it could not effect the right of the Defendant below in any respect.

VI. The admission of the Defendant below, made at the request of Plaintiff below, that he took the property in question on an execution vs. P. M. Kilduff, on the 10th of February, 1857, as Sheriff of Lee County, (Record p. 17, abstract p. 2,) entitled the Defendant below to question the bona fides of the transaction, and to show that it was fraudulent as against the creditors of Kilduff, hence the 5th and 6th instructions were erroneous.

1 Enleaf Ev 2186-205
VII. The Plaintiff was bound to show her title to the property in question, and recover if at all, upon the strength of her own title, or if the Defendant could show title in any one other than the Plaintiff, under the issues

in this cause he was entitled to a verdict; and the Court erred in refusing to give the 1st and 2nd instructions, asked by the Defendant below. 1 Gilm. 365—12 Wen. 30—21 do. 205—1 John. 380—1 Black. 291—20 Conn. 364—1 Carter, (Ind.) 54.

VIII. If Wm. McCorristen purchased the Piano with his own means and mortgaged it, and Kilduff purchased it on the sale under such mortgage, it thereby became liable to levy and sale under the execution vs. Kilduff, because if Wm. McCorristen gave the property to defraud his creditors, the gift was void as against his creditors; and if he afterwards mortgaged it to secure a debt owing by him, the mortgage would be valid as against the Plaintiff below; and the title of Kilduff to the property under the mortgage sale, was good; hence, the bona fides of the transactions, and the question of solvency or insolvency of Wm. McCorristen became material, and the 3rd and 5th instructions asked for by Defendant below should have been given.

IX. The bill of sale in question being directly from Kilduff to Wm. McCorristen, necessarily showed title in Wm. McCorristen, if in any one, and showed title out of the Plaintiff below; and the 10th instruction asked for by Defendant below, should have been given.

CHUMASERO & ELDREDGE.

Attorney's for Plaintiff in Error.

Ozias Whelan
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Margt McCormack

Pomelo &c

Filed April 20, 1854

E. G. Gland
Clerk

SUPREME COURT, OF THE STATE OF ILLINOIS.

THIRD GRAND DIVISION.

OZIAS WHEELER, Plaintiff in Error.

VS.

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(1.) The evidence of Wm. George McCoristen, shows the property was in the possession of Wm. McCoristen; and his statements in regard to ownership while he was in possession, should have been received as part of the RES GESTÆ.

II. The Court erred in excluding the chattel mortgage offered in evidence, as part of the res gestæ, the mortgages having been executed upon the property while in the possession of Wm. McCoristen.

III. The first instruction on the part of the Plaintiff below, was erroneous, because it limits the enquiry by the jury, to the question as to whether the Piano was the property of P. M. Kilduff—and the 4th, 5th, 7th, 9th and 10th, instructions on the part of the Plaintiff below, are subject to the same objection, whereas the material issues presented by the 3rd and 4th pleas are, as to whether the Piano in question was the property of the Plaintiff. 1 Gilman, 365—4 Scam. 440. 2 *Gmuleaf v S 1863*

IV. The declarations of Kilduff made subsequent to the levy, and the time of the commencement of the suit, are incompetent to effect the rights of the Defendant below; hence, the 2nd, 3rd, 9th and 10th instructions on the part of Plaintiff below, were erroneous.

V. The 3rd instruction on part of Plaintiff below is erroneous, as being indefinite in its application and calculated to mislead the jury. The evidence shows that the bill of sale was not executed until after the levy, and after the commencement of the suit, and consequently it could not effect the right of the Defendant below in any respect.

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V. *Gmuleaf v S 186-205*
VII. The Plaintiff was bound to show her title to the property in question, and recover if at all, upon the strength of her own title, or if the Defendant could show title in any one other than the Plaintiff, under the issues

in this cause he was entitled to a verdict; and the Court erred in refusing to give the 1st and 2nd instructions, asked by the Defendant below. 1 Gilm. 365—12 Wen. 30—21 do. 205—1 John. 380—1 Blak. 291—20 Conn. 364—1 Carter, (Ind.) 54.

VIII. If Wm. McCorristen purchased the Piano with his own means and mortgaged it, and Kilduff purchased it on the sale under such mortgage, it thereby became liable to levy and sale under the execution vs. Kilduff, because if Wm. McCorristen gave the property to defraud his creditors, the gift was void as against his creditors; and if he afterwards mortgaged it to secure a debt owing by him, the mortgage would be valid as against the Plaintiff below; and the title of Kilduff to the property under the mortgage sale, was good; hence, the bona fides of the transactions, and the question of solvency or insolvency of Wm McCorristen became material, and the 3rd and 5th instructions asked for by Defendant below should have been given.

IX. The bill of sale in question being directly from Kilduff to Wm. McCORRISTEN, necessarily showed title in Wm. McCorristen, if in any one, and showed title out of the Plaintiff below; and the 10th instruction asked for by Defendant below; should have been given.

CHUMASERO & ELDREDGE.

Attorney's for Plaintiff in Error.

Ozias Whalen
29th 120
Margt. McCorrean
Positive

Filed April 20, 1859
G. Leland
Clerk

SUPREME COURT, OF THE STATE OF ILLINOIS.

THIRD GRAND DIVISION.

OZIAS WHEELER, Plaintiff in Error.

VS.

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(1.) The evidence of Wm. George McCorristen, shows the property was in the possession of Wm. McCorristen; and his statements in regard to ownership while he was in possession, should have been received as part of the RES GESTÆ.

II. The Court erred in excluding the chattel mortgage offered in evidence, as part of the res gestæ, the mortgages having been executed upon the property while in the possession of Wm. McCorristen.

III. The first instruction on the part of the Plaintiff below, was erroneous, because it limits the enquiry by the jury, to the question as to whether the Piano was the property of P. M. Kilduff—and the 4th, 5th, 7th, 9th and 10th, instructions on the part of the Plaintiff below, are subject to the same objection, whereas the material issues presented by the 3rd and 4th pleas are, as to whether the Piano in question was the property of the Plaintiff. 1 Gilman, 365—4 Scam. 440. — 2 Embury 6563
7. Roads 104—265, 1 Calver 54

IV. The declarations of Kilduff made subsequent to the levy, and the time of the commencement of the suit, are incompetent to effect the rights of the Defendant below; hence, the 2nd, 3rd, 9th and 10th instructions on the part of Plaintiff below, were erroneous.

V. The 3rd instruction on part of Plaintiff below is erroneous, as being indefinite in its application and calculated to mislead the jury. The evidence shows that the bill of sale was not executed until after the levy, and after the commencement of the suit, and consequently it could not effect the right of the Defendant below in any respect.

VI. The admission of the Defendant below, made at the request of Plaintiff below, that he took the property in question on an execution vs. P. M. Kilduff, on the 10th of February, 1857, as Sheriff of Lee County, (Record p. 17, abstract p. 2,) entitled the Defendant below to question the bona fides of the transaction, and to show that it was fraudulent as against the creditors of Kilduff, hence the 5th and 6th instructions were erroneous.

1 Embury 6563 + 205
VII. The Plaintiff was bound to show her title to the property in question, and recover if at all, upon the strength of her own title, or if the Defendant could show title in any one other than the Plaintiff, under the issues

in this cause he was entitled to a verdict; and the Court erred in refusing to give the 1st and 2nd instructions, asked by the Defendant below. 1 Gilm. 365—12 Wen. 30—21 do. 205—1 John. 380—1 Black. 291—20 Conn. 364—1 Carter, (Ind.) 54.

VIII. If Wm. McCorristen purchased the Piano with his own means and mortgaged it, and Kilduff purchased it on the sale under such mortgage, it thereby became liable to levy and sale under the execution vs. Kilduff, because if Wm. McCorristen gave the property to defraud his creditors, the gift was void as against his creditors; and if he afterwards mortgaged it to secure a debt owing by him, the mortgage would be valid as against the Plaintiff below; and the title of Kilduff to the property under the mortgage sale, was good; hence, the bona fides of the transactions, and the question of solvency or insolvency of Wm McCorristen became material, and the 3rd and 5th instructions asked for by Defendant below should have been given.

IX. The bill of sale in question being directly from Kilduff to Wm. McCorristen, necessarily showed title in Wm. McCorristen, if in any one, and showed title out of the Plaintiff below; and the 10th instruction asked for by Defendant below, should have been given.

CIUMASERO & ELDREDGE.

Attorney's for Plaintiff in Error.

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Ozias Whelan

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Margt McCormick
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Filed April 20. 1839
L. Leland
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SUPREME COURT, OF THE STATE OF ILLINOIS.

THIRD GRAND DIVISION.

OZIAS WHEELER, Plaintiff in Error.

vs.

APRIL TERM, A. D. 1859.

MARG'T MCCORRISTEN, Def't. in Error.

POINTS AND AUTHORITIES ON THE PART OF PLAINTIFF IN ERROR.

I. The Court erred in excluding the deposition of James Dalrymple. (Record p. 23, abst. p. 3.)

(1.) The evidence of Wm. George McCorristen, shows the property was in the possession of Wm. McCorristen; and his statements in regard to ownership while he was in possession, should have been received as part of the RES GESTÆ.

II. The Court erred in excluding the chattel mortgage offered in evidence, as part of the res gestæ, the mortgages having been executed upon the property while in the possession of Wm. McCorristen.

III. The first instruction on the part of the Plaintiff below, was erroneous, because it limits the enquiry by the jury, to the question as to whether the Piano was the property of P. M. Kilduff—and the 4th, 5th, 7th, 9th and 10th, instructions on the part of the Plaintiff below, are subject to the same objection, whereas the material issues presented by the 3rd and 4th pleas are, as to whether the Piano in question was the property of the Plaintiff. 1 Gilman, 365—4 Seam. 440. 2. *Gauler v. 563*
9. Mass 104-265, *Carlin (Ind) 152*

IV. The declarations of Kilduff made subsequent to the levy, and the time of the commencement of the suit, are incompetent to effect the rights of the Defendant below; hence, the 2nd, 3rd, 9th and 10th instructions on the part of Plaintiff below, were erroneous.

V. The 3rd instruction on part of Plaintiff below is erroneous, as being indefinite in its application and calculated to mislead the jury. The evidence shows that the bill of sale was not executed until after the levy, and after the commencement of the suit, and consequently it could not effect the right of the Defendant below in any respect.

VI. The admission of the Defendant below, made at the request of Plaintiff below, that he took the property in question on an execution vs. P. M. Kilduff, on the 10th of February, 1857, as Sheriff of Lee County, (Record p. 17, abstract p. 2,) entitled the Defendant below to question the bona fides of the transaction, and to show that it was fraudulent as against the creditors of Kilduff, hence the 5th and 6th instructions were erroneous. 1. *Gauler v. 563*
9. Mass 104-265

VII. The Plaintiff was bound to show her title to the property in question, and recover it at all, upon the strength of her own title, or if the Defendant could show title in any one other than the Plaintiff, under the issues

in this cause he was entitled to a verdict; and the Court erred in refusing to give the 1st and 2nd instructions, asked by the Defendant below. 1 Gilm. 365—12 Wen. 30—21 do. 205—1 John. 380—1 Black. 291—20 Conn. 364—1 Carter, (Ind.) 54.

VIII. If Wm. McCorristen purchased the Piano with his own means and mortgaged it, and Kilduff purchased it on the sale under such mortgage, it thereby became liable to levy and sale under the execution vs. Kilduff, because if Wm. McCorristen gave the property to defraud his creditors, the gift was void as against his creditors; and if he afterwards mortgaged it to secure a debt owing by him, the mortgage would be valid as against the Plaintiff below; and the title of Kilduff to the property under the mortgage sale, was good; hence, the bona fides of the transactions, and the question of solvency or insolvency of Wm McCorristen became material, and the 3rd and 5th instructions asked for by Defendant below should have been given.

IX. The bill of sale in question being directly from Kilduff to Wm. McCORRISTEN, necessarily showed title in Wm. McCorristen, if in any one, and showed title out of the Plaintiff below; and the 10th instruction asked for by Defendant below, should have been given.

CHUMASERO & ELDREDGE.

Attorney's for Plaintiff in Error.

29 12th
Ozias Whelan

M^{rs}
Margt. McLoneta

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Filed April 20, 1859

S. Leland

clerk

SUPRME COURT, OF THE STATE OF ILLINOIS.

THIRD GRAND DIVISION.

OZIAS WHEELER, Plaintiff in Error,

VS.

APRIL TERM, A. D. 1859.

MARGT. MCCORRISTEN, who sues by her
next friend John Dement, Def't in Error

ERROR TO LEE.

ABSTRACT OF THE RECORD.

RECORD

This was an action of Replevin commenced in the Lee Circuit Court, by the Defendant in Error, against Ozias Wheeler, Sheriff of Lee County, and was tried at the June term, A. D. 1858, of said Court, before Hon. J. V. Eustace, and a jury; and a verdict found for Defendant in Error, and damages assessed against Plaintiff in Error, at ten dollars, a motion for a new trial was made and over-ruled, and a bill of exceptions was signed and sealed by the Judge, and made part of the record.

Page 11.

The Declaration consists of one count, alledging that the Plaintiff in Error, on the 10th day of April, 1857, in Dixon, in Lee County, in a certain dwelling-house, there took a certain piano-forte of said Plaintiff, and unjustly detained the same, &c.

p. 12, 13.

The Defendant filed to this Declaration four pleas, viz:—

- 1st. Non Cepit.
- 2nd. Non Detinet.
- 3rd. Property in Defendant.
- 4th. Property in Patrick M. Kilduff.

Page 14.

To the first and second pleas, the Plaintiff took issue to the country. To the third and fourth pleas, the Plaintiff replied property in the Plaintiff, and tendered an issue to the country. To which Defendant added a Semilitur. The Plaintiff in the Court below, to maintain the issues on her part; introduced as a witness Wm. George McCorristen, who testified as follows:—The Plaintiff is my sister, I knew the piano in the spring of 1857, was my sister's—my grand-mother in Chicago, gave my sister money to buy her a Piano, and my father bought a Piano with the money. The Piano then bought was not the Piano in controversy now. The first Piano was bought five years ago. Sister requested my father to exchange it for another; my father took it to Chicago and did exchange it for another one—I never knew on what terms my father exchanged Pianos; he exchanged it with Reed & Watkins of Chicago. My sister has always lived at home. The Piano has always been at my father's house, where my sister lived. Know P. M. Kilduff, the bill of sale shown me is signed by him.

On cross examination, witness stated:—My grand-mother died in Chicago a number of years ago; don't recollect how long ago—she gave my sister money enough to get her a Piano, I did not see the money given to my sister by my grand-mother. My grand-mother willed it to her, it was left to her; she got it after grand-mother's death. I was in Galena and so was my sister, when grand-mother died; I never saw her WILL. The property my grand-mother left was sold after her death, and the proceeds of the sale were sent to my sister to buy a piano with; it came to my sister by mail

RECORD

Page 16.

from Chicago to Galena in an envelope—I saw no letter; the envelope was addressed directly to my sister—it was remitted by some person in Chicago by mail—the envelope contained money in currency, there was no letter in the envelope that I recollect. I suppose my father took it out of the post-office. The estate consisted of a building—the money came to my sister in 1849, she is now near seventeen years old; don't know how much was sent to her, or what kind of currency it was—the way I know it came from my grand-mother was, I was told so by my mother. I don't know whether my grandmother made a will or not. My father kept the money and bought a Piano with it—I was not with him when he bought it—he and my mother told me he bought it—it was bought a long time after the money came. We moved from Galena to St. Louis, don't remember how long we lived there—one or two years. Moved to Peru in July 1852; father bought the first Piano, about a year after we moved to Peru. I know he took the money to buy the Piano because, father and mother told me so; I was not present when the exchange of Pianos was made, it was made with Reed & Watkins, of Chicago—my father and mother told me it was made. I was at home when the Piano came home—I think it came by Railroad. The Piano was made by A. W. Ladd & Co., Boston; there never was any other Pianos in our house, except the two Pianos since we moved to Peru. I was not in Peru in August 1856, was in Dubuque. My grand-mother's name was Catherine Boyne, she had two names. When the Piano was levied on, it was at father's house; it was never moved from our house—Grand-mother was quite old, and lived by herself in Chicago. Mother was in Peru when the first Piano was purchased, and when it was exchanged for the second Piano. The Defendant here admitted, at the request of the Plaintiff below.

Page 17.

That he took the piano in question on an execution against P. M. Kilduff, on the 10th day of February, A. D. 1857, as the Sheriff of Lee County. The Plaintiff here rested.

Page 18.

The Defendant introduced and read the deposition of Chauncey L. Watkins, who testified that he was dealer in Pianos, in Chicago. That he was acquainted with Wm. McCorristen—that on the 28th of June, 1854, he witness, sold to Wm. McCorristen a Piano Forte for \$350, on six months time. That he witness shipped the Piano directed to Wm. McCorristen, Peru, Ill.; and that he acknowledged the receipt of it. That he did not say for whom he purchased it; and witness supposed he purchased it for himself. The Piano has not been paid for. There has been \$54 paid, and the balance is yet due and unpaid. Was a, rosewood piano, round corners, sliding desk, harp pedal, seven octaves, made by A. W. Ladd & Co., Boston, Massachusetts.

Page 19.

The Defendant then introduced and read in evidence the following note.
\$350. CHICAGO, June 28, 1854.

Six months after date, I promise to pay to the order of Reed & Watkins, at Marine Bank, three hundred and fifty dollars, for value received.

WILLIAM MCCORRISTEN.

Page 20.

The Defendant introduced and read the deposition of Wm. H. Foot, who testified that he was a constable, that he knew Plaintiff, but did not know Defendant—that he knew William McCorristen, had known him five or six years in Peru, and that he now lived in Dixon. The paper marked and attached to the depositions as exhibit A, was delivered to me, by D. M. Hulet, Attorney for Oscar H. Pratt, the mortgagee, to collect the amount thereof. I called upon Wm. McCorristen with the paper, and demanded the property described in the mortgage, at the house of Wm. McCorristen in Peru; he showed me the property and turned it out to me. I took possession of it.

RECORD

and advertised and sold it, as will appear by the several endorsements on the back of said mortgage; which endorsements are in my hand-writing, and signed by me the day they bear date. McCorristen and his family were present on the day of the sale. The property was sold to Patrick M. Kilduff, for \$338 62. I received the money and paid it to D. M. Hulett, Attorney for mortgagee, and took his receipt for the same, endorsed on back of mortgage.

The paper marked, exhibit A. above referred to, is a chattel mortgage, given by Wm. McCorristen to Oscar H. Pratt, to secure \$850, is dated 4th May 1858, and is on the property sued for, viz: the said Piano and other property therein described; said mortgage was acknowledged and recorded as required by law.

The endorsements referred to by the witness Foote, are:

1st. An endorsement of levy on the goods described in the mortgage, dated July 22, 1856.

2nd. An endorsement under date July 23rd, 1856, of the posting of notices to sell on 4th August, 1856.

3rd. An endorsement under date August 4th, of adjournment of sale 9th August.

4th. The following—"August 9th, 1856, sold the above described property to P. M. Kilduff, he being the highest and best bidder for the sum of \$338 62.

WILLIAM H. FOOT, Constable.

5th. The following receipt—"Peru, August 9th, 1856. Received of Wm. H. Foot, \$328 62; proceeds of sale of property under within.

D. M. HULETT.

Att'y for Mortgagee."

The Defendant then offered to read in evidence, the deposition of James Dalrymple, who testified in substance as follows:—That he was acquainted with Margaret McCorristen and William McCorristen. That he was present in the Court Room of the United States Circuit Court for the Northern District of Illinois, in January 1857, when McCorristen was testifying under oath in a certain proceeding against him in said Court, and heard him testify in said case. That he heard him testify relative to a Piano and the household furniture then in his possession. That at that time, said McCorristen stated, that the Piano and household furniture were in his possession, and that they had been sold to Patrick M. Kilduff, and that Kilduff then owned them; and that Kilduff purchased at a sale under a mortgage, given by him to Oscar H. Pratt.

To the reading of which deposition the Plaintiff objected, and the objection was sustained; to which decision of the Court the Defendant then and there excepted.

The Defendant then introduced the deposition of F. W. Mattocks, who testified that he knew Wm. McCorristen; that witness was a livery stable keeper; that witness in fore part of January 1857, took some household furniture, carpets, bedding; crockery &c., to Illinois Central Railroad Depot in La Salle, from the residence of McCorristen in Peru, on my wagons; the Piano was taken on a dray; the goods were directed to J. Burdine, Dixon, Illinois; they were shipped on the account of, and the receipt taken in the name of Patrick M. Kilduff, by directions of the said McCorristen.

The receipt was given to Wm. McCorristen; he directed me to take the receipt in the name of P. M. Kilduff, and then give it to him which I did; McCorristen told me at the time that I took the goods &c. up, that that they belonged to Patrick M. Kilduff.

The Defendant then read in evidence a mortgage, given by Wm. McCor-

RECORD

risten, in substance as follows:—"That Wm. McCorristen had sold for consideration of one dollar, to Oscar H. Pratt, a certain Piano, then in his McCorristen's dwelling-house and possession at Peru, upon condition, that whereas he was indebted to said Pratt in \$850, and had given a chattel mortgage on a Piano and other property, dated Sept. 8th, 1853; and has sold the Piano so mortgaged. This sale is for the purpose of securing the payment of said indebtedness, to be paid when the same is payable &c; and also on condition that I shall remain in possession of said Piano, until default be made in the payment of said \$300; said mortgage contains the usual power of sale, and bears date 16th day of January, 1855.

p. 29 to 35.

The Defendant then offered to read in evidence, a certified copy of certain mortgages, after having made the necessary proof, and which are to be found on pages 29, 30, 31, 32, 33 and 34 of the Record; the first of which mortgages bears date 8th Sept., 1853, and was given by Wm. McCorristen to Oscar H. Pratt, and recites indebtedness of \$850, and is upon a Piano and other property.

The second is between the same parties, for the same consideration, on the same property, and bears date 14 July, 1852.

Page 36.

To the introduction of which two mortgages, the Plaintiff objected, and the Court sustained the objection, to which the Plaintiff then and there excepted.

The Defendant here rested.

The Plaintiff introduced and read to the jury a bill of sale from P. M. Kilduff, for the property in question, purporting to have been executed 2nd of February, 1857, and which is as follows:

"PERU, February 2, 1857.

Wm. McCorristen. Bought of P. M. Kilduff, the following described goods and household furniture, now in the possession of the said McCorristen, at Dixon Illinois, to-wit:—(here follows personal property to the amount of \$170,); also all the right title and interest, which I may have in and to one certain Piano Forte, now also in the possession of said McCorristen, and called the property of Margaret McCorristen, being all the interest I acquired in the same, by virtue of a sale made under a chattel mortgage, given by said McCorristen to O. H. Pratt, and sold by Wm. H. Foote, and bid off in my name, without my knowledge or consent. Received payment in full.

P. M. KILDUFF."

The Defendant then called Mr. Witt, who testified that he had seen the bill of sale, about two weeks since; that at that time it was not signed by Kilduff; that witness took it to Peru and asked Kilduff to sign it; that Kilduff said he did not like to sign it, when it was dated so far back, as it might compromise him, but he would think of it; he did not sign it at that time.

On cross examination, witness stated: that Kilduff said he had no claims to the property in dispute; and that he never had any claim to said property.

This was all the evidence in the case. The Plaintiff asked the following instructions, which were given by the Court.

1st. That if the jury believe from the evidence, that the property in question was purchased by the Plaintiff's father, and was given to her, and she had it in her possession as such gift, and the Defendant, without right, took the Piano in question from the Plaintiff's possession; and the Piano was not the property of Kilduff, they should find the issues for the Plaintiff.

Page 39.

2nd. That the statements of Kilduff called out by the Defendant, from the witness Witt, are evidence to prove that he has and had at the time of the

RECORD

taking of the property by the Defendant, no interest in the property in question.

3rd. That the bill of sale offered in evidence made by Kilduff, is of itself prima facie evidence, that said Kilduff has no claim to the property in question.

4th. That the actual possession of the property in question, by the Plaintiff with a claim of right and title, is sufficient to authorize her to recover in this case; unless a higher or better title had been proved to be either in Kilduff or the Defendant, Wheeler.

If the jury believe from the evidence that the Piano in controversy was in the possession of Margaret McCorristen, under a claim of title; and that it was taken from her possession by Defendant Wheeler, she is entitled to a verdict under the pleadings and evidence in the case; unless the Defendant, Wheeler, has shown a better title in himself or in Kilduff; and has also in some way connected himself with Kilduff's title.

Page 40.

5th. That the question of solvency or the insolvency of Wm. McCorristen, or the solvency of Kilduff; or the question whether the Defendant Wheeler, had an execution in his hands, under which he claimed the property, is not in issue in this case; the only question being, had the Plaintiff a right and title to the property as against Kilduff or Wheeler.

6th. That the question of bona fides or good faith, of the Plaintiff's title, or whether her possession was fraudulent as to the creditors of either her father or of Kilduff, is not in issue in this case.

7th. That unless the jury believe from the evidence, that either the Defendant or Kilduff had a title to the Piano in question, which they had a right to enforce against the possession of the Plaintiff, they should find for the Plaintiff if she has shown possession of said property, claiming title, and with the consent of the actual purchaser.

8th. That the admission of the Defendant that he took the property in question, by virtue of an execution against Kilduff, is not, under the issues, evidence to prove that the Defendant is justified in his taking by virtue of such execution.

Page 41.

9th. The Court is requested to instruct the jury on the part of the Plaintiff, that under the issues in this case, the admissions of Kilduff as to the property in controversy, are conclusive evidence as to the right of Kilduff to said property as far as Kilduff is concerned.

10th. That under the issues in this case, the admissions of Kilduff as to the property in controversy, are proof as to right of Kilduff to said property.

To the giving of which and each of which, the Defendant then and there excepted.

The Defendant then asked the following instructions, when the Court refused to give the instructions, numbered 1, 2, 3, 5 and 10.

1st. The Defendant by his 3rd and 4th pleas, having denied the allegations in the Plaintiff's declaration, that the Piano Forte in question is the property of the Plaintiff, the burden of proving the title to the property in question is upon the Plaintiff; and if the jury find from the evidence, that the Piano in question was taken by the Defendant; but that at the time it was taken, it was the property of Patrick M. Kilduff or Wm. McCorristen, or any other person other than the Plaintiff, they should find for the Defendant.

Page 42.

2nd. The Plaintiff, to entitle her to a verdict, must establish her title to the property in question, upon the strength of her own title; and if the jury should find from the evidence, that the Defendant took the property in question, and that at the time of taking, the property was in the possession of the Plaintiff; such possession alone and of itself, is not such evidence of the Plaintiff's title to the property, as will entitle her to a verdict.

3rd. If the jury believe from the evidence that the Piano in question was purchased by Wm. McCorristen with his own means, and upon his

RECORD

own credit, he has a right to execute a mortgage upon the same, and that a title in the purchase under such mortgage would be good, and the Defendant in this case must recover, unless it has been shown satisfactorily to the jury, that said William McCorristen had parted with his title to said property, prior to said mortgage to Plaintiff, for a good and valuable consideration; and that said mortgage and sale under the same, was made without the permission or assent of the Plaintiff.

Page 43. 4th. The Plaintiff in this case, being the daughter of Wm. McCorristen, if the jury believe from the evidence that she was living with the said Wm. McCorristen; and that the Piano in question was in the possession of the said Wm. McCorristen, and that he mortgaged the same, with the permission or assent of the Plaintiff; a sale under said mortgage would vest the title in the purchaser, even if the Plaintiff was the actual owner of the property.

5th. If the jury believe from the evidence that Wm. McCorristen purchased the property in question, and gave the same to the Plaintiff, for the purpose of protecting the same from his creditors; such gift created no title in the property in the Plaintiff, as against the creditors of Wm. McCorristen, and he had a right to mortgage the same, and a sale under such mortgage would vest the title in the purchaser, and they must find for the Defendant.

6th. It is incumbent on the Plaintiff to establish on the trial of this cause, either that there was an unlawful taking of the Piano, the property of the Plaintiff, or a demand of the property of the Defendant, and refusal to deliver the same to the Plaintiff, prior to the commencement of this suit, and in the absence of any evidence showing either such unlawful taking, or demand and refusal to deliver prior to the commencement of this suit, the jury should find for the Defendant.

Page 44. 7th. If the jury find from the evidence, that the Piano in question was purchased by Wm. McCorristen, and retained in possession of Wm. McCorristen, and used by the different members of his family, that no presumption arises from such possession solely that the Piano is the property of Margaret McCorristen.

8th. The jury are not bound to believe all the testimony that may be given by witnesses; they are the judges of the credit, to which a witness is entitled, and they have the right to judge of said fact, from the appearance and behavior of the witness on the stand; and if they are satisfied that the witness has not testified fairly, they may discredit all of the testimony given by such witness.

9th. If a witness is contradicted in any material statement, the jury may disregard all of the evidence given by such witness, and in the event that the witness makes improbable statements, they may disregard such testimony; they are not bound to believe a witness because he testifies under oath.

10th. The bill of sale introduced in evidence by the Plaintiff, if it shows title in any one to the Piano in question, it shows title in Wm. McCorristen and not in the Plaintiff.

To all of which refusals of the Court the Defendant then and there excepted.

The jury found a verdict for the Plaintiff, and assessed the damages at ten dollars, which Plaintiff remitted down to one cent.

The Defendant moved the Court for a new trial, which motion was overruled by the Court; judgment was rendered by the Court, on the verdict; to which over-ruling of said motion and rendering of said judgment, the Defendant then and there excepted.

CHUMASERO & ELDREDGE.

Attorney's for Plaintiff in Error.

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Oscar Wheeler
no ~~220~~

M. M. Gorristen
abstract.

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Fried April 30, 1859
L. Deland
Clerk

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Margaret M. Corrigan }
Ozias Wheeler } Replevin

United States of America } Held in the Sec County Circuit Court
Sec County, State of Illinois } in the 22nd Judicial Circuit of Illinois

WRIT OF REPLEVIN.—Culver, Page & Hoyne, Stationers, 128 and 130 Lake Street, Chicago.

STATE OF ILLINOIS,

Lee County. } ss.

1- The People of the State of Illinois, to the ^{Coroner} Sheriff of said County, GREETING:

If *Margaret McCorristen*
of said County of _____ shall give you good and sufficient security to
prosecute ~~her~~ suit to effect and without delay, and to make return of the following described goods
and chattels, the property of *her* the said

Margaret McCorristen

to wit:

*One Piano Forte of the Value of One Hundred
and Fifty Dollars*

which

Oscar Wheeler Sheriff of Lee County
also of said County, ~~forcibly and unlawfully~~ took, and unjustly detains—and return the said property,
if return thereof be awarded—and further to save and keep you harmless in replevying said property;
then you are to cause the said goods and chattels to be replevied and delivered to said Plaintiff with-
out delay. And summon the Defendant personally to be and appear before our Circuit Court in
and for said _____ County, on the first day of the next term thereof, to be holden at
the Court House in said _____ County, on the *second* Monday of
April A. D. 1857 to answer to the said *plaint* of the said Plaintiff for
~~forcibly taking and~~ unjustly detaining the goods and chattels aforesaid. And make due
return of the Bond to be taken of the said plaintiff aforesaid, together with this Writ, to the Clerk
of our said Court, with an endorsement hereon as to your doings in the premises.

WITNESS

L.S.
the seal thereof, at

this

(10th) day of *April*

A. D. 1857

John G. Harker Clerk of said Court, and

in said County,

John G. Harker Clerk.

WRIT OF REPLEVIN.

Docket No. Page

Circuit Court.

vs.

Filed in the Circuit Court, this

Clerk.

Attorney.

Endorsed

" Served the return April 11. 1857 by reading
the same in the presence & hearing of the
named Elias Wheeler, and by replevying,
delivering over to Margaret McCord
the following described Goods

One Second Horse

H. O. Kelsey Coroner
of Lee County Ill - "

Declaration filed June 5th 1857

State of Illinois } Lee County Circuit Court
Lee County is } June Term AD 1857

Ozias Wheeler the Defendant in this suit was
immoval to answer Margaret McCorristen
who sued by her next friend John Deament Plaintiff in
this suit of a Pen whereby he took the goods & chattels
of the said Margaret McCorristen, and unjustly
detained; the same against sureties & pledges in
L & L Kent and therefor the said Plaintiff by Horatio
& Altherton her Attorneys complains. For that the
said Defendant on the tenth day of April 1857
in Person in the County and State aforesaid
in a certain dwelling House there took the goods &
chattels to wit a certain Piano Forte of the said
Plaintiff of great value to wit of the value of One
Hundred and Fifty Dollars = 150⁰⁰ and unjustly
detained the same against sureties & pledges in L &
& C, wherefor the said Plaintiff saith she is injured
and hath sustained Damages to the amount of
One Hundred & fifty Dollars, therefore she brings
suit &c

Horatio & Altherton
Attys for Plt

3
Filed Oct 29th A D 1858

State of Illinois, Lee County Circuit Court

Chas Wheeler

Margaret M Corristen who sues
by her next friend John Deament

And now comes
the said Defendant by Chummeson & Blunck and
Malloy his Attorney & agents &c & says that he
did not take the said Goods & Chattels in the said
Plaintiffs Declaration mentioned at the said time
when &c as therein alleged, and of this he puts
himself upon the Country.

And the Plaintiff doth the like
And so it is ordered that the
Verdict be for the Plaintiff.

And for a further plea in this behalf the said Defendant
says that he did not detain the said goods &c in the
said Plaintiffs Declaration mentioned, at the
said time when &c as therein alleged, and of this
he puts himself upon the Country.

And the Plaintiff doth the like
And so it is ordered that the
Verdict be for the Plaintiff.

And for a further plea in this behalf the said
Defendant says that he does not because he says, that
the said goods &c in the said Declaration mentioned
at the time when &c were the property of him the said
Defendant, & not the property of the said Margaret M
Corristen, as by the said Declaration it is above
supposed and that he is ready to verify, where
the jury find him &c

" And for a further plea in this behalf, the said
 Defendant says actio non, because he says that
 the said goods &c in the said Declaration mentioned
 at the time when he was the property of one Jas.
 McElduff, and not of the said Plaintiff McE.
 Corristen as by the said Declaration is above
 supposed, and this he is ready to verify, wherefore
 he prays judgment &c

Cummeson & Eldridge & Mallory
 Atty's

" And the said Plaintiff avers to the said
 Defendants pleas, truthfully & lawfully by him above
 pleaded says including non, because she says
 that the property of the said goods, at the time
 of the taking &c was in her the said Plaintiff
 in manner & form as she in her Declaration
 aforesaid hath alleged, and this she prays
 may be enquired of by the Country.

And the Defendant doth the like.

Heaton & Atterbury

Atty's for Df

Verdict found June 22^d AD 1858

" We the undersigned jurors find for the Plaintiff and
 award the Damages at Ten Dollars "

State of Illinois }
 Lee County, }

For the Lee County Circuit Court at a term thereof begun and holden at the Court House in Dixon in said County on the second Monday of April in the year of our Lord One Thousand Eight Hundred and Fifty seven

Present Hon John C. Cochrane Judge of the said Judicial Circuit &c
 Robert C. Burdell States Attorney for said Judicial Circuit
 George C. Haskell Clerk of said Circuit Court of said Lee County
 Ozias Wheeler Sheriff said County

Do it remembered that on the 24th day of April the same being one of the regular days of said April Term, in the matter of Margaret McCorristen who sues by her next friend John Dement, against Ozias Wheeler, the following entries appear to us in that behalf

" Margaret McCorristen who sues by her next friend John Dement Ozias Wheeler	}	Replevin
---	---	-----------------

It is ordered by the Court that this cause be continued the service not being in time for this term of Court

And at the same term of said Court next ensuing to wit at a Term of said Court begun and holden at Dixon as aforesaid on the third Monday of June A.D. 1857 -
 Present same as at the April term

It is remembered that on the Eighteenth day of June the same being one of the regular days of said June Term the following entries appear to us of record to wit

Margaret Elbertson who sued by her next friend John Bennett }
 Orazio Wheeler } J. P. Lewis

On this day comes the Plaintiff by Norton & Norton her Attorneys, and the Defendant being three times solemnly called comes not, but makes default. And afterwards on this day comes the said Defendant by Mallory his attorney and by agreement the above default is set aside and this Cause continued at Plaintiffs cost. It is considered and adjudged by the Court that the Plaintiff have and recover of the Defendant his costs and charges by him at this term of Court expended and that she have Execution therefor.

and afterwards to wit: at the November Term of said Circuit Court then next ensuing began and holden at the Court House in Dixon in the County of State aforesaid on the second Monday in November AD 1857.

Present, as at the April Term aforesaid and George E. Haskell Chief Justice, Dall Deputy, Clerk

It is remembered that on the Eleventh day of November the same being one of the regular days

of said November Term, the following entry appears
 to be of record in said Cause.
 "Margaret McGristen who sues by
 her next friend John Dement

Ophas Wheeler

Deft. vs. Plt.

On this day comes
 the Plaintiff by Watson & Atterton her Attorneys, and
 the Defendant by Chmeseers & Eldridge his Attorneys
 and the said Plaintiff now enters his motion for a
 continuance herein, which motion is sustained
 at Plaintiff's cost. It is considered and adjudged
 by the Court, that the Defendant have and recover of
 the Plaintiff his costs and charges by him at this
 term of Court expended, and that he have Execution
 therefor. And now comes the said Defendant, and on
 his motion it is ordered that a Writ of Attachment
 be awarded for Witnesses, De M. Hewlett & Patrick McNeil
 returnable at the next term of this Court.

And
 afterwards, at the April Term of said Court then
 next ensuing begun and holden at the Court
 House in Dixon aforesaid on the second Monday
 of April A.D. 1858

Result: as at the April Term A.D. 1857

It is remembered that on the thirteenth day of
 April the same being one of the regular days of
 said April Term, the following entry appears.
 And of record in this behalf.

"Margaret McCorristen who does
by her next friend John Dement
Gina Wheeler

Pfeiffer

On this day
comes the Plaintiff by Horton & attention her Attorneys
and the Defendant by Mallory Chumero & Eldridge
his Attorneys, where upon motion of said Defendant
this cause is continued at his costs. It is considered
and adjudged by the Court that the Plaintiff have and
recover of the Defendant, her costs & charges, in & about
this suit at this Term of Court expended, and that
she have Execution therefor "

And
afterwards at the same Term of said Court, begun
and holden in the Court House at Dixon, Illinois
on the third Monday of June AD 1855

Present: as at the November Term AD 1854

It is remembered that on the Twenty first day
June the same being one of the regular Days of
said Term, the following entry appears to us of
Record in this behalf

"Margaret McCorristen who does by
her next friend John Dement
Gina Wheeler

Pfeiffer

On this day
comes the Plaintiff by Horton & attention her Attorneys
and the Defendant by Chumero, Eldridge & Mallory
his Attorneys, also come a jury of good & lawful
men to wit: Luther J. Bradley, Hugh Wells, Charles

Harrison, S. D. Martin, Darius Sawyer, Lemuel Palmer, Elias Jones, Sherman Endicott, George S. Kent, Washington Hutton, Joel Cook and Herman P. Mead, who were duly elected, tried, and sworn, well and truly to try the issues joined: And now it is by the Court ordered that the said jury meet the Court tomorrow morning at half past eight O'Clock. "

And afterwards on the day following to wit on the Twenty second (22nd) day of June aforesaid the following entry appears to us of record herein

"Margaret McGorriston who sues by her next friend John Dement

Ozias Wheeler

Answer

On this day come the said parties by their respective Attorneys; also come the jury heretofore impaneled in this case, and the said jury having now heard the evidence and the argument of Counsel return to consider of their verdict. And afterwards on this day again come the said jury into Court & return the following verdict to wit "We the undersigned jurors find for the Plaintiff and give the Damages at Ten Dollars" whereupon the said Plaintiff by her said Attorneys remits (\$0.22) Nine Dollars and Ninety Nine cents. And now comes the Defendant and moves for a New trial herein, which said motion is overruled & to which ruling the Defendant excepts and gives an appeal herefrom, which said appeal is awarded on this Court on however, that the said Defendant give his appeal Bond in the sum of One Hundred Dollars within thirty days from the date hereof William Cummings being. It is now considered and adjudged by the Court that the Plaintiff have and recover of the Defendant one cent for Damages

together with her costs & charges by her in & about
this suit expended, and that she have Execution
therefor "

Margaret C. Corristen who sues
 by her next friend John Dement
 11
 Bill of Exceptions } Orais Wheeler
 Lee County Circuit Court
 of the June Term A.D. 1858

Be it remembered that on the 31st day of June
 A.D. 1858, the same being one of the regular
 days of said June Term of said Court, this cause
 coming up to be tried & a jury being empanelled to
 try said cause: the following are the issues, to wit:

State of Illinois } Lee County Circuit Court
 Lee County } June Term A.D. 1857.
 Orais Wheeler Defendant in this

suit was summoned to answer Margaret C. M.
 Corristen who sues by her next friend John Dement &
 Plaintiff in this suit in a plea wherein he took the goods
 & chattels of the said Margaret C. M. Corristen unjustly
 detained the same, against summes & pledges, where
 & thereupon the said Plaintiff by Henton & Atherton her
 Attorneys complains. For that whereas the said
 Defendant on the tenth day of April A.D. 1857 in Dixon
 in the County & State aforesaid in a certain dwelling house
 there took the goods & chattels to wit a certain Piano
 Forte of the said Plaintiff of great value to wit of the
 value of One Hundred & Fifty (\$150) Dollars, & unjustly
 detained the same, against summes & pledges, where
 whereupon the said Plaintiff sueth that she is injured

which sustained Damages to the amount of One
Hundred and Fifty Dollars, therefore brings suit &c
Horton & Thornton Attys

State of Illinois
Lee County Circuit Court
Ozias Wheeler

vs
Montgomery McCorteen, who sues by
his next friend John Dement
And now comes the said Defendant by Chumesceri Elomitz &
McAlloy his Attorneys & defends &c & says, that he did not
take the said goods & chattles in the said Plaintiffs Decla-
ration mentioned at the said time when &c as therein
alleged & of this he puts himself upon the Country
And the Plaintiff doth the like
Horton & Thornton Attys for Df

And for further plea in this behalf the said Defendant says
that he did not detain the said goods &c as in the said
Plaintiffs Declaration mentioned at the said time when &c
as therein alleged & of this he puts himself upon the
Country.

And the Plaintiff doth the like

Horton & Thornton Attys for Df

And for further plea in this behalf the said
Defendant says Actio non, because he says

That the said Goods & Chattels &c in the said Declaration mentioned at the time when &c were the property of him the said Defendant & not the property of the said Margaret McCorristen, as by the said Declaration is above supposed, and this he is ready to verify, wherefor he prays judgment &c

And for a further plea in this behalf the said Defendant says now Because he says that the said Goods &c in the said Declaration mentioned at the said time when &c were the property of one Patrick McFilduff, and not of the said Margaret McCorristen, as by the said Declaration is above supposed, and this he is ready to verify, wherefor he prays judgment &c

Chambers, Eldridge & Mullory
Deft's attys

And the said Plaintiff as to the said Defendants pleas thirdly and fourthly above pleaded says in conclusion, because she says that the property of the said goods, at the time of the taking &c was in her the said Plaintiff in

manner & form as she in her Declaration of an
 oath alleged - and this she prays may be required
 of by the Country

And the Defendant doth the like as
 Keaton & Atherton atty for Plff.

The Plaintiff to maintain the issue and her point
 introduced as a Witness William George McCorristen, who
 testified as follows: - "The Plaintiff is my Sister
 - knew the Piano in the Piano in the Spring of 1857
 - was my Sister - my Grandmother in Chicago
 gave my Sister money to buy her a Piano, and my
 Father bought a Piano with the money - the Piano
 then bought was not the Piano in controversy now
 - the first Piano was bought five years ago -
 Sister requested my Father to exchange it for
 another - my Father took it to Chicago, and did
 exchange it for another one - I never knew on
 what terms my Father exchanged Pianos - he
 exchanged it with Reed and Watkins of Chicago
 - My sister has always lived at home - the piano
 has always been at my Father's house, where my
 sister lived - know J. M. Kilduff - the Bill
 of Sale shew me is signed by him

x On the examination the witness stated

My Grandmother died in Chicago a number
 years ago, don't recollect how long ago

years ago - don't recollect how long ago
 - she gave my sister money enough to get her
 a Piano - I did not see the money given
 to my sister by my Grandmother - My
 Grandmother willed it to her - it was left to
 her, - she got it after Grandmother's death -
 I was in Galena, & so was my Sister when my
 Grandmother died - I never saw her will - The
 property my Grandmother left was sold after her
 death, and the proceeds of the sale were sent to
 my Sister to buy a Piano with - it came to my
 Sister by Mail from Chicago to Galena in an
 Envelope - I saw no letter - The Envelope was
 addressed directly to my Sister - it was remitted
 by some person in Chicago by Mail - The
 Envelope contained money in currency, there
 was no letter in the Envelope that I recollect -
 I suppose my Father took it out of the Post Office
 - The Estate consisted of a Building - the
 money came to my Sister in 1849 - she is
 now near Seventeen years old - don't know
 how much was sent to her, nor what kind of
 currency it was - the way I know it came
 from my Grandmother was, I was told so by my
 Mother - I don't know whether my Grandmother
 made a Will or not - my father kept the money
 and bought a Piano with it - I was not with
 him when he bought it - he, and my mother told
 me he bought it, - it was bought a long time

after the money came - we moved from Galena
 to St Louis - don't know how long we lived
 there - one or two years - moved to Iria in July
 1852 - father bought the first piano, about a
 year after we moved to Iria - I know he took that
 money to buy the piano, because father & mother told
 me so - I was not present when the exchange
 of piano's were made, it was made with Reed and
 Watkins of Chicago - my father & mother told me it
 was made - I was at home when the piano came
 home - I think it came by Railroad - the piano
 was made by A W Sadel Ho Boston - there never
 were any other piano's in our house, except
 the two piano's since we moved to Iria - I
 was not in Iria in August 1856 - was in Dubuque
 (The court at this stage of proceedings adjourned till
 June 22nd at which time, the witness was again
 cross-examined & stated) "By Grandmother's name
 was Catherine Boyne, she had two names - when the
 piano was levied on, it was at father's house
 - it was never moved from our house - Grandmother
 was quite old, and lived by herself in Chicago -
 mother was in Iria, when the first piano was
 purchased, and when it was exchanged for the
 second piano -"

17

The Defendant here admitted at request of Plaintiff that he took the Pismo in question on an Execution against J. M. Giddup, on the 10th day of February A.D. 1857 as the Sheriff of Lee County.

The Plaintiff here rested his evidence in this cause and the Defendant introduced in evidence the Deposition of Chauncey S. Watkins, who testified as follows.

July 1st State your name, age, occupation and residence, and whether you are acquainted with the parties to this suit.

Ans 1st My name is Chauncey S. Watkins, my age twenty six years, my occupation that of a Dealer in Pismo Bells, I live in Chicago I know John Dement only.

July 2nd Are you acquainted with William M. Corristen, and if so, how long have you known him & where did he reside in June 1854.

Ans 2nd I am acquainted with him and have known him since June 28th 1854, he then resided at Fond du Lac, Wisconsin.

July 3rd Did you at or about that time have any business transactions with said William M. Corristen, and if so state fully what it was.

Ans 3rd I simply sold him a Pismo Bell at one hundred and fifty Dollars on six months time.

July 4th State whether you delivered or shipped the Pismo Bell

to said McCorristen, and if so how?

Ans. 4th I did ship the Piano, my impression is that I shipped it by mail, and he acknowledged the receipt of it by letter, it was directed, marked and shipped to William McCorristen. Ans. 5th

Q. Did McCorristen at the time of the purchase of said Piano State for whom he purchased it?

Ans. 5th He did not say for whom he purchased it, and I supposed he purchased it for himself.

Q. Has the said Piano ever been paid for, by said McCorristen or any one for him?

Ans. 6th It has not been fully paid for, there has been \$4 Dollars paid upon it, and the balance of the purchase is yet due and unpaid.

Q. Describe if you can the Piano sold to him.

Ans. 7th It is a rosewood Piano Forte, round corner sliding desk, half pedal, seven Octaves, made by W. W. Ladd & Co Boston Massachusetts.
Chauncey L. Watkins

The Defendant here introduced in evidence the hand writing of McCorristen had been admitted, the Note of which the following is a copy -

"-350

Chicago June 28th 1854

" Six months after date I promise to pay,

19.

" to the order of Paul & Watkins at Marine Bank,
" One hundred and fifty Dollars for Value received
" Wm M Corristen "

The
Defendant, then read in evidence, the Deposition of
William H Foote, who testified as follows:

Inter 1st What is your name occupation & place of residence?

Answer 1st William H Foote, age 40 years, occupation Constable
reside in Iowa, Ill.

Inter 2nd Are you acquainted with the parties to this suit,
either, if so which of them & how long have you known
them

Ans 2nd I have seen the Plaintiff frequently, do not know Defendant

Inter 3rd Are you acquainted with William M Corristen, if
so how long have you known him, and where, and
what is his present place of residence

Ans 3rd I have known William M Corristen five or six
years, in Ford, Illinois & the residence at Dixon Ill.

Inter 4th Look upon the paper presented to you, marked
Exhibit A & state whether you have ever seen
it before & under what circumstances

Ans 4th I have seen the paper it was delivered to me
by Dea Charles Allmon, for Oliver H Pratt the
Notary to collect the amount owing by it

Inter 5th What did you do with it after it was delivered to you

Ans 5th I called upon William McCorristen and in a demand for the property described in the Mortgage at the house of William McCorristen in Iron Co. Mo. He showed me the property, and turned it out to me and I took possession of it and advertised & sold it as will appear by the several endorsements upon the back of the said Mortgage, which endorsements are in my hand writing and signed by me the several times they bear date

July 6th Who was present at the time of the sale

Ans 6th McCorristen, and his family & some other persons

July 7th Who became the purchaser at said sale, & for what amount was the sale made

Ans 7th The property was sold to ^{Reuben} E. Willard and for the sum of Thirty Eight Dollars & Sixty two cents

July 9th Did you receive the money for which the property was sold & if so what disposition did you make of it

Ans 8th I received the money & paid it to D. M. Hull Attorney for Mortgage & took his receipt for the same which is enclosed upon the back of the mortgage
Wm H Foste

(Exhibit "A" referred to by said Wm H Foste)

"Know all Men by these presents, that I William McCorristen of Iron & Salt County, Mo, come this day for the consideration of One Dollar to me paid by Henry H Pratt of St Louis. hereinafter, sold & conveyed & by these presents, to bargain sell & convey to said

Grant all my personal property mentioned in a
 Schedule hereto attached, marked Schedule 'A', said
 property now being in my house & in my possession at
 the City of Peru. To have and to hold unto said Rath
 his representatives & assigns forever. But this
 conveyance is upon this express condition that
 whereas I am indebted to said Oliver H. Rath in the
 sum of Eight Hundred & fifty Dollars, with interest
 thereon from the date of a Note given for said amount
 & to be paid on or before the third day of June AD 1855
 & am anxious to secure the payment of the same, now
 if I shall well and truly pay the said sum of money
 when the same shall become payable as aforesaid,
 all interest due thereon, then this sale shall be void
 otherwise shall remain in full force. And also upon
 this condition, that said property shall remain in
 my possession until default be made in the payment of
 said sum of money & demand of the same by the
 said Rath. After said sum of money shall become due
 and shall be unpaid & at any time before that, if said
 Rath shall become in reason satisfied that his account
 shall be satisfied if said property longer remains in mine
 said Rath by himself or agent is hereby authorized to
 take possession of said property, & through auctioneers the
 same, for the time & in the manner required of Constables
 or sales by them to sell in the City of Peru the same
 to the highest bidder, & give good title thereof to the purchaser
 & to pay out of the proceeds the costs of sale, & the sum of
 money due as aforesaid, with interest to said Rath, and
 rendering the surplus if any to me.
 Witness my hand & seal this 4th day of May AD 1855
 W. A. Corwin } S.
 I think it expedient in the above Mortgage and
 a list of the property conveyed.
 One Sumo valued at \$300.00 also Sumo St.

"One Guitar, One Flute, One Cow & Half & all my
 "household furniture now in my possession & use at
 "dwelling house, to wit: Carpets, Bed Cloths, Rugs & c.
 "Tables, Chairs, Stoves & pipe, cooking utensils, Lamp.
 "Cushions, bowls, pitchers, tumblers, looking glasses,
 "Clock, desk & case, bedsteads, mattresses, beds & bedding
 "hardware & c. and all other household utensils
 "and articles now in my possession the value of which
 "I estimate at Seven Hundred Dollars

"Wm H. Corristen {LB}

"State of Illinois }
 "Sanball County } P.D. it remembrance that on the fifth
 "day of August 1855, personally appeared before me
 "J. B. Edliff a justice of the Peace William H. Corristen
 "and acknowledged that he had executed the same
 "the purpose therein contained

"J. B. Edliff {LB}

"State of Illinois }
 "Sanball County } I certify that the foregoing was filed
 "for record Aug 8th 1855 at 3 O'Clock & duly recorded
 "book of pages 99-100-101 of S. Nash Clerk

"Levy made by virtue of the within Subpoena
 "dated July 1856 on the goods & chattels specified
 "in a Schedule, which is made part of this return, all of
 "which are expressed in the within Schedule &

"Wm H. Fote Court

"July 23rd 1856 posted two copies of Notice to sell
 "described goods on the 4th day of August 1856 between
 "the hours of 5 O'Clock A.M. & 1 P.M.

"Wm H. Fote Court

"August 4th 1856, adjourned sale to August 9th same time
 "at place Wm H. Fote Court

"August 9th 1856, sold the above described property to J. B.
 "Edliff he being the highest & best bidder the sum of \$35.00
 "Wm H. Fote Court

New August 9th 1856 return of Wm H. Fote
 "32562 received & paid off property
 "under citation Mrs. Edliff
 "are on page 101

23^d The Defendant then offered to call in evidence the deposition of James Dalrymple who testified as follows:
Q. 1st What is your name occupation & place of residence?

Answer 1st James Dalrymple, Occupation Merchant, resides in
Free Illinois

Q. 2^d Are you acquainted with the parties in this suit, and to which of them, - how long have you known them

Ans. 3^d I am acquainted with Margaret McCorristen, but do not know the Defendant, have known her for two or three years

Q. 3^d Are you acquainted with W^m McCorristen, if so how long have you known him, where did he reside, and where does he now reside

Ans. 3^d I am acquainted with him & have known him a long time, years, he resided in Free Ills, until the latter part of the Summer of 1856, when he removed to Free Ills, where he now resides

Q. 4th Were you present in the Court Room of the United States Circuit Court for the Northern District of Ills in the City of Chicago in the Month of January 1857 at a time when the said McCorristen was testifying under oath in a certain proceeding against him in said Court, and did you hear him testify in said case

Ans. 4th I was present & heard him testify

Q. 5th Do you remember what was the testimony given him relative to a certain James Fort & the House of Representatives at that time in his deposition

Aug 24th 5th I recollect hearing him testify relative to the Goods and household furniture

July 6th When did he state said property then was

Ans 6th H. stated that the property was then in his possession

July 7th What did he state relative to the ownership of said property

Ans 7th That the Goods & household furniture were sold to Satrius Mc Gilduff & that he Gilduff owned them

July 8th How did he state that said Gilduff became the owner thereof

Ans 8th By purchase at sale under Mortgage given by him to Oscar H Pratt

James Dalrymple " to the reading of which the Plaintiff object & the objection was sustained by the Court to the decision of the Court, the Defendant then & there excepted.

The Defendant then read in evidence the Deposition of Frederick W Mottos, who testified as follows

July 1st What is your name & occupation & where do you reside

Ans 1st Frederick W Mottos is my name, occupation Linen State Keeper, residing in Evans Illinois

July 2nd Are you acquainted with William Mc Corristen, and if so how long have you known him

²⁹
25.
Ans 2^d I am acquainted with William McCorristen and have known about four or five years

Q^y 3^d Did you ever, and if so when take away any goods for said McCorristen, or by his direction, from the residence of said McCorristen in Iron Illinois to the Illinois Central rail road depot, at La Salle and if so how & to whom were said goods, directed and to what place, and on whose account, were they shipped - state fully all you know about it

Answer 3^d I took some household furniture, carpets bedding, crockery &c to the Illinois Central Rail Road Depot in La Salle in the month of January 1887, from the residence of the said McCorristen in Iron. I believe the Piano was taken in a Dray, and the rest of the goods in my wagons and were directed to J. Dantine Dixon Illinois they were shipped on the account of, and the receipt taken in the name of Patrick M. Tilduff by directions of the said McCorristen

26
July 4th To whom was the receipt given-

Aug 4th To William McCorristen he directed me to take the receipt in the name of J. M. Gilduff, and then to give him the receipt, which I did.

July 5th Did said McCorristen state to you at that time, or at any time who was the owner of said household goods, or items if he did, what was it and who did he say was the owner.

Aug 5th He stated to me at the time I took the goods up, that is the Household furniture Items &c that they belonged to Patrick M. Gilduff
J. W. Matlock

The Defendant then read in evidence the Mortgage following to wit:

"Know all men by these presents that I William McCorristen of Co. LaSalle County Illinois, have this day for the consideration of One Dollar to me paid by Oscar H. Galt of St Louis, sold and conveyed, and do hereby sell and convey to said Galt a certain Place now in my dwelling house, and property at Peru, to have and to hold, unto said Galt his representatives and assigns forever; but this sale is upon this condition that whereas I am indebted to said Galt, in the sum of Eight Hundred and Fifty Dollars, with interest to be paid on the third day of June next, and have given as Chattel Mortgage on a Farm, and other personal property, dated 8th Sept^r 1853 to secure the payment of the same, and having sold said Farm so mortgaged now this sale is for the purpose of securing the payment of said indebtedness to be paid when the same is payable, then this sale shall be void otherwise to remain in full force, and also on this condition that I shall remain in possession of said Farm until default be made in the payment of said \$300, when the same shall become due; After said \$300 shall become due as aforesaid & shall not be paid said

Pratt is hereby authorized to take possession of
 Leino, and having advertised the same, for a
 time, and in the manner required of constables
 on sales by them to sell the same to the highest
 bidder, and make conveyance thereof to the
 purchaser, and pay out of the proceeds, the costs
 of the sale, and the said \$300 & interest; and
 rendering the overplus if any to me
 Witness my hand and seal this 10th day of
 Jan^y AD 1855 W^m McCorristen {Seal}

State of Illinois }
 La Salle County, } D. It remembrance that
 on the 17th day of January AD 1855, personally
 appeared before me, Warren Brown a justice of the
 Peace W^m McCorristen, and acknowledged that he
 had executed the same for the purposes therein contained.
 Warren Brown J. D. {Seal}

(Filed January 17th at 3 1/2 O. C. S. M.)

State of Illinois }
 La Salle County, } I John J. Nash Clerk of the
 Circuit Court in & for said County
 and State, do hereby certify that the above said
 foregoing Chattel Mortgage is a true full perfect
 and complete copy of the Mortgage from William
 McCorristen to Oscar H. Pratt, as the same appears
 of Record in my office, recorded in Book No. pages
 504 & 505

In testimony whereof I have hereunto set

{ L S }

my hand & the seal of said Court at
Ottawa this 8th day of January AD 1857
J. F. Clark Clerk."

The Defendant then offered to read in evidence the following certified copies of Mortgages, and offered to prove that the originals were not in his power or control which Mortgages are as follows:

" This Indenture made this Eighth day of September AD 1853, Between William McCorristen of Town of La Salle County Illinois, of the first part and Owen H. Pratt of St. Louis, of the second part. Witnessed that the said first party for and in consideration of the sum of Eight Hundred Dollars & fifty Dollars to him in hand paid by the second party, at, or before the executing of these presents the receipt whereof is hereby acknowledged, doth grant bargain sell & convey & hath granted bargain sold & conveyed unto said second party, all and singular the goods, furniture and household stuff mentioned and expressed, in the Schedule hereunto annexed - To have and to hold, all and singular the said goods hereinafter mentioned set forth unto the said second party, his heirs and assigns forever - Provided always, & these presents are on this express condition, that if the said first party, his executor and administrators, shall and do well and truly pay or cause to be paid, unto the said second party, the

first, and full sum of Eight Hundred and Fifty Dollars, with interest and before the the third day of June 1855 then there presents to be said otherwise of force - and it is covenanted and agreed between the parties that until default shall be made in the payment of the said sum of money and interest or until said second party shall become satisfied that his security be endangered by leaving & said property in said first party's possession, it shall be lawful for said first party and his assigns to have hold, enjoy, retain in his possession & use the goods and premises above bargained and sold as aforesaid without the hindrance or interruption of the said second party or his assigns and it is also agreed that in case, default be made in payment as aforesaid, or the second party shall chose before that time to take possession then it shall be lawful for him to enter into & upon said first party's premises or wherever the goods &c may then be & take possession of the same & after advertising ten days by posting in three public places, in the City of San Jose the same at public Auction & after said second party's claim principal & interest & cost pay over the surplus to said McCristen or his assigns. In Witness Whereof the said first party has hereunto set his hand and seal this 8th day of September 1853

Wm McCristen & Seal

Schedule A

Being the property referred to in the aforesaid
 Mortgage, said property now lying in the house of
 said McCord in San Luis County, Alameda
 Two parlor Carpets - One Rug carpet One stair
 Carpet - Twelve yards Oval to cover same - Eighteen
 Carpets; - One Hall lamp - One Oil cloth for Hall
 One Bed room Carpet, Two Mantle Rugs, two dining
 tables, - One side table, - One Hall table - One Hall
 Hat stand - Two mats, - two dozen Windsor chairs
 - One dining room stove & pipe; - One parlor stove & pipe;
 - One cooking stove & pipe & cooking utensils - One
 room stove & pipe - one tin safe - One iron safe
 one clothes horse, two kitchen tables, - One reading table
 - four bed room tables - One side board, - four brass
 lamps, - four table & two small glass lamps, - two
 candle sticks, two glass lanterns, two bed chamber
 lamps, - four bed chamber candlesticks, two glass
 lanterns, - one tin lantern, - two wash tubs
 two wood barrels, two tin barrels, six tin pans, - One
 tin boiler, One tin Basin, shovel & tongs, four
 sand irons, six wash basins & pitchers, six wash
 stands, six chamber pots, one six Regent of flute
 one guitar, - One piano, One school stand, One
 quartette stand, - One spring bottomed chair, One sofa
 One Mahogany centre table; One pair Mahogany table
 One sewing chair, - One rocking chair, - One Office
 chair, six Mahogany chairs, six cane bottomed
 chairs, - One piano stool, one work table, One
 and deep case with library, One mirror,

large looking glasses - two small looking glasses
 One clock; - four high posted Bedsteads; two
 posted Bedsteads; - One Trundle Bed; - six shuck
 mattresses; - six bolsters; twelve moss Mattresses
 two feather beds; - six feather pillows - six bolsters
 twelve bed comforters; - six bed spreads; twelve
 Blankets; - two dozen Sheets; - two dozen pillow slips;
 three dozen towels; - six table cloths; - four wool
 fancy table covers; - three red window curtains
 three white window curtains; - three oil umbrellas
 shades; - three dozen white plates; - two dozen knives
 & forks; - One dozen white cups & saucers; - two
 dozen tumblers; One dozen jelly cups; six glass
 preserves dishes; six glass sugar bowls; - six
 salt Cellars; two white tea pots; two Britannia
 Urns; - One Britannia tea pot; - One Black Walnut
 Cupboard; - One Knife box; - & ice chest; One Can
 & Calf; One dozen table spoons. Entertain; One dozen
 silver tea spoons; - & all the other articles of
 furniture & household goods now in possession
 of said McCorristen Wm McCorristen

State of Illinois

La Salle County

I, J. P. McCorristen do hereby certify that on the
 6th day of September A.D. 1853, personally appeared
 before me Warren Brown, a justice of the Peace, Wm McCorristen
 and acknowledged that he had executed the same for
 the purposes therein contained

Warren Brown

(Filed Sep 12 1853 at 1³/₄ O.C. L.A.)

State of Illinois } I John F. Nash, Clerk of
 La Salle County } the Circuit Court in & for said
 County & State; that the above and foregoing Charter
 Mortgage is a true and perfect & complete copy of
 the Mortgage from William McCorristen to Oscar
 H. Pratt, as the same appears of Record in my office.
 Record in Book 66 pages 42, 43 & 44.

{ L.S. }

Given testimony whereof I have hereunto set
 my hand and the seal of said Court at
 Ottawa this 9th day of January 1885
 J. F. Nash Clerk

"Know all Men by these presents that I William
 McCorristen of the City of Iron County of La Salle
 and State of Illinois of the first part, and O. W.
 Pratt County & State of Iowa of the second part
 Witnesseth that the said party of the first part, for
 and in consideration of the sum of Eight Hundred
 and Fifty Dollars to him in hand paid by the said
 party of the second part, does by these presents, bargain
 sell and deliver unto the said O. W. Pratt his
 heirs, executors, administrators and assigns the
 following described property to wit: Two parlor
 Carpets, One rug carpet, One stair carpet, Twelve
 yards crash to cover same, Eighteen brass stair
 rods, One Hall lamp, One Oil Cloth for Hall, One
 bed room Carpet, two needle rugs, two dining
 tables, One side table, One small table, One "

hat stand, three mats, two dozen of Windsor chairs.
 One dining room stove & pipe, one cooking stove
 & pipe, One parlor stove & pipe, One bedroom stove & pipe.
 One tin case, One iron safe, One clothes horse, two kitchen
 tables, three reading tables, four bed room tables.
 One side board, four brass lamps for table & two
 small, two glass lamps, two candlesticks, two glass
 lanterns, two bed chamber lamps, four bed chamber
 candlesticks, two glass lanterns, One tin lantern
 two wash tubs, two wood pans, two tin pans, six
 tin pans, One tin boiler, One tin basin, shovel &
 tongs, four sad irons, six wash basins & pitchers.
 six wash stands, six chambers, One six keys
 flute & guitar, One piano, One scroll stand
 One quadrille stand, One spring bottomed chair
 One sofa, One Mahogany center table, One pair
 Mahogany tables, One sewing chair, One rocking
 chair, One office chair, six Mahogany chairs
 six cane bottomed chairs, One piano stool
 One work table, One desk & desk case with writing
 One bureau, two large looking glasses, two small
 looking glasses, One clock, four high posted
 bedsteads, two low posted bedsteads, One trundle bed
 six plush mattresses, six moss mattresses, two
 feather beds, six feather pillows, six bolsters, twelve
 bed comforters, six bed spreads, twelve blankets
 two dozen sheets, two dozen pillow slips, three
 dozen towels, six table cloths, four wool fancy
 table covers, three red window curtains, three

white muslin curtains, three oil window shades,
 three dozen white plates, two dozen knives & forks
 one dozen white cups & saucers, two dozen tumblers
 one dozen jelly cups, six glass preserve dishes
 six glass sugar bowls, six salt cellars, two
 white tea pots, two buttermilk urns, one Britannia
 tea pot, one black walnut cupboard, one knife box
 one ice chest, one half dozen silver tea spoons
 one cow & calf, one dozen table spoons butter
 together with ^{various} other articles of furniture the whole
 being all the furniture now in the house in the
 City of Iron County & State aforesaid owned by
 C. W. Taylor. So have and to hold the said property
 of the first part, & sold to said O. W. Pratt his
 executors, administrators & assigns forever

In testimony whereof the said party of the
 first part, hereunto have set his hand and
 seal this fourteenth day of July, One thousand
 eight hundred and fifty two

Witness Doug. Livingston } W. M. Corristen { Seal
 State of Illinois }
 Cass County }

I, J. W. Gilson a Notary
 Public in & for the City of Iron said State & County
 do certify that on this 3^d day of June 1853 personally
 appeared before me, W. M. Corristen who is known
 to me to be the identical person who executed the
 within Bill of Sale & acknowledged it to be his free
 act & deed. for the uses and purposes therein
 expressed. Witness my hand and Office

real, day & date as above

{ S.D. }

Geo. W. Gilson
Not Pub^e

(Filed June 3rd 1853 at 4 O'Clock P.M.)

State of Illinois

La Salle County, ss

I John P. Nash Chief of the Circuit Court, in & for said County & State, do hereby certify that the above cited foregoing Chattel Mortgage is a true, full, perfect, and complete copy of Mortgage from Wm. McCorristen to O. H. Pratt as the same appears of record in my office recorded in Book 'Y' pages 630 & 631.

In testimony whereof I have hereunto set my hand, & the seal of said Court at Ottawa this 4th day of January A.D. 1857
{ S.D. } J. P. Nash Clerk

to the introduction of the foregoing Mortgage as evidence the Plaintiff objected & the Court sustained the objection, to which ruling the Defendant then assented & there accepted

The Defendant then rested his case, when the Plaintiff introduced & read to the jury, a Bill of Sale from J. M. Hilduff for the property in question purporting to have been executed 2nd February A.D. 1857, and which is as follows.
" Given 2nd Feb. 1857.
J. M. Hilduff

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1

The following described goods & household furniture
now in the possession of the said Mc Cormick
at Dixon Ills, to wit:-

1	Sofa	15	00
x	Centm Table	7	00
1	Quartette "	2	50
1	Carpet	11	50
2	Stoves & pipe	16	50
12	Comm Chairs	4	50
2	Tables	12	00
1	Oil Cloth & Lamp	4	25
1	Stair Carpet	5	00
1	Dining room Carpet	5	50
6	Window Curtains	6	00
1	Desk & Books	13	00
x	Lounges	3	00
2	Burners	17	50
1	Clothes Press	6	75
1	Clock	2	00
1	Heat Rack	1	75
1	Side Board	5	00
2	Looking Glasses	4	75
2	Wash Stands	2	50
6	Chairs	15	00
		<u>170</u>	<u>00</u>

Also all the right title and interest which I may
have in & to one certain Farm Tract, now also in

possession of said ^{Mc}Corristen & called the property
Margaret ^{Mc}Corristen, being all the interest &
acquired in the same by virtue of a sale made under
a Chattel Mortgage given by said ^{Mc}Corristen
to O. H. Pratt and sold by Wm H. Felt and bid
off in my name, without my knowledge or consent.

Received payment in full

J. B. Kilduff

The Defendant then called Mr Witt, who testified
that he had seen the Bill of sale, about two
weeks since, that at that time, it was not signed
by Kilduff, that witness took it to J. W. and
asked Kilduff to sign it, that Kilduff said he
did not like to sign it, when it was dated so far back,
as it might compromise him, but he would ~~think~~ sign it
he did not sign it at that time.

On cross examination the Witness stated, that he
said that he had no claim to the property in dispute
& that he never had, had any claim to said property.

This was all the evidence in the case. The Plaintiff
asked the following instructions, which were given
by the Court,

1. That if the jury believe from the evidence, that the
property in question was purchased by the
Plaintiff's father & was given to her, and she
had it in her possession as such gift, and the

Defendant without right took the Piano in question from the Plaintiff's possession & the Piano was not the property of Kilduff, they should find the issue for the Plaintiff.

- 2 That the statements of Kilduff called out by the Defendant, from the Witness Wilt, are evidence to prove, that he has & had, at the time of the taking of the property by the Defendant, no interest in the property in question.
- 3 That the Bill of Sale offered in evidence, made by Kilduff is of itself prima facie evidence, that said Kilduff has no claim to the property in question.
- 4 That the actual possession of the property in question by the Plaintiff with a claim of right & title is sufficient to authorize her to recover, in this case, unless a higher or better title had been proved to be either in Kilduff or in the Defendant Wheeler.

If the jury believe from the evidence that the Piano in controversy was in the possession of Margaret McCoristen, under a claim of title & that it was taken from her possession by the Defendant Wheeler, she is entitled to a verdict, under the pleadings & evidence in this case, unless the Defendant Wheeler, has shown a better title in himself, in Kilduff & has also in some way connected him

with Kilduff's title -

40

- 5 That the question of solvency or the insolvency of Wm McCorristen or the solvency of Kilduff, or the question whether the Defendant Wheeler had an Execution in his hands, under which he claimed the property, is not in issue in this case, the only question being had the Plaintiff a right & title to the property as against Kilduff or Wheeler
- 6 That the question of *Bona Fides*, or good faith of the Plaintiff's title, or whether her possession was fraudulent as to the creditors of either her father or of Kilduff, is not in issue in this case -
- 7 That unless the Jury believe from the evidence, that either the Defendant or Kilduff had a title to the *Quint* in question, which they had a right to enforce, against the possession of the Plaintiff, they should find for the Plaintiff if she has shown possession of the said property claiming title & with the consent of the actual purchaser
- 8 That the admission of the Defendant that he took the property in question by virtue of an Execution, against Kilduff, is not under the issues, evidence to prove that the Defendant is justified in his taking by virtue of such Execution -

141 9

The Court is requested to instruct the jury on the part of the Plaintiff that under the issues in this case, the admissions of Kilduff to the property in controversy, are conclusive evidence as to the right of Kilduff to said property, so far as Kilduff is concerned

10

That under the issues in this case, the admissions of Kilduff, as to the property in controversy, are proof as to the right of Kilduff to said property -

To the giving of which and each of which the Defendant then and there excepted

The Defendant then asked the following instructions when the Court refused to give the instructions then asked 1; 2; 3; 5; 8; 10; -

Request

1 The Defendant, by his 3^d & 4th pleas, having denied the allegations in the Plaintiff's declaration that the Lease in question is the property of the Plaintiff, the burden of proving title to the property in question is upon the Plaintiff, and if the jury find from the evidence that the Lease in question was taken by the Defendant, but that at the time it was taken it was the property of Patrick M. Kilduff or William A. Kilduff or any other person other than the Plaintiff, they should find for the Defendant

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2

That the question of solvency of the insolvent man

The Plaintiff to entitle her to a Verdict, must establish her title to the property in question upon the strength of her own title, and if the Jury should find from the evidence, that the Defendant took the property in question, and that at the time of taking, the property was in the possession of the Plaintiff, such possession alone, and of itself, is not such evidence of the Plaintiff's title to the property, as will entitle her to a Verdict:—

3

If the Jury believe from the evidence that the Land in question was purchased by William McCorristen with his own means, and upon his own credit, he has the right to execute a Mortgage upon the same & that a title in the purchase under such Mortgage would be good, & the Defendant in this case must recover, unless it has been shown satisfactory to the Jury that said Wm McCorristen had parted with his title to said property prior to said Mortgage to Plaintiff for a good & valuable consideration, and that said Mortgage, and sale under the same, were made without the permission or assent of the Plaintiff.

4

The Plaintiff in this case being the daughter of Wm McCorristen if the Jury believe from the evidence that she was living with the said Wm McCorristen, and that the Land in question, was in the possession of said Wm McCorristen & that he mortgaged the same, with the permission, or assent of the Plaintiff

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a sale under said Mortgage would vest the title in the purchaser, even if the Plaintiff was the actual owner of the property

5 If the Jury believe from the evidence that Mr. McCorristen purchased the property in question & gave the same to the Plaintiff for the purpose of protecting the same from his Creditors, such gift created no title in the property in the Plaintiff as against the creditors of Mr. McCorristen & he had a right to Mortgage the same and a sale under such Mortgage would vest the title in the purchaser & they must find for the Defendant

6 It is incumbent upon the Plaintiff to establish on the trial of this cause, either that there was an unlawful taking of the Deed, the property of the Plaintiff, or a demand of the property of the Defendant & a refusal to deliver the same prior to the Plaintiff prior to the commencement of this suit & in the absence of any evidence showing, either such unlawful taking or demand, and refusal to deliver prior to the commencement of this suit, the Jury should find for the Defendant -

7 If the Jury find from the evidence, that the Deed in question was purchased by William McCorristen & retained & retained in possession of Mr. McCorristen, and used by the different members of his family, that no presumption arises

from such possession solely that the Deano is the Property of Margaret McCorristen

8 The Jury are not bound to believe all the testimony that may be given by witnesses - they are the judges of the credit to which a witness is entitled, and they have the right to judge of each fact, from the appearance & behavior of the witness on the stand - and if they are satisfied, that the witness has not testified fairly, they may disregard all of the testimony given by such witness

9 If a Witness is contradicted in any material statement, the Jury may disregard all of the evidence given by such Witness - and in the event that the Witness makes improbable statements they may disregard such testimony; they are not bound to believe a Witness simply because he has testified under oath -

10 The Bill of sale introduced in evidence by the Defendant, if it shows title in any one to the Deano in question it shows title in Mrs. McCorristen and not in the Plaintiff "

To all of which requests of the Court the Defendant, then and there excepted

The Jury found a verdict for the Plaintiff and

and assessed her damages at ten Dollars, which
Plaintiff remitted down to one cent

The Defendant moved the Court for a New Trial
which motion was overruled by the Court &
Judgment was rendered by the Court on the
Verdict, to which, overruling of said Motion and
rendering of said judgment, the Defendant then &
there excepted & prays that this his Bill of Exceptions
may be signed & sealed & made part of the record
herein, which is done in open Court this 9th
day of July A.D. 1858, the same being one of the
regular days of said June Term

(signed) John O. Eustace { Seal }
Judge 2nd Just Cir -

Bill of Cost for Book E pag 304

Margaret McCorristen }
 Grace Wheeler } In Replevin

Copy of Plaintiff's cost
 Doc case 3 terms 30 copy 40 Wit of Rep 35 Sum of \$140 140
 apt 10 Dep 10 apt 10, 1/2 6 for 30, call pages 25 and 10 30 15 90
 and to open Dep 20, 2 for 40/20, but judge 25 for 20 170
 and for Damages 20 and for cost 20 and for 20 apt att. 25 80
 Bill of cost 30 copy 20 and 40/25 85
 Sheriff's fee 20 and Replevin 10 100
 for 300 3
 \$10.40

Copy of Defendant's cost
 apt 3 att. 35 1/2 4 for 20, but for new trial 20 20
 and except 5 of 20, no for appeal 25 110
 and grant appeal 20, and not to bond & security 20 110
 apt 10 2 for 40/20, Bill of cost 30 copy 20 140
 Doc case 30 125 125
 Sheriff's fee 40 and 10 40
 fee on deposition 11.25 11.25
 Cost of this Transcript and 40/25 11.36
 \$27.21

State of Illinois } I certify the foregoing to be correct copies of cost
 in County of } from my Book in said cause
 Geo E Haskell Clerk
 Sept. 11th 1866

State of Illinois
Lee County

I Geo. E. Haskell Clerk
the Circuit Court in & for the County & State
aforesaid do hereby certify that the foregoing
matter in a full & complete recapitulation
of all the Records in said cause, correctly copied
from the books &c. in my office.

For Witness, whereof I hereunto set my
hand & the seal of said Court at Dixon
this 6th day of September A.D. 1858
Geo. E. Haskell Clerk
Joseph Hall Deputy Clerk

Ozias Wheeler
Plff in error

Sup Court Ills 3rd Grand
Division

To April Term 1889,

Margaret M. Cornistew
who sues by her next friend
John Dement.

assignment of errors

Def't in error.

And now comes the said Ozias Wheeler
plff in error by Chumaseu & Mauep his
attorneys and says that in the record
and proceedings aforesaid and in giving
the judgment aforesaid there is manifest
error and assigns the following
grounds of error. V₃

1. The Court Erred in excluding the most
of the jury which may be
found on the 29 to 35 pages of record
2. The Court erred in excluding the dep
osition of James Dunsymple from
the jury.
3. The Court erred in giving the 1-2-3-
4-5-6-7-8-9- & 10 instructions asked
by plaintiff
4. The Court erred in refusing to give
the 1-2-3-5- & 10 instructions
asked by plaintiff defendants
5. The Court Erred in overruling
the defendants Motion for new
trial - & giving judgment on the verdict
- 6

The ^{outcome} judgment is against the
weight of evidence.

Chumasco & Harman
attys for ppy in error

And now comes said defendant
in error & says there is no such error
as plaintiff in error has above alleged

T. Lyle Dickey
for deft in error

¹²⁰ 29
Sub Court
Mayans Robinson

Ozias Wheeler
off in error

M. M. Conster ^{off in error}

Round

Filed March 6th 1839
Leland
Clerk

\$500 paid by Chumacero