

Jefferson County Circuit Court
Case Files-Civil
May 1870, No. 15

Box 26 Folder 30

Haenschel, Gustavus T.
Orthwein, Charles F.
vs.

Luechtemeyer, Frederick
Volmack, Frederick
Cheatham, George

Replevin

10 boxes china ware, silverware, table
cloths, curtains, \$200 damages; other
plaintiffs William Orthwein, Louis S.
Bart; Supreme Court; bill of exceptions

Gustavus J. Haenschel
and Charles F. Orthwein, partners
in trade under the firm name
of Haenschel & Orthwein, — Plaintiffs

Against
Frederick Leuchtemeyer
Frederick Volmack,
~~William~~ ~~Keating~~, and
George Cheatham, — Defendants,

In the Circuit Court of
Jefferson County Missouri
May Term 1870.

The Plaintiffs, Gustavus J. Haenschel and Charles
F. Orthwein, composing a partnership firm un-
der the name and style of Haenschel & Orthwein,
state that they are lawfully entitled to the pos-
session of the following specific personal prop-
erty, to wit, Ten Boxes, left by them in the care and
custody of William S. Dyer, and containing various
articles of China Ware, Silver ware, Table Cloths,
Curtains, and other articles of Table and house-hold
furniture, of the value of four hundred dollars,
which said property the Defendants on the 23rd
day of October 1869, wrongfully took from the
Plaintiffs, and that the said Defendants now
illegally and wrongfully detain the said prop-
erty from the possession of the Plaintiffs. — The

Plaintiffs therefore ask judgment for the recovery
of said property, and Two hundred dollars ^{damages} for
the detention thereof.

} Abner Green
} Attorney for the Plaintiffs

Charles Little, Agent for the Plaintiffs,
makes oath and says that the above petition and
the matters therein as stated he believes to be true,
- that the said Plaintiffs are lawfully entitled
to the possession of the said Ten Boxes and their
Contents as described in said petition, - that said
property was wrongfully taken by the Defendants
from the Plaintiffs, - that said property is now
wrongfully detained by the Defendants from the
possession of the Plaintiffs, - that the actual value
of said property is four hundred dollars, - that
the same has not been seized under any process,
execution or attachment against the property of the
Plaintiffs, - that Plaintiffs right of action for
said property has accrued within one year, - and
that Plaintiffs will be in danger of losing
their said property, unless it be taken out of the
possession of the Defendants or otherwise secured.

Subscribed and sworn to before me this 2^d day of November
Elias P. Houghens Clerk } Charles Little
By L. H. Allen D.C.

In the Circuit Court
Jefferson County

Wm. Ashen & Catherine

vs,

Geo. Leachman,
Debtor.

Plaintiff,

The Clerk will give
summons agt,被告,
to Geo. Co. ~~to the Court~~,
~~the Clerk~~, - It also
for delivery of the property

Filed Nov 2nd 1869
Geo. P. Henry clk

43.00 paid by Plaintiff

Gustavus Wauschun &
Charles P. Orthwein Partners
under the firm name and style of
Wauschun & Orthwein,

Against
Fred Schlemmer &
Fred Volmuth &
George Cheatham,

Now at this day
Comes the Plaintiffs and files their petition
and affidavit as Required by Law stating
~~and~~ praying an order for the possession
of the, hereafter described specific
personal property, whereupon it is ordered
by the undersigned Clerk of the Circuit
Court, that said defendants deliver
the property specified in the annexed
petition ^{to wit} Two Boxes containing various
articles of China Ware, Silver ware,
lute Cloths Curtains and other articles
of Household and Table Furniture
of the value of Four Hundred Dollars
And that, the Comor if the same should
not be delivered, then take the same
from the defendants, and deliver said
property to the plaintiffs with compliance
with the statute in such Cases
made and provided.
Witness my hand and the

Seal of said Court here affixed at
office this 30th day of
November A.D. 1869
Elias P. Hemenyck
By F. Hayford D.C.

THE STATE OF MISSOURI,
COUNTY OF JEFFERSON. SS.

THE STATE OF MISSOURI,

Comer
To the Sheriff of the County of Jefferson—Greeting:

We command you, that you summon

*Fred K. Lichtmeyer Fred
Volmack & George Cheatham*

if ~~he~~ be found in your County, that ~~he~~ be and
appear before the Hon. Judge of our Circuit Court, on the first day of the next term
thereof, to be begun and held at the town of Hillsboro, within and for the County of
Jefferson, on the *7th* Monday after the fourth Monday of *March*
next, and then and there to answer unto

*Gustavus J. Orshorn &
Charles J. Orshorn*

upon *the* original petition, a copy whereof is hereunto annexed and accompa-
nies this writ, and have you then there this writ.

Witness ELIAS F. HONEY, Clerk of our said Circuit Court,
with the seal thereof hereto affixed, at office in Hillsboro, this
3 day of *April*, A. D. 1869

Elias F. Honey
By *L. Hagen* Clerk Circuit Court

I enclose the within writ, within the County of Jefferson in the State of Missouri, on the occasion of Leachtemeyer on the 3rd day of November 1869 by delivering to a ^{him} copy of the within writ and petition (as furnished by the Clerk) he being the first de-
fendant, and on the occasion of the writ de-
lay by delivering to him a copy of the writ, and also, by said two defendants, ~~in~~ ^{holding in} ~~to me~~ (as-
signed) ~~the~~ ^{under} the provisions of the
within named General Property, to wit, ten boxes
containing various articles of China Ware, silver ware,
table cloths, curtains and other articles of household fur-
niture; but the actual provisions of which property
I was unable to obtain by reason of Alfred Mitchell
furnishing the provisions of the same, claiming to hold them
as trustee for Eliza Barnes (as well as said Defendants)
and by reason of his refusing to deliver them up to me, -
the said George Chaathens not found in my County.

St. Petersburg

2958
15

Jefferson Circuit Court
May term 1870

Gustavus J. Kuenoch
Charles J. Orthwein

vs.

J. Luchmeyer & Co.

(orig)

I have received

Fees for the Coroner
G. J. Kuenoch

For raising the road and
2 dependents \$2.00
1 road cut \$0.50
approving bond \$0.50

Cheatham \$3.00

Gustavus T. Haenschel and
Charles F. Orthwein, partners
in trade under the firm name
of Haenschel & Orthwein, Plaintiffs

Against

Frederick Leuchtemeyer,

Frederick Volmack,

~~William King~~, and

George Cheatham, - Defendants,

In the Circuit Court of
Jefferson County Missouri
May Term 1870.

We, Gustavus T. Haenschel and Charles F. Orthwein, by Abner Green, our Attorney in fact, as Principals, and

as securities, acknowledge our selves to owe and stand indebted to Frederick Leuchtemeyer, Frederick Volmack, ~~William King~~, and George Cheatham, the above defendants, in the sum of Eight hundred dollars, for the payment whereof we bind ourselves, our heirs executors and administrators, upon the following Condition;

That whereas, the said Gustavus T. Haenschel and Charles F. Orthwein, partners in trade under the firm name of Haenschel & Orthwein, as Plaintiffs, have commenced a suit, in the nature of a replevin, in the Circuit Court of Jefferson County Missouri, against

Frederick Leuchtenmeyer, Frederick Volmash, ~~William~~
~~Heinig~~, and George Cheatham, Defendants, return-
able to the May Term 1870 of said Court, and have
obtained from the Clerk of said Court, an Order for
the delivery to Plaintiffs of Ten Boxes and their
Contents, consisting of several articles of China-ware,
Silver-ware, Table cloths, Curtains, & other articles of
table & household furniture, by the said Defendants,

Now, if the said Plaintiffs shall prosecute
their said action with effect and without delay,
return the said Property to the Defendants, if re-
turn thereof be adjudged by the Court, and in de-
fault of such delivery (if so adjudged) that they
will pay to Defendants the assessed value of
said Property, and will pay all damages ad-
judged against them for the taking and detention
thereof, and all Costs that may accrue in the
action if adjudged against Plaintiffs, - then the
above Bond to be null and void, otherwise to
remain in full force.

Witness our hands and seals this 2nd day of
November 1869.

Gustavus L. Haenschel Seal

& Charles F. Orshwin Seal

Approved this } By Abner Green their Attorney in
4. day of November } fact,
1869. } **Wm. Stein** Seal

G. Stegmann
Coroner of Jeff. Co. Mo. } D. W. Mueller Seal

In Circuit Court
Jefferson County

Thomas D. Smith

vs.

Geo. Leuteneger
et al.

Bond

Filed Nov. 4th 1869

Wm. B. Hony

per ~~Reed~~

Chapman

William Orthwein and
 Louis S. Baur, to the use of
 Gustavus L. Haenschen and
 Charles F. Orthwein, - Plaintiffs
 Against
 Frederick Leuchtemeyer
 Frederick Volmack and
 George Cheatham, - Defendants
 } In the Circuit Court of Jef-
 } ferson County Missouri, -
 March Term 1870.

Amended Petition filed by leave of the
 court, } The Plaintiffs, William
 Orthwein and Louis S. Baur, state that they are
 Trustees in a certain Deed of Trust, executed on
 the 30th day of January 1869, by Hermann Brack-
 vogel and Albert Brackvogel, conveying to said
 Trustees the property hereinafter described,
 for the use and benefit of the said Gustavus L.
 Haenschen and Charles F. Orthwein, and which
 Deed of Trust was duly acknowledged and rec-
 orded. And that as such Trustees, the Plain-
 tiffs state that they are now, and were on the 23rd-
 day of October 1869 and prior thereto, lawfully en-
 titled to the possession of the following Spe-
 cific Personal Property, to wit, Ten Boxes, left by
 them in the care and custody of ~~William S. Baur~~ ^{Albert Brackvogel}
 said County, and containing various articles of
 China Ware, Silver ware, table cloths, curtains,

and other articles of table, and household furniture, and of the total value of four hundred dollars, - Which said Property the Defendants on the 23rd day of October 1869, wrongfully took from the Plaintiffs, and wrongfully detain the same from the possession of the Plaintiffs.

The Plaintiffs therefore ask judgment for the recovery of said Property, and two hundred dollars damages for the detention thereof.

Abner Green
Attorney for the Plaintiffs

Abner Green Attorney for the Plaintiffs, makes oath and says the above Petition and the matters therein as stated, he from information received believes to be true, - that said Property has not been seized under any process execution or attachment against the Property of the Plaintiffs, - that Plaintiffs right of action for said Property accrued within one year, - and that the Plaintiffs were in danger of losing said Property, at the commencement of this suit, if it had not been taken out of the Defendants possession and Property secured

Subscribed and sworn to
before me the 2^d day

of July 1870

E. J. Wynn Clerk
B. S. Hayward

Abner Green
Attorney for Plaintiffs

In Ancient Court
Jefferson County

William Guthrie's
& Louis W. Davis
to use of Macintosh Guthrie's

vs,
Fred, Leach Kennedy &
George Chaitham

Amended Petition

Filed July 2^d 1876
C. J. Henry et

William Othwin and
Louis S. Baur to the
use of Gustavus F. ~~Henschen~~
and Charles F. Othwin
Plaintiffs

In the Superior
Circuit Court.

Medwick ~~Henschen~~,
Medwick Vollmarck
and George Henschen
Defendants

Now at this day comes said De-
fendants and for answer to the amended
petition filed by Plaintiffs on the 2nd
day of July 1870 admit that William Oth-
win and Louis S. Baur were trustees
in a certain deed of trust executed on the
30th day of January 1869 by Herman Brock-
vogel and Albert Brockvogel
but they deny that said deed of trust con-
veyed or attempted to convey to said trustees
the all the property said for. They own
that said deed of trust pretended to convey
to said trustees for the use of Gustavus F.
Henschen and Charles F. Othwin the
following property among other things
viz: Six Sops. 2 Dsr. Chairs 1 Dsr. Table
large, 1/2 Dsr. Bureau, 5 Work boxes

8 Stoves, 1 Cooking Stove, Cooking utensils,
6 doz plates, 2 doz knives, forks and spoons,
and other ware, 3 clocks, ail Cloths, Cor-
psets and curtains in house, 3 guns, 3 revolv-
ers, 300 books 30 paintings, and pictures
and all other household ~~and~~ furniture
table ware and fancy ware in and upon
said premises & that the above is the only
Clause in said deed of trust which could
by any possible construction be made
to cover the property sued for or any
portion thereof.

Dependents aver that the following articles
were contained in the boxes replicated by
Plaintiff in this cause viz: Two rolls of
carpeting, ^{two ladies' dresses, one lady's bonnet,} one velvet watch, one gold ring
one small lot of jewelry, hairbrush with gold,
one small box of ribbon, one small box
of ribbon, three photograph albums one
lot of books, two Rail Road Campers,
thirteen linen table cloths, two doz. fine
and coarse linen napkins, two doz. linen
towels, five and a half doz linen towels,
twelve doz. fine linen pillow cases, 14 doz
fine linen sheets, twenty and half doz napkins,
four sheets, ten pillow cases, one writing
desk and fine case, five towels, one sheet,
one bed tick and four pillow ticks, one bundle

Napkins, lamp mats and tides, one Doz. Muslin
curtain, One red velvet window curtain,
one red napkin, one burner table cloth
one satin bed quilt, two ~~at~~ Crochet table
covers, two red satin pillows, one fine linen
night gown, one fan, one dresser with
cover, three bead work lamp mats, one
box, one hand complete, one
miniature boat, four books, one brush, one
bead work frame, thirteen lace curtains,
ten pictures and frames, one thermometer
one safe with 25 cents in fine cent pieces,
one seal and one basket with eleven gold
pieces on it, two cushions, two large pictures
without frames, one bead work hanging
seventy seven linen napkins and table cloths,
one solid silver waiter, sixty three napkin
yellow slips and mats, two hundred and
six pieces of linen, one small trunk, eleven
curtains and sheets, two Crochet worked
mats, one pair of suspenders, one bundle
of sundries, three satin cushions, two boxes
of ladies clothes, one silk shawl, two black
lace shawls, one muslin box, one lot
ladies cloth, one woolen shawl, one large
fur cloak, two foot stools, one box of china
and glassware, one box of glass and china
ware, one ottoman, one box of china and

glow worn, right pictures with frames
Defendants are that the following
articles of those above named were
not covered nor intended to be covered
and conveyed by said deed of trust
viz: Two ~~ladies~~ saddles, one ladies and one
boys, one silver watch, one gold ring, one
small lot of jewelry, hair braid with gold, one
small lot of jewelry, three photograph
albums, two Rail Road Companions, one
fine linen night gown, one fan, one egg
with cover, one lens complete, one miniature
boat, one thermometer, one soap with
25 cents in 5 Cent pieces, two hundred
and six pieces of silver, one pair of suspenders
one bundle of sundries, two boxes of ladies
clothes, one silk shawl, two black
lace shawls, one lot of ladies clothing
one black silk lace shawl, one lot
of ladies cloth one woolen shawl, one
large fur cloak, one seat and one basket
with eleven gold pieces on it. As to whether
the said deed of trust was intended to convey to
Plaintiffs the other articles above enumerated
these defendants have not sufficient
knowledge or information to form a
belief and therefore require strict proof.
but they own that if said deed of trust

were intended to convey and did convey
to Plaintiffs any of said articles yet
Plaintiffs ^{not} were made to the possession
by reason of the fraudulent intent with
which said deed was made by said Herman
and Albert Brockrope and accepted by
said Herschen and Othman. Because
defendants over that on the 30th day of
January 1869 the said Albert and Herman
Brockrope were indebted to various
persons in large sums of money, so much
that they ~~were~~ ^{were} in embarrassed circumstances
and on the love of dishonesty and robbing
and being so indebted, embarrassed and
involunt they conceived the design of
hiding and delaying and defrauding
their numerous creditors of whom George
Cheatham one of said defendants was
one, in the collection of their demands
against them and in order to carry out
such fraudulent and malicious design
they fraudulently, ~~and~~ conveyed to said
Plaintiffs the above described property with
every thing else they possessed to: that
Plaintiffs accepted said conveyance with-
out any consideration and well knowing
at the time that said Herman and Albert
Brockrope intended thereby to cheat

and defraud their Creditors. Dependents
own that the above named articles were
conveyed by said Simon and Albert Brock
Vogel ^{of conveyed assets said debt of suit} to said Trustees by the advice and
direction ~~and advice~~ of Gustavus J. Kinsden
and Charles F. Orthwein under a pretense to
secure a pretended present and future
indebtedness but with the real design of
withholding said property from the Creditors
of said Simon and Albert Brock Vogel.
Defendants allege that George Cheatham
had a demand against Simon and
Albert which existed on the 30th day of January
1869 the date of said pretended deed of
trust amounting to Three hundred and
fifty dollars for Corn sold and delivered
to them by said Cheatham: that on the 23rd
day of October 1869 said Cheatham obtained
from the office of the Clerk of the Circuit
Court of Jefferson County Missouri in
and from law a writ of attachment in his
favor and against the lands and Ten-
ements, goods chattels &c. of said Simon
and Albert Brock Vogel for the satisfac-
tion of his demand of Three hundred and
fifty dollars with the interest and costs
of suit: that ~~said~~ writ of attachment
was directed to the Sheriff of Jefferson County

that at that time Frederick Luchtemyer was sheriff of Jefferson County and Frederick Volmarck was his deputy: that on the day last aforesaid said Luchtemyer as sheriff of Jefferson County attached and seized by virtue of said writ of attachment all the right title and interest of the said Herman and Albert Brockhoff in and to the articles above enumerated for the purpose of securing to the said Cheatham the sum of three hundred and fifty dollars with interest and cost. and that at the time Plaintiffs replied said goods & articles said Luchtemyer and his deputy Volmarck were holding ~~said~~ the same under said writ of attachment.

dependants own that afterwards to wit on the day of November 1869 the said Cheatham recovered judgment against said Herman and Albert Brockhoff in the Jefferson Circuit Court on said demand for the sum of three hundred and fifty nine dollars and the costs of suit.

Therefore dependants deny that Plaintiffs were at the commencement of this suit or at any other time entitled to the specific personal property sued for or any portion

thereof or that Defendants or either of them at the commencement of this suit or any other time wrongfully detained said property or any portion thereof from Plaintiffs but Defendants own that their possession of said property was lawful for the reasons and purposes hereinbefore set out. They demand a return of said property Defendants deny that Plaintiffs are entitled to recover the possession of said property or any portion thereof or two hundred dollar damages or any part thereof for the detention of said property.

John L. Thomas

Atty for Defendants.

Stephen - 1880
as 2C

2

Richardson & Co

Andrew.

Chester

Phil July 23rd 1870
W. J. Henry & Co

The State of Missouri,
COUNTY OF JEFFERSON.

To *Abraham Mackay, Charles Mackay, Charles Thomas & Co.*

not served
You are hereby Comanded, That setting aside all manner of excuse and delay, you appear before our Circuit Court, for the County aforesaid, on the *1st* day of ~~the 1st~~ *Sept* at Hillsboro, then and there to testify and the truth to say in a certain matter of controversy, now pending in our said Court, wherein *Charles F. Johnson*

Neal A. Johnson Plaintiff, and
Leander A. Johnson Defendant; and herein you are
Defendant, on the part of
in no wise to fail.

Witness, ELIAS F. HONEY, Clerk of our said Court, with the seal thereof
hereto affixed, at office, this *29th* day of

August A. D. 187*6*
Elias F. Honey
E. F. Honey Clerk.

SUBPOENA

RETURNABLE TO
JEFFERSON CIRCUIT COURT.

Sept

Term, 1870

Manschen & Entwine

^{vs}
Luchtmeyer & Chatham

for Debt

H. Brachvogel, A Brachvogel

E Koeltz, Sam Barrow &

W S Dyer, George Chatham

Chas Thomas,

E. Caves &

Dec 8 4.00
3.50

And Luchtmeyer & Chatham
By J W Williams Jr. Deft

I executed this Sub on the within named
H Brachvogel E Koeltz W S Dyer
Sam Barrow Geo Chatham
Chas Thomas E Caves at Jefferson Mo

The State of Missouri,
COUNTY OF JEFFERSON.

*Improve Geo. Chamberlin for
after business.*

To *At* *Bartholomew* *Bartholomew* *Bartholomew*
My *Dyer* *den* *Bartholomew* *Bartholomew* *Bartholomew*
Bartholomew *Bartholomew* *Bartholomew* *Bartholomew* *Bartholomew*
You are hereby commanded, That setting aside all manner of excuse and delay, you

appear before our Circuit Court, for the County aforesaid, on the *1st* day of *Sept*

truth to say in a certain matter of controversy, now pending in our said Court, wherein

Bartholomew *Bartholomew* *Bartholomew*
Bartholomew *Bartholomew* *Bartholomew*

Plaintiff, and

Bartholomew *Bartholomew* *Bartholomew*
Bartholomew *Bartholomew* *Bartholomew*
Defendant, on the part of *Bartholomew*; and herein you are
in no wise to fail.

Witness, ELIAS F. HONEY, Clerk of our said Court, with the seal thereof
hereto affixed, at office, this *29* day of

August A. D. 187*10*

Elias F. Honey

Bartholomew *Bartholomew* *Bartholomew*
Bartholomew *Bartholomew* *Bartholomew*

SUBPENA

RETURNABLE TO
JEFFERSON CIRCUIT COURT.

Sept

Term, 1870

Charles D. Orthwein
Fred Luchtmeyer

for Deft
H. Brachvogel & A. Brachvogel
E. Koettitz, W. S. Dyer
Samuel Barnow
George Chatham
Charles Thomas
Elisba Barnes +

Deco \$ 4.00 3.50

Fred Luchtmeyer Sher
139 2d St. Milwaukee Wis
Sept

I presented this subp. on the 9 day of Sept
by reaching the same to the within named
At Brachvogel & Koettitz W. S. Dyer
Sam. Barnow Geo. Chatham Chas. Thomas
to appear at J. Ct. term, on 9 day Sept

The State of Missouri,
COUNTY OF JEFFERSON.

To

Wm. J. Gil X Charles Liddle X

You are Herely Commanded, That setting aside all manner of excuse and delay, you appear before our Circuit Court, for the County aforesaid, on the

day of Sept. 1870, at Hillsboro, then and there to testify and the

truth to say in a certain matter of controversy, now pending in our said Court, wherein

Marshall and

Plaintiff, and

Charles J. Crumley & Co. Defendants.

Defendant, on the part of ; and herein you are in no wise to fail.

Witness, ELIAS F. HONEY, Clerk of our said Court, with the seal thereof

hereto affixed, at office, this

August A. D. 1870

30th

day of

E. F. Honey,

Clerk.

The within was served on the 5th day of September A D 1870 at
Rush Mr by reading the same to the within named M. Webb and
R. P. C. C.
Jewell

Test
J. P. C. C.
by J. P. C. C.
Deputy

SUBPOENA

RETURNABLE TO
JEFFERSON CIRCUIT COURT.

September Term, 18⁹⁰

Served

The State of Missouri,
COUNTY OF JEFFERSON.

To

L. M. Alfred

You are Herely Commanded, That setting aside all manner of excuse and delay, you appear before our Circuit Court, for the County aforesaid, ~~on the~~ *for the with* , at Hillsboro, then and there to testify and the

truth to say in a certain matter of controversy, now pending in our said Court, wherein *Ortwine & Handson* are *Plaintiffs*, and *Ad. Beuchtenys* Defendant, on the part of *Defendant* ; and herein you are in no wise to fail.

Witness, ELIAS F. HONEY, Clerk of our said Court, with the seal thereof hereo affixed, at office, this *21st* *Sept* day of *Sept* . A. D. 187 *0*

E. F. Honey
Clerk.

SUBPENA

RETURNABLE TO
JEFFERSON CIRCUIT COURT.

Sept

Term, 18

70

Hauchew & Oath
vs

Fred Luthemeyer &
Fred Vollmar
Georg Chesler

Served the within Saly we were ^{at} 4 1/2 days
of September 1870 by ordering the steam
to the within named Dr. H. O. O'Brien
in his bearing and presence at
Jefferson County, Tenn

Attest J. W. O'Brien
By Wood Shellen and
J. O'Brien
per 500 1/2

William Orthwein and
Louis S. Baur to the use
of Gustavus F. Haenschel
and Charles F. Orthwein, - Plaintiffs

Against
Frederick Leuchtemeyer
Frederick Volmack &
George Cheatham, - Defendants

In the Circuit Court of
Jefferson County Missouri

The Plaintiffs in reply to the Answer of Defendants filed on the 23rd day of July 1870 to the amended petition of Plaintiffs, deny the allegations of Defendants, that the property claimed in plaintiffs said petition was not embraced in the Deed of Trust made on the 30th day of January 1869, by Herman Brackvogel and Albert Brackvogel, to the Plaintiffs to the use of said Haenschel and Orthwein, - except the wearing apparel of the wife of said Albert Brackvogel, as therein enumerated in said Answer, & to which Plaintiffs did not set up any claim, but which articles were placed in said Boxes & Trunks by said Brackvogels unknown to the Plaintiffs, - and which have since been delivered up to said Albert Brack-

vogel by the Defendants, Plaintiffs deny that said Deed of Trust, made to them on the 30th day of January 1869, by Herman Brackvogel and Albert Brackvogel, was made to cheat and defraud the Creditors of said Brackvogels, - and deny the allegation of said Answer that said Deed was made without any Consideration, or for any fraudulent purpose, - but, on the Contrary, Plaintiffs state that said Herman Brackvogel and Albert Brackvogel at the time said Deed was made ^{was} ~~was~~ indebted to ~~by~~ Gustavus T. Waenschen and Charles F. Orthwein ⁱⁿ the sum of Two Thousand dollars, and to secure the payment of said sum of money, and also the further sum of Eight Thousand dollars, which said Waenschen & Orthwein then obligated themselves, to advance to said Herman and Albert Brackvogel, as they should need it to enable them to carry on their business at their Mill of manufacturing ~~a~~ bonnetes, and to liquidate their debts, they said Herman and Albert Brackvogel made said Deed to Plaintiffs on the 30th day of January 1869, as Trustees for said Waenschen & Orthwein, conveying to them the property therein described, to secure the payment of said indebtedness, and advances, to be made as afore-

said, And Plaintiffs therefore say that said deed was made bona fide and without any fraudulent designs by either of said parties thereto, They deny that said Herman Brackvogel & Albert Brackvogel made said deed with intent to hinder, delay or defraud their creditors, or that the said Gustavus V. Wauschen & Charles F. Orthwein accepted of said deed with any such fraudulent designs, - all such allegations in said Answer are utterly false and unproved, Plaintiffs state that they have no knowledge or information sufficient to form a belief, of whether George Cheatham obtained a valid judgment for \$330.⁰⁰ or whether the Sheriff of Jefferson County had a valid attachment or Execution in favor of said Cheatham or not, when he the said Frederick Luehteneyer seized said property, as the property of said Brackvogels, - But, Plaintiffs aver that by the terms of their said deed of Trust, they were entitled to the possession of all of the property described therein, on the 23rd day of October 1869, for the purpose of subjecting the same to sale to satisfy said indebtedness of said Herman & Albert Brackvogel to the said Wauschen & Orthwein, & that Plaintiffs had a subsisting lien on said property for

said therefore, and they therefore deny that
the Defendants had any right to the free-
devotion of said property, but were illegal-
ly and wrongfully in possession of it,
when this suit was commenced, - and
Plaintiffs deny that Defendants have any
right to said property, or the possession
thereof. Plaintiffs therefore ask judgment for
the recovery of said property & damages, on which
commenced Frederick Trager, Attner Trager
3 Attorney for Plaintiffs

W^m Orthwein
+ L. S. Baur
vs,
Fred Leuchteingor
& others,

Replication

Cheatham

Filed Sept 8/87
E. J. Henry cler

We pray are you then are mislabeled that though
Grand must be proven yet ~~the~~ pray can
such Grand may be proven by William
Hawley.

2 - A Doctor in 'giving' Encumbrances,
may transfer one Creation to another, and
may transfer ^{all} his property to him, to
become a transferee debt, and leave the
other Creators wholly unharmed, and ~~not~~
transfer of itself is no evidence of fraud,
as fraud is not to be presumed, but
must be shown by the party alleging it.

3 - And even if the Jury should be-
lieve from the evidence that the Black
Vegets and Noctitts were largely mistaken
to other persons when they gave the dates
of the 30th of January 1869 to Plaintiffs
to the use of Maunochan & Cathruden,
yet, unless the Jury believe from
the evidence that said Maunochan
and Cathruden did accept said 30th
for a fraudulent purpose, they will
find for the Defendants.

William Orthwein and
Louis A. Baur, to use of
Maenschen & Orthwein, - Plaintiffs

Against
Frederick Leuchtenmeyer,
& Isaac Volmuck, - Defendants

The Plaintiffs ask the Court to give
to the Jury the following instructions

1. - If the Jury believe from the evidence
that the two Deeds of Trust executed on the
30th day of January 1869, by the Brackvogels
& Kettler to Plaintiffs, to the use of Maen-
schen & Orthwein, were made in good faith
for the indebtedness therein stated, and
that the Plaintiffs to the use of Maenschen
& Orthwein accepted said Deeds to secure
the debt therein stated, and that said
Brackvogels & Kettler were so indebted,
then it is immaterial what the parties
making said Deed may have intended,
unless the ~~Plaintiffs to said use~~ ^{said} Maenschen & Orthwein, accepted
said Deeds with the intent to enable the
said Brackvogels & Kettler to defraud their
creditors, the Jury should find for the
Plaintiffs

Henschen & Orthwein

v

George Cheatham

Fred. Luchtmeyer et al

The Court instructs the
Jury that if they believe from the evidence
that on the 30th day of January 1889 H & A
Brockroge were in failing circumstances
and financially embarrassed: that on that
day they made two deeds of trust to Hen-
schen & Orthwein covering their individual
and joint property & ~~certain~~ the property
or a portion of the property in dispute:
that H & A Brockroge furnished a list
of the property to be included in said
deeds of trust: that they had the property
in dispute put into ~~said~~ ^{the} deeds of trust read
in evidence by Plaintiffs for the purpose
of hindering, delaying or defrauding
their Creditors: that Henschen & Orthwein
knew of such fraudulent intent of said
H & A. Brockroge and permitted said
property in dispute to be put into said
deeds ~~forth~~ to assist H & A. Brockroge
in defrauding their Creditors, then said
deed is fraudulent as to George Cheatham
a creditor of said H & A. Brockroge and
the Jury will try the issues for the Defendant

although they may further find that said
H & A. Brothers are indebted to raise
Hewcken & B. then in order to
for money advanced before & after
the giving of said deed of trust.

Haenichen & Orthwein
vs

Geo Cheatham et al

are the
farther

Albino with the 20/84
of the give the month bar
defendants —

John with
primary

Wm O. Titman and
Louis S. Bower, to use
of Kenschel & Othman

27
Luchtemeyer, Vollmoet
& Cheatham

Now at this day Come said
Defendants and move the Court
to ascertain the value of the property
taken in the above entitled ^{cause} and assess
the damages sustained by Defendants
by reason of the writ of replevin issued
in this cause as follows.

Just of his Judgment dated
Nov 1889

\$359.

Just on same up to this time

16.90

Costs of suit

25.00

Suit Paid & attorneys

100.00
\$500.90

R. H. H. & Thomas

Attys for Defendants.

Memorandum
to the Hon. Secy of the
Treasury

John D. Tanner
Danvers.

Recd Sept. 22nd 1876.
D. C. M. Money, etc.

William Othman
& Louis S. Paur to the
me of Harnsden & Othman
against Plaintiffs
Fred. Leuchtemeyer & others.
Defendants

In the Circuit Court of
Jefferson County Mo.

William Othman being duly sworn
on his oath states that since the trial
of the above entitled cause he had a con-
versation with John Veith, who was one
of the jurors on the trial of the above
case; that in such conversation said John
Veith informed him, that the verdict was
given against Plaintiffs, not because the
Jury had thought that plaintiffs were
guilty of fraud in taking the deed of
trust in question, but because the Jury
had become dissatisfied with the manner
in which plaintiffs Attorney Mr. Green
had examined the witnesses last night
in said case, and this affiant also
states that one of the Jurors named
Richard Manpin has been sleeping
during a considerable part of the
time while the trial of said case was progressing.

Presented and
subscribed before me
this 22nd day of
September 1890
J. Ed. Walker,
Notary Public
Dist. Co. Mo.

For
Witness

Orthwein & Bauer
to use of Haenschen
& Orthwein,

as
Fred Luchtemeyer
et al.,

Affidavit,
Vouches to motion
for new trial,



Filed Sept. 22nd 1870
E. F. Haney, clk.

William Orthwein and
Louis S. Baur, to the use
of Gustavus J. Maenschen
and Charles F. Orthwein, - Plaintiffs

Against
Frederick Leuchtemeyer
Frederick Volmack and
George Cheatham, - Defendants

In the Circuit Court
of Jefferson County, Missouri
September Term 1870,

The Plaintiffs move the Court to set aside
the verdict of ^{the} Jury, in the above entitled Cause
and the judgment rendered thereon, for the
following reasons;

1- Because the Court admitted illegal and
improper evidence offered on part of the De=
fendants,

2- Because the Court excluded ^{from the Jury} proper and
legal evidence offered by the Plaintiffs,

3- Because the Court ~~erred~~ in the instruc=
tions given at the instance of the Defendants,

4- Because the verdict, ^{of the Jury} is against the
law and evidence in the case, -

5- Because the Jury disregarded the in=
structions given ^{by the court} on the part of the Plaintiffs,

- 6 - The jury were guilty of improper conduct, and utterly disregarded the evidence given on part of the Plaintiffs, -
- 7 - Because the verdict of the jury is contrary to the law of the case, and the Instructions as given by the Court,
- 8 - Because the Court erred in permitting Louis W. Alford to give in evidence the statements of Herman Brackvogel as made to him after the Deeds of Trust were executed by him, and not in the presence of Plaintiffs,
- 9 - Because the verdict is for the Defendants when it should have been for the Plaintiffs.
- 10 - Because the jury, in disregard of the direction of the Court, conversed with various persons out of Court, about the case while it was on trial,
- 11 - The jury were summoned by the Sheriff and his deputy, who are parties defendants to this suit, and who talked with the jury out of Court while the case was on trial, about this case, -

A. Green, & W. F. Alvey,
Attorneys for the Plaintiffs

In the Circuit Court
of Jefferson County

Wm. C. Thacker &
L. J. Darn

(vs.)

Leuchtmeier
Et al,

Motion for
New Trial

Made Sept. 22nd 1875.
D. J. Conway, Clerk

Wm Osthorn & Louis
S. Bauer here of
Kenschen & Osthorn

~
Fred Luckemeyer & al

Richard Maupin one of
the jurors who tried the above case
states on oath that he was not asked
during the trial of the above case
while the same was on trial

Sworn to & subscribed
before me Sept 24 } Richard ^{his} X Maupin
1870 } Mark

J. Ed. Walker

Notary Public
Jeff Co Mo

affd
P. MacArthur

Filed Sept 24th 1870
E. J. Henry att

William Othman and
 Louis S. Bower to use
 of Kenschel & Othman
 2
 Fred. Lucheneys et al

This officiant John Veth
 states on oath that he was one of the
 Jurors who tried the above case and
 that it is not true as alleged by Wm
 Othman in his affidavit filed with
 his motion for a new trial that
 this officiant told said Wm Othman
 that the jury did not decide the
 above case "because Plaintiffs
 had been guilty of any fraud, but
 because they were dissatisfied
 with the mode and manner of Plain-
 tiffs' atty examining the witnesses"
 Subscribed
 before me Sept 24
 1870 J Ed. Walker
 Notary Public
 Jeff Co Mo

John Veth

Hanno chu & O'Brien

2

Cheatham

Affair

John Dick

Filed Sept 24th 1870

E. J. Honey etc.

William Orthwein and
Louis S. Baur, to the use of }
Gustavus T. Haenschen }
and Charles F. Orthwein, - Plaintiffs }
Against
Frederick Leuchtemeyer }
Frederick Volmack, and }
George Cheatham, - Defendants }

In the Circuit Court of
Jefferson County Missouri

We, the undersigned, Gustavus T. Haenschen, Charles F. Orthwein and John C. Nelson, acknowledge ourselves indebted to the above defendants, Frederick Leuchtemeyer, Frederick Volmack, and George Cheatham, in the sum of one thousand dollars, to be void upon this condition; That, whereas, the above named Plaintiffs have appealed from the judgment of the Circuit Court of said Jefferson County, in an action wherein the said William Orthwein and Louis S. Baur, to the use of Gustavus T. Haenschen and Charles F. Orthwein are Plaintiffs, and Frederick Leuchtemeyer, Frederick Volmack, and George Cheatham are Defendants, to the Second District Court of Missouri. Now, if such appellants shall prosecute their appeal with due

diligence to a decision in the said Second District Court, and shall perform such judgment as shall be given by the said Second District Court, or such as the said District Court may direct the Circuit Court to give, and if ^{the} ~~such~~ judgment of such Court, or any part thereof, be affirmed, that they will comply with and perform the same, so far as it may be affirmed, and will pay all damages and costs which may be awarded against the said Defendants, by the said District Court. Then this Bond shall be void, otherwise to remain in full force.

Witness our hands and seals, this
19th day of October 1870.

J. S. Haunshy (seal)

Chas. F. Hoenig (seal)

John C. Nelson (seal)

Approved Oct. 22nd 1870

J. H. Honeycutt

12 Wm. M. Mullins

In Chancery Court
Jefferson County

Wm. B. Thomas &
Son v. Barn to use
of Macintosh & B. Thomas
vs.

George B. Heatham
and others

Done

Wm. B. Thomas &
Son vs. Barn to use
of Macintosh & B. Thomas
vs.

William Orthwein and
Louis S. Baur, to the use of
Gustavus J. Haenschel
and Charles J. Orthwein, - Plaintiffs

Against
Frederick Leuchtemeyer,
Frederick Volmack and
George Cheatham, - Defendants

In the Circuit Court of
Jefferson County Missouri

This Affiant Charles J. Orthwein
states that the ap-
plication by the Plaintiffs in the above
entitled cause, for an appeal from the
Judgment of the Circuit Court of said
Jefferson County, rendered in said cause,
to the Second District Court of Missouri, is
not made for vexation or delay, but
because this Affiant believes that the
above Plaintiffs, - the said Appellants, - are
aggrieved by the Judgment and decision
of said Circuit Court

Chas. Orthwein

Subscribed & sworn to before
me this 19 day of October
A D 1870 German Haenschel
Notary Public
St Louis Court

In the Circuit Court
Jefferson County

Wm. Ruthven &
Levin A. Brown, to vs.
of Macomber & Ruthven's

vs.

George Cheatham
and others

Plaintiff

Dec. 3rd 1870
C. H. Harvey Clerk

William Orthwein and
Louis S. Baur to the use of
Gustavus F. Haenschel and
Charles F. Orthwein, - Appellants

Against
Frederick Leuchtmeier
Frederick Volmack
and George Cheatham, - Respondents,

In the Circuit Court of
Jefferson County, Missouri
September Term 1870,

Be it remembered that on the 21st day of
of September 1870, of the September Term of said
Court, the above entitled Cause came up for trial,
and all and singular the matters in issue
between the parties was submitted to a jury,
and the Appellants to sustain the issues on
their part introduced the following testimony;
They read in evidence a Deed of Trust, executed
on the 30th day of January 1869, by Albert Brack-
vogel, Herman Brackvogel and ^{Edward} George Kaettly
to William Orthwein and Louis S. Baur, trustees
for Haenschel & Orthwein, to secure a debt of two
thousand dollars, which deed is in words & figures
as follows (The clerk will here copy said deed)
- also a Deed of the 30th of January 1869, from
said Albert, & Herman Brackvogel to said
William Orthwein & Louis S. Baur, trustees for

said Haenschend Orthwein, and which acca is as follows, (here copy same)

Also the return of the Cornoner on the writ of replevin as follows, (here copy same)

And the Defendants admitted they had possession of the property mentioned in Plaintiffs' Petition at the Commencement of this suit,

The Plaintiffs here rested their case,

And the Defendants to sustain the issues on their part introduced the following testimony:

James Kelly - Who says he has lived at Vineland for four years - Knows Albert & Herman Brackvogel & worked for them, - Was at Dr. Dyers when the boxes were put in his barn - They were A. Brackvogels boxes, I knew them - one ^{was} a big trunk & one ^{was} a small ^{one} The Sheriff and Cheatham attached ^{them} at Dr. Dyers and took them to De Soto - They had been in the barn four weeks before this, Dr Dyers barn is about a mile from Brackvogels. Have not seen any of these Boxes back since the Sheriff took them. - I dont know who took the boxes to Dr. Dyers - ~~He~~ worked at ~~Dr's~~ place, ~~was~~ about the barn near night & the boxes were not there next morning the boxes & ~~trunks~~ were in the barn.

Rio? Collins - Says, I lived last year close to Vineland - Dont know when the goods were moved - I loaned my Wagon & saw persons go from Brackvogels

To Dyers, after night I saw a light at his barn,
Was uneasy about my team - Bragle who lived
at Brackvogel's borrowed my team I went and
got my team, I heard a lumbering near
Brackvogel's house as if boxes were being
loaded into the wagon.
Fred Colmack - Says I was Deputy Sheriff in
1867, I went to Vineland three or four times, to levy
Executions against Brackvogel in 1867, - ^{In Aug} They told
me to wait on them & they would pay - I went there
on 4th October 1867, to levy Executions, I levied on
some tiff, - I had a difficulty to get the key
from a man named Bucher, - I delivered property
marked, W. & A. Brackvogel to Eaves, -

I went down again with Cheatham's attach-
ment I found the Boxes in the Second Story of Dr.
Dyers Barn, - levied on them and took a list of
the goods contained in them, - Mr. Leuchte-
meyer & myself delivered over to Plaintiffs all the
property mentioned in this list. Haenschen &
Brackvogel both claimed the property, - Lidle
was Agent for Haenschen & Orthwein, and
he came here and claimed the property for
them, The boxes containing the goods were the
same I found in Dr. Dyers Barn, -
Cross examined - Says I delivered the property
to Dr. Stegman, the Coroner as well as I can
recollect, Mr. Mitchell, ~~refused to give up the~~
~~property~~, with whom I had left the property

after I had levied Cheatham's attachment on it) refused to give it up because the Constable had notified him not to give it up. - Brackvogel claimed the property, and demanded of me to deliver up to him his wife's wearing apparel. I don't know that he delivered any notice to me or the Constable to deliver up to him his wife's wearing apparel.

Then read in evidence the affidavit & Bond of Plaintiffs (here Copy)

Elisha Cones - Says I went to Vineland as Constable in ^{the} fall of 1869, several times - Saw Mr. Orthwein there. I levied on some tiff he claimed it as his property, & I told him I had a lien on it prior to his claim & would beat him & he then said let it go.

I levied on the Boxes & took an inventory of the property in them, I employed Mitchell and Mr. Mullen to take charge of them for me, I have a list copied from the one the Sheriff made, The Executions came into my hands in July or August, I levied on the property at Victoria, after Volmack, deputy Sheriff had levied, I did not deliver any thing to Brackvogel,

Fred, Leuchtermeyer, - I went to Vineland & sold some tiff that had been levied on by my Deputy - Mr. Orthwein was not there at the time, I levied that day on some wood and mill machinery. I was at Victoria & saw the property levied on by Volmuck, & made a list of it and attached it to the attachment. This was the goods in the Boxes I think the property was worth \$2000, as it was very valuable property - ^{there} was 206 fine linen ~~towels~~ towels, napkins ^{in the boxes} &c. - I delivered the property to Dr. Stegman so far as I was concerned, Caves the Constable may have held it, - They took the boxes and all in them, Dr. Stegman claimed the goods I had levied on & put them in boxes, - Brackvogel claimed his wife's wearing apparel, and I told him he could have it, -

C. W. Thomas - States, he had dealings with Brackvogel & Co. - & they owed him ^{in Jan. 1869} \$350, - I had a conversation with Orthwein, & he said Brackvogel had spoke to him about paying me. He said he had agreed to pay \$10,000, for Brackvogel, & had paid \$4,000, of it, - but that

he had quit paying any more for him, as
the business was falling off. — In Sep.
1869, I saw Brackvogel boxing up goods, —
I don't know that Oithmer's boarded at Brackvogel's — don't know where he boarded,
~~I sold the corn about Christmas, of 1868 & Brackvogel~~
~~hauled the corn to his crib in Jan~~
~~1869.~~

George Cheatham, — Defendant, — Brackvogel
was indebted to me about a year ago, in the
sum of \$350, for a field of corn sold to him,
He often promised to settle with me & give me a
note, but refused to do it, — I saw the goods
in Dr. Dyer's Barn & got out an attachment
25th Dec, 1868 & Brackvogel hauled the corn to his crib in Jan 1869
and had them levied on, I sold the corn about
Sept. 1869. The record in evidence the petition
writ of attachment & return thereon in case
of George Cheatham vs Brackvogel & Co (see copy)
Defendants — Then read judgment of Exon &
Jas. Harrison against Brackvogel & Co, (here
as follows
copy same) and also, Execution thereon & return,
(here copy same) — Also, a judgment in favor
of George Cheatham (here copy same)

Also, — a Deed of Trust, by Herman & Albert
Brackvogel, dated 27th June 1868, to John C.
Nelson, Trustee for Waenschel & Oithmer's, to se-
cure \$20,000, — (here copy same)
as follows

(1)

Louis W. Alford, - Being shown the Deeds of the
both of January 1869, says, ^{last in 1869 Deputy Recorder of Jefferson Co} I have seen these
Deeds before, I recorded them, - I saw them
at one time, ^{about Sept 1869} in the hands of Herman Brack-
vogel, - he brought them to me to record, -

(Witness is then asked to state what Brack-
vogel said about recording these Deeds, - To
which, question eliciting the statements
of Herman Brackvogel, the Plaintiffs
at the time objected, - on the ground that
such statements are mere hearsay, illegal,
and incompetent, But the Court overruled
the objection, and permitted the witness
to give the statements of Herman Brack-
vogel, - and to which decision of the Court
the Plaintiffs at the time excepted.)

The witness then proceeded to state that ^{at the time he brought the deeds}
Herman Brackvogel, said he wanted him
the witness to mark the said two Deeds
filed for record, and then to give them
back to him without recording them, as
he wanted to make some alterations ^{in them}, - that
there was some difficulty about the prop-
erty, & he wanted to take them back ^{to make some alterations in them}, before
being recorded, - but wanted ^{them} marked filed,
I refused to do this, and he took them
away. In three or four days the
Deeds came back by mail, from Haen-

schen & Arthurs to be recorded, — ^{I told} ~~the~~
Brackroger, if he wanted any alterations, to
~~cross examination~~
make them, as I would not file them, and
let him alter them afterwards. ^{These Deeds}
^{between the time I first saw them when they}
had been altered, since I read them, as there was,
^{come back for work stated,}
only eight miles in them when I first read,
them, & this ^{was} altered to nine. — There was
no erasures in the Deeds when I first read
them, nor ^{any} interlineations. — These Deeds now have
some erasures & interlineations, — I don't usually
read a Deed all through before I record it, but
I did these, or nearly so, —

Defendants have closed their testimony, -
And the Plaintiffs in rebuttal introduced the
following testimony.

Charles Liddle, - Who states, I came to Vine
land on the 20th of October 1869, - Haenschel &
Orthwein were then running the Mill, - They had
the entire control and management of the same,
- I heard about Cheatham going after the goods
about the 22^d of Oct, 1869, with his attachment,
But I don't know any thing about how the
property was taken to Dr. Dyer, - After Chea-
tham brought suit, & attached the goods, I notified
Haenschel & Orthwein about Cheatham's seizing
the property under his attachment, - I was
then the Agent of Haenschel & Orthwein, - I
was at Victoria, when the Sheriff delivered
this property up to me, as Haenschel & Orthwein's
Agent. This was in another replevy suit they
had brought for the property, - I then shipped
the goods to Haenschel & Orthwein at St. Louis,
I boarded at Brackvogel's and Mr. Orthwein
took supper there once, I think it was about
the 20th Oct, 1869, - Edward Kaetzelitz was,

with me I think at Victoria when I got
the goods, - I don't know whether he went to
St. Louis with the goods or not,

Martin Dim, - In the Fall of 1869 I was at
Vineland with Mr. Orthwein, - He was then
running the Mill for Haensch & Orthwein,
They took possession of the Mill on the
1st of September 1869, and were running the
Mill & carrying on the business, when the
Sheriff made a levy on some tiff - which they
were manufacturing, - Brackvogel had
no control or management of the business
at the Mill, - I boarded at the Mill, but don't
know where Mr. Orthwein boarded, - Koettitz
was sometimes at the Mill but had nothing
to do with it, Mr. Piel was Agent at the
Mill for Haensch & Orthwein, -

~~Long as some tiff, was working for
Haenschel & Orthwein, Brackvogel had
no control of the Mill after the 7th Sep-
1869, I boarded at the mill, but don't
know where Orthwein boarded, Kuntz
was sometimes at the Mill, but had nothing
to do with it, Brackvogel had nothing to
do with the Mill, Charles & William Orth-
wein were then running the Mill, Mr.
Pyel managed the business on their part,~~

William Braman, - Says I was living at
the Mill at Vineland in the fall of 1869, I
was working for Haenschel & Orthwein in
September 1869, - Before that time I worked
for Brackvogel & Co, - Charles Orthwein was
there at ^{that} time, - did not stay at the mill con-
stantly - went away at night probably
to St. Louis & returned next day - Don't
know where he boarded, - They had five
of side hands working at the mill, ~~and~~ ^{and}
* had the entire control of the same,
Brackvogel had nothing to do with it,
Haenschel & Orthwein paid all expenses
in running the mill - bought tiff &c, -

William Orthwein, - States, I am the Book-
Keeper, and have been since 1860, of the
Firm of Waenschen & Orthwein, - a firm
composed of Gustavus F. Waenschen, & Charles
F. Orthwein, - They are Commission
merchants in St. Louis, - I ~~managed~~ also
their financial concerns, - and the paper
here produced in Court is a true ab-
stract taken from the Books of said
Firm, as kept by myself, I made this
abstract from the books, and it shows,
the various amounts of money paid out
by said Firm for Hermann & Albert Brack-
vogel, on their Checks & drafts during
the year ending August 31st 1869, - (This memo-
randum being handed the witness, he is asked
to state by reference thereto, the various amounts
of money paid to Brackvogel & Co, during
said year) But, the Defendants objected to the
witness referring to the memorandum made
by himself, from Books kept by himself, to
refresh his memory, - and the Court sustained

the objection, and would not permit the witness to refer to such memorandum in giving his testimony, And to which ruling & decision of the Court the Plaintiffs at the time excepted,)

(The Plaintiffs then offered to ask questions by reference to such memorandum, - but the Defendants objected to Plaintiffs asking any questions from such memorandum, - And the Court sustained the objection, & would not permit Plaintiffs Counsel to ask any question based on the items stated in said memorandum, - and to which ruling and decision of the Court, the Plaintiffs at the time excepted,)

Witnesses ^{then} stated we received the products of the mill, while it was carried on by Brackvogel & Co, and sold the same as Commission merchants - and charged ourselves with the net ^{proceeds} ~~proceeds~~, after deducting the commissions of the firm, - The closing of the account of said firm with Brackvogel & Co for the year ending August 31st 1867, shows a balance against Brackvogel & Co, in favor of said firm of Haenschent & Orthwein of thirty seven thousand dollars, - This was for advances made to Brackvogel & Co, over and above the products sent to Haenschent &

* Here the above
Memorandum is
shown the witness
& the dependants
withdrew their
objection to the
writing, using
it to refresh
his memory &
the witness
stated that this
Memorandum

Orthwein to sell on Commission, - said
Firm of Waenschent Orthwein paid for
Brackvogel^{HCo} in the shape of drafts, checks,
orders, and, as endorser on their notes, the
several amounts charged in this memo-
randum, which I have taken from their
Books, kept by myself, - & generally made
these payments myself, - This Memorandum
is a correct statement of the entries made
in the Books of said Firm for moneys ad-
vanced and paid to Brackvogel HCo, -
Said Memorandum or Statement is as follows,
(The Clerk will here copy same)

By reason of the various advances made, and
money loaned to Brackvogel HCo, by said Firm
they became indebted to Waenschent Orthwein
on 27th June 1868, in the sum of \$20,000, - & to
secure which a deed of Trust was taken on the
Farm & Mill of Brackvogel HCo, of that date, - The
Farm was sold under this deed of Trust & bought
by Waenschent Orthwein for \$1000, - but subject to
in favor of Nathaniel, Lewis HCo,
an older deed of Trust, under which it was af-
terwards sold for \$12,000, - and bought by said Firm,

The two deeds of Trust executed on the 30th January
1869, are for the same consideration, that is, \$5,000
advanced to Brackvogel HCo, and \$8,000, to be
advanced to enable them to carry on their business
and liquidate their debts,

Two Deeds, ~~were~~ taken, because a portion of the property did not belong to the firm of Brackvogel & Co., but to Brackvogel alone, - The firm of Haenschel & Orthuwein after the taking of said the whole amount of \$20,000, in various sums as enumerated in the abstract of their Books Deeds of Trust paid ~~\$4,000, more on them, and~~ ~~being \$4,000, advanced on the same,~~ ^{the same} - They then refused to advance any more. As, by allowing Brackvogel & Co. the full Credit of \$20,000, (although made nothing out of the loan, and got no title to it) for the land & mill, they are still in debt to the firm of Haenschel & Orthuwein in the sum of \$17,000. - And the Personal Property secured by the two Deeds of Trust of January 30th 1867, is all they are intended to secure \$12,000, & the \$7,000, is not secured by any deed. The security they have for said sum of money.

(When Brackvogel got the loan mentioned in the two Deeds of Trust of 30th January 1867, he stated that he had other sources of getting money besides the proceeds of the mill, - that he expected some from Europe, & some from a man in New York, whom he expected to become a partner, - & we relied somewhat on these assurances as well, ^{as} the Personal Property secured, - We never examined the Personal Property at the time, as we had then Confidence in Brackvogel's honesty, - I don't know what portion of the property is on the farm now. The farm & Dwelling House is in possession of our Agent ^{relative of Bartholomew Lewis & Co.} Charles Liddle. I suppose the most of the House hold property is there. I have not examined

them ~~and~~ I cannot enumerate what articles are
there now, - All the Mules, horses, wagons,
Cattle &c, included in the Deed of Trust of
January 30th 1869, were taken by Higgen-
bottom, who held an older Deed of Trust on
the same, - We have then nothing to secure
us, (The Firm) for the money advanced
under said Deed of Trust of 30, Jan'y 1869, but
this Household Property in ~~Contravention~~,
We took possession of the Mill property on
1st Sep. 1869, but did not think it necessary
to take actual possession of the Household
^{at that time, but let it remain in the possession of Brackvogel}
property, - When Hauschen & Brummen
took possession of the Mill on 1st Sep. 1869,
they took possession of the cord wood, & other articles
there on the premises, & paid Brackvogel the
full value of the same, by crediting their gen-
eral account, - We have never disposed of
the property now in dispute, it remains in our
possession at St. Louis. Mr. Lisle is our Agent,
& took possession of the household property
on the farm, ^{by our collection, when Brackvogel left the firm} ¹¹ The reason we did not have
the Deeds of Trust of 30th January 1869, recorded
as soon as made was that Brackvogel told
us he expected money from Europe, & from New
York, & he thought he could soon pay us back,
& he did not want to injure his credit, - and
we believed his statements, & did not think

winter of 1870, -

it necessary to record the Deeds immediately,
When the two Deeds of Trust of January 30th, 1869,
were taken Brackvogel & Co, owed ^{Haenschel & Co} ~~them~~ \$2,000, on
account for advances previously made, (which was
not secured by any Deed of Trust) - and that they refused
to advance any more unless they were secured
by a Deed of Trust on some Property, Whereupon
Brackvogel then brought them up a list,
of Household & other Property, and which
was included in the said Deeds of Trust,
I am ^{one of the} ~~the~~ Trustees in the said two Deeds of
Trust, - Our Agent, Liddle, never furnished us
with a list of what property was left in the House
when Brackvogel left, & I never requested him to
do so,

The above and foregoing being all the testimony introduced by the Parties in the said entitled cause, - the Court at the instance of the Plaintiffs gave to the Jury the following instructions Nos. 1, 2, 3, as follows, (the Clerk will here copy same), And the Defendants asked, and the Court gave to the Jury the two following instructions (here copy same) To the giving of which instructions so prayed by the Defendants, the Plaintiffs at the time objected & ~~excepted~~, but the Court overruled said objection, & gave to the Jury the Defendants' ^{said} instructions, To which ruling & decision of the Court in giving said instructions, the Plaintiffs at the time excepted,

The Jury returned the following verdict, (here copy verdict) and thereupon the Court entered Judgment for the Defendants as follows, (here copy judgment) The Court at the same time on motion of Defendants, proceeded to assess damages for the amount of defendant's debt &

Fragment against Brackvogel, ⁷⁶ as follows, (here copy same) to which, Plaintiffs at the time objected & accepted, —

The Plaintiffs then on the 22^d day of September 1870, filed their motion to set aside the verdict, ^{and assessment of damages} and the judgment of the Court, ^{and to} grant them a New trial, which motion is as follows, (here copy motion for new trial)

But, the Court overruled the Plaintiffs motion for a New trial, to which decision of ^{in overruling said motion and, refusing to grant a new trial,} the Court, Plaintiffs at the time accepted, And now in vacation, by leave of the Court, both parties consenting thereto, and the same being entered of record, prays that that their Bill of exceptions may be signed, sealed, and made a part of the record in said Cause, ^{and} which is accordingly done,

J. H. Vail. Judge. (Seal)

✓

In the Supreme Court of Mo.
October Term 1871

Wm. Orinheim et al. Ap. } Appeal from
vs. } Jefferson
F. Lucktemeyer et al. Resp. } Circuit Court

Opinion of the Court.

The plaintiffs sue in replevin to recover possession of various articles of personal property, mainly household furniture.

They claim title under a deed of trust dated January 30, 1869, and the pleadings show that the deed was executed on that day, that is, signed, sealed and delivered; for the full execution of a deed includes its delivery.

The defendants claim under an attachment of the same property in a suit against the grantors in the trust deed. Whether this deed was fraudulent as to creditors was the issue submitted to the jury for determination.

On the trial the Court admitted certain evidence over the plaintiffs objections. The only question upon this record requiring examination is, was that evidence properly received?

The trust deed is not seriously objected to as without an adequate consideration; but

it was objected to as having been used as a cover to shield the grantor's property ^{from} seizure by their other creditors; that is, to hinder and delay them. The effort at the trial on the part of the defendants was to show that such was the purpose of the conveyance on the part of the grantors, and that the grantees and beneficiaries were cognizant of the design.

Upon the face of the deed it appears that it was executed to secure \$20000 present indebtedness, and \$8000 to be thereafter advanced, and that the ^{whole} was to be paid in seven months from the date of the deed. The deed was not ~~recorded~~ ^{recorded} till September 1. 1869, more than seven months after its execution; and consequently after the maturity of the debt it purports to secure. As against creditors, the recording was a matter of vital moment, since the grantors remained in possession (Mag. 281 § 8).

On the first of September, the debt being due, Herman Brockvoyle as the evidence shows presented the deed at the Jefferson County Recorder's office for record, or to be filed for record - desiring the recorder at the same time to mark the deed as received for record, but to return it to him (Brockvoyle) without recording, stating that there was

some trouble about the property and that he might wish to make some changes in the deed. The recorder declined to accede to this request and Brockvoyle left the office carrying the deed with him. A few days after the deed was received at the recorder's office by mail from St. Louis having been transmitted for record by the beneficiaries. There was also evidence tending to show that the deed was held up from record at the suggestion of the grantors, and that the grantors or one of them remained in possession of the property down to the date of its seizure under the attachment, the latter part of September 1869.

Under this state of facts and of the evidence were Herman Brockvoyle's statements to the recorder in reference to the deed, when he presented it for record, competent evidence against the grantees? That is, against the plaintiffs. These statements were admitted by the court and their admission is the matter complained of as erroneous.

In what character or capacity did Brockvoyle act when he presented the deed for record? Did he therein act as the agent of the grantees? If he did then it does not seem to be questioned

but that his declarations in the line of his agency are verbal acts which may be given in evidence against his principals.

Brockvoyle either acted for himself or the plaintiffs. On the face of the transaction he would seem to have been acting for the plaintiffs. If the deed was in all respects an honest one it is difficult to see what interest Brockvoyle had in the recording.

According to the pleadings the deed had been once delivered to the grantees. Seven months after its execution it is found in the hands of one of the grantors who presents it for record. How came it there? and why was it offered for record? The plaintiffs do not pretend that Brockvoyle was wrongfully in possession of the deed; nor is there the slightest circumstance to show that they repudiated his acts in presenting it for record. On the other hand the facts and circumstances in evidence were abundant as it seems to us to warrant the jury in finding that Brockvoyle was in possession of the deed with the plaintiffs' consent, and that he was expected to have it placed on record when he might consider it desirable or necessary in order to carry out its objects. In other words there was evidence from which the jury might

have found that Brockvoyle presented the deed for record as the plaintiff's agent. It is fair to presume that the trial court took that view, and that Brockvoyle's declarations were admitted on that ground. It was for the Court to decide whether there was any evidence tending to show the fact of agency; but it was for the jury to pass upon its sufficiency. There being facts and circumstances from which the agency might be inferred, it was necessary for the Court to rule on the evidence with reference to the contingent finding of the fact of agency by the jury. If the plaintiff's counsel considered the agency unproved or in doubt, they should have asked the Court to instruct the jury to disregard the statements of Brockvoyle to the Recorder in case ^{they} failed to find that he was acting in the capacity of an agent of plaintiff when he presented the deed for record. The failure to give such instruction was no error in the Court, since no instruction of that kind was asked.

The action of the Court on the subject of instructions is not complained of and the judgment will be affirmed. The other judges concur.

Warren C. Carrier

In the Supreme Court, held at St. Louis, of the State of Missouri,

October Term, 1871

November 29, 1871

Gustavus T. Haenschel and
Charles F. Ostusie Appellants

Fredrick Luchtmeyer and
Fredrick Wolmuck Respondents

Appeal from Jefferson
Circuit Court.

Now again come the parties aforesaid, by their respective attorneys, and the Court being now sufficiently advised of and concerning the premises, doth consider and adjudge that the judgment rendered herein by the said Jefferson Circuit Court be in all things affirmed and stand in full force and effect, and that the said Respondents recover of the said Appellants their costs and charges herein expended, and have execution therefor. Opinion filed.

STATE OF MISSOURI, SS.

~~Francis Minor~~
O. D. FISHBACK, Clerk of the Supreme Court, held at St. Louis, of the State of Missouri, certify that the above and foregoing is a full, true and complete copy of the judgment rendered in the above entitled cause, as fully as the same remains of record in my office.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Court, at office in the City of St. Louis, this Fourth day of December, A. D. eighteen hundred and seventy one.

Francis Minor Clerk.
Per J. F. Dingle

2958

 Supreme Court of Missouri.

Gustavus T. Haensch
et al vs

Fredrick Luchtemeyer
et al Resp

MANDATE.

JUDGMENT OF

Jefferson Circuit Court

 AFFIRMED.

11/10/9

State of Missouri, ss.

I, FRANCIS MINOR, Clerk of the Supreme Court, held at St. Louis, of the State of Missouri, certify that the above and foregoing is a full, true and complete copy of the opinion delivered in the above entitled cause, as fully as the same remains on file in my office.

Witness my hand, with the seal of said Court hereto affixed,
at office ^(in the) City of St. Louis, this 23rd
day of December one thousand eight
hundred and seventy one!

Francis Minor
Clerk.

John H. Davis
Atty.

Regular Judgment

William Orthwein and
Louis S. Bair, to the use
of Gustavus F. Baensch
and Charles F. Orthwein, - Plffs

Replevin.

Frederick Leuchtenmayer

Frederick Bolmack and

George Cheatham - Defts,

Now at this day come the parties
aforesaid by their respective attorneys, and all and singular
the matters at issue are submitted to a jury of,

London Williams - James Luffoon, Louis Partney,
John Evans, W. Frederick Gro Kohl.

Travis Williams - Richard Manpin, Chas McCreary,
Wm Null, Wm Deon, John Vieth,

" The Jury gives the verdict in favor of the Deft.
John Vieth foreman"

The Jury found for Defts,

(After verdict)

It is considered by the Court that Plaintiff
take nothing by his writ: that Defendants
~~Sh & V. Sheriff and deputy Sheriff~~
have recovered of Plaintiff
(for costs). Whereupon H. L. &
H. V. as Sheriff and deputy Sheriff
file of Jefferson Co. no file then
motion to ~~do~~ answer damages on the
Replevin bond which is on motion
of Plaintiff continued till tomorrow

orders to be entered
in the arithmetic
cases

Heathman
case

William Anthoine and Louis S. Barr to the use of
 Hermann & Heerschen + Charles Anthoine Plffs. }
 Domico Luchtemeyer ^{no} Frederica Volmace and }
 George Cheatham }
 H & C } Judgment Sept 24th 1870 against
 L & V + Cheatham, } Plainiffs for \$400.00 vd 6 p 249
 Amt. pr by Plff. \$ 3.00

Money -

Cop. - put	30	affd	25	order	35	copy	45	with 3 copies	130		3.25	
Leave to ans	20	cont	25	an	20	motion	20	Leave to ans	20		1.05	
Leave to an	20	cont	25	Rep	20	Sec	45	affd	25	Bond	50	1.85
motion	20	rule	20	4 Spas	100						1.40	
											<u>17.55</u>	

Boyer clerk judge. 50 doc judge 10 A B 10 making cost 100 \$ 170

Bill Ex 55 ord for appeal 55 ord for Trans 35 motion 20 rule 20 145

Judge on motion 50 issue joined 25 cont on motion 25 1.00

Trans to Supreme Court.

18.32 \$ 22.47
18.32
 4.15

G. Skogman Coroner.

Serv 2 Septs 200 (1 month 50 order 50 Bond 50 3.50

Luchtemeyer. Serv 17 Spas @ 50 8.50

calls, .60 9.10

E. Eaves — 4 days 6 miles 4.48

Fred Volmace 3 " 3.00

No. 2958

Circuit Court.

Term, 18

Wencher & Orthwein

vs.

Fred K Luchtmeyer

Etal

Judgment, - - \$

Date 18

Fee Book No. Page

Judg't Docket, Page

Plaintiff's Atty.

ATTORNEYS: Exercise care and return promptly.

C. F. Chamberlin & Co., Printers and Stationers, St. Louis.