

DeFerson County Circuit Court
Case Files - Civil
May 1870

Box 26 Folder 32

Orthwein, William

Baur, Louis S.

vs

Bush, Isidor

Eaves, Eliska

Mitchell, Alfred

Replevin

Carpet, saddles, china ware, flat ware,
table cloths, curtains; \$200 damages;
involved attachment of Herman and
Albert Brockvogel; bill of exceptions

William Orthwein }
and Louis S. Baur, - Plaintiffs

Against
Isidor Bush, Elisha Caves,
and Alfred Mitchell, - Defendants,

} In the Circuit Court
} of Jefferson County, Mis-
} souri,

The Plaintiffs state that they are law-
fully entitled to the possession of the
following specific personal property,
to wit, Two rolls of Carpeting, Two Saddles,
Four Boxes, and their Contents, and four
Trunks and one Chest and their con-
tents, said Boxes, Trunks, and Chest, con-
taining various articles of China-ware,
plated silver ware, Table Cloths, Curtains
and other articles of Household Furni-
ture, - of the total value of Four hun-
dred dollars, Which said property
the Defendants wrongfully took and
now illegally and wrongfully detain
from the possession of the Plaintiffs.
The Plaintiffs therefore ask judgment
for the recovery of the said property,
and Two hundred dollars damages
for the detention thereof.

Abner Green
Attorney for the Plaintiffs

Charles Liddle, Agent for the above named Plaintiffs, makes oath and says 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 specific personal property described in the above Petition, that said property was wrongfully taken by the Defendants from the Plaintiffs, and the same is now wrongfully detained by the said Defendants from the possession of the Plaintiffs, - that the actual total value of said property is four hundred dollars, - 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 the recovery of said property has accrued within one year, and that the Plaintiffs will be in danger of losing their said property unless it be taken out of the possession of the said Defendants or otherwise secured,

Subscribed & sworn to before me } Charles Liddle
this 15th day of Nov 1869 }
E. J. Henry Clerk }
By S. H. Liddle }

In Circuit Court
Jefferson County

William Cuthbert
and David, David
vs,

David Smith & Co,

Petition

For removal and
order for delivery of
property, against
the debtors,

Filed Nov 15 1869
C. J. Henry clk

William Orthwein and }
Louis S. Baur, — Plaintiffs

Against
Isidor Bush, Elisha Caves, }
and Alfred Mitchell, — Defendants }

Now at this Come said Plaintiffs
and file their Petition and affidavit as re-
quired by law praying an Order for the de-
livery of the possession of the Property here-
inafter described to them, Whereupon it
is ordered by the undersigned Clerk of the
Circuit Court of Jefferson County Missouri; that
the said Defendants deliver to the Sheriff
of said County the Property specified in said
Petition, to wit, Two Rolls of Carpeting,
two Saddles, Four Boxes and their contents,
Four Trunks, and one Chest, and their con-
tents, — said Boxes, Trunks, and Chest, contain-
ing various articles of China ware, plated
Silver ware, table cloths, Curtains, and other
articles of House-hold furniture, — of the total
value of four hundred dollars, And that
the said Sheriff, if the said Property be
not delivered to him, take the same from
the said Defendants, and deliver the same
to the Plaintiffs, — on their complying with
the Statute in such cases made and provided,
in giving the Bond required by law,

Witness, Elias F. Honey
Clerk of the Circuit Court of
said County, with the seal
thereof hereto affixed, at office
this 13th day of November 1869,
Elias F. Honey cl16
By L. H. Alfred DB

William Orthwein and
Louis S Baur - Plaintiffs

Against
Isidor Busch

Elisha Eaves and Alfred Mitchell - Defendants

In the Circuit Court of Jef-
ferson County Missouri

We, William Orthwein and Louis S Baur
as principals and Haensichen & Orthwein of St Louis
and Peter Jenni of Hilstovo as securities, acknowledge
ourselves indebted to Isidor Busch, Elisha
Eaves and Alfred Mitchell the above named
Defendants, in the sum of ~~five~~ ^{one} ~~thousand~~
(1,000) Dollars, for the payment whereof we bind
ourselves, our heirs, executors and admin-
istrators upon the following condition:

That whereas the said William
Orthwein and Louis S Baur as plain-
tiffs have commenced suit in the
nature of a replevin in the Circuit Court
of Jefferson County Missouri against Isidor
Busch, Elisha Eaves and Alfred Mitchell
Defendants; returnable to the May Term
1870 thereof and have obtained ^(of said Court for the delivery to them by the) an
Order by the Clerk of said Defendants
of the following specific personal property
To wit, Two rolls of carpeting, Two saddles
Four boxes and their contents and four
Trunks and one chest and their contents -
said Boxes, Trunks and Chest containing
various articles of China - Ware plated Silver
ware, Table Cloths, curtains and other
articles of Household furniture particularly
enumerated

enumerated and described in the petition
of the above named Plaintiffs. - Now
if the said William Orthwein and Louis
S Baur plaintiffs in the above en-
titled cause shall prosecute their said
action with effect and without delay
and shall return the said property
to the said Defendants, or return there-
of be adjudged by the Court, and in
default of such delivery (or so ad-
judged) that they will pay to the said
Defendants the assessed value of
said property and will pay to them
all damages for the taking and deten-
tion thereof by the Plaintiffs that
may be adjudged against them, and
all costs, that may accrue in the
said action, and be adjudged against
the Plaintiffs, - then the above
Bond to be null and void, other-
wise to remain in full force

Witness our hands and Seals
this 11th day of November 1869.

Approved this 13th
day of November
1869,
Fred Luchtemayer Sheriff
By Fred Vollmach
Deputy

Wm Orthwein (seal)
L S Baur (seal)
Karl Orthwein (seal)
Peter Jenni (seal)

Wm. Orthwein
David, Dan
20,
Eliza Evans Esq
Dana

THE STATE OF MISSOURI,
COUNTY OF JEFFERSON. SS.

THE STATE OF MISSOURI,

To the Sheriff of the County of Jefferson—Greeting:

We command you, that you summon

E. Caves
Alfred Mitchell & Thomas M. Muttli

if ~~they~~ found in your County, that ~~they~~ 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

Stauschen, & Ortwine

upon *this* 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

4 day of *Apr*, A. D. 18*69*

Elias F. Honey

By S. H. Mayo Clerk Circuit Court

Haasch & Son
Co.
Leavenworth

Copy

THE STATE OF MISSOURI,
COUNTY OF JEFFERSON.

THE STATE OF MISSOURI,

To the Sheriff of the County of Jefferson—Greeting:

We command you, that you summon

E. Caves & Alfred Mitchell & Thomas McMullin

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

Ortwein & Haensch

upon *this* original petition, a copy whereof is hereunto annexed and accompanies 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

4 day of *Apr*, A. D. 18*69*

Elias Honey

Clerk Circuit Court

By L. A. Apr 20

THE STATE OF MISSOURI
COUNTY OF JEFFERSON

THE STATE OF MISSOURI

To the Sheriff of the County of Jefferson—Greeting:

Amos & Bohn's

vs.

E. E. Campbell

County



THE STATE OF MISSOURI,
COUNTY OF JEFFERSON. SS.

THE STATE OF MISSOURI,

To the Sheriff of the County of Jefferson—Greeting:

We command you, that you summon

Jedra Beish
Elisha Caves, & Alfred Mitchell

if ^{they} ~~he~~ be found in your County, that ^{they} ~~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 *Seventh* Monday after the fourth Monday of *March*
next, and then and there to answer unto, *the complaint of*

William Orthwein, & Louis S. Bauer,

upon *three* original petition, a copy whereof is herunto 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 *15th*
day of *November*, A. D. 186*9*

Elias F. Honey
By *L. A. Hager* Clerk Circuit Court

William Orthwein and
Louis S. Baile, Plaintiffs } In the Jefferson
Against } Circuit Court.
Isidor Bush, Elisha
Eaves, and Alfred Mitchell }
Defendants }

Now at this day come said
Defendants and for answers to the petition
of the Plaintiffs heretofore filed in this
behalf deny that Plaintiffs were on the
15th day of November or at any other time
entitled to the specific personal property
described in said petition or any part
or parcel thereof. They deny that
they on the day aforesaid or at any other
time took from Plaintiffs the property
aforesaid or any parcel thereof wrongfully
~~and~~ that they on the day aforesaid or
any other ^{time} unlawfully, illegally or wrongfully
detained said property or any parcel thereof
from Plaintiffs. They deny that Plaintiffs
are or ever were entitled to recover the
possession of said property or any part
thereof or two hundred dollars ^{damages} or any
part thereof for the detention thereof.

Defendants for further answer state
that on or about the 23rd day of October 1889

the Sheriff of Jefferson County Missouri
by virtue of an attachment issued by the
Clerk of the Jefferson Circuit Court
in favor of George Heatham and
against Herman and Albert Brock-
Kogge dated October 23rd 1869 attached
all the right title and interest of said Herman
and Albert BrockKogge in and to the property
sued for: that on the day of 1869
Isidor Bush one of said defendants recov-
ered judgment before James C. Power
Justice of the peace of Central Township
Jefferson County Missouri against
Herman and Albert BrockKogge for the
sum of one hundred and

dollar and costs of suit
upon which judgment an execution
was issued by said Justice of the peace
directed to the Constable of Central
Township in said County in favor
of said Bush and against said
Herman and Albert BrockKogge
dated the day of 1869 returnable
90 days after the date thereof: that
Elisha Coover was then and then Con-
stable of Central Township aforesaid and
as such received said execution and on the
day of 1869 said execution was

the property sued for herein as the property
of said Henson and Albert Brockroge
to satisfy said Henson and costs, subject
however, to the prior lien created by the
attachment aforesaid for \$350 & the
costs of such attachment. Defendants
aver that at the date of the levy upon
said property by the Sheriff under said
attachment of said Constable Eaves,
under said Henson the said Henson
Brockroge and Albert Brockroge
were the owners of said property and Eaves
was entitled therefore to the possession of
said property for the purpose of selling the
same to satisfy said Henson. But defend-
ants aver that before any sale could be
made by said Constable under said
Henson Plaintiffs repudiated said
property out of the hands of said Constable.
Defendants therefore pray the Court for an
injunction against Plaintiffs for the return
of said property to Defendants to satisfy
said Henson.

John L. Norman.
Att'y for Defendants.

Arthur A. Burr

on

L. Burr, et al

Attorneys.

Dated July 25th 1870

Alvin D. Hemeny

att

J. Lewis M. Ward &c

William Orthwein and 3
 Louis S. Baur, — Plaintiffs
 Against
 Isidor Bush, Elisha Eaves,
 & Alfred Mitchell, — Defendants.

In the
 Circuit Court
 of Jefferson
 County

The Plaintiffs for Replication to
 the Answer of the said Defendants, state that
 they have no knowledge sufficient to form a
 belief, of whether the Sheriff of Jefferson County
~~xx~~ by virtue of an Attachment issued by the
 Clerk of the Jefferson Circuit Court in favor of George
 Cheatham & against Herman and Albert Brack-
 vogel dated the 23, day of October 1869, attached
 on said day all the interest of said Brackvogel's
 to said property, - or that on the - day of - 1869,
 Isidor Bush recovered judgment before a ju-
 dicial of the Peace against Herman & Albert
 Brackvogel, for the sum of one hundred
 dollars, nor whether the Constable of Central
 Township, by virtue of a valid Execution
 levied on said property as the property of
 said Brackvogels, - And Plaintiffs deny
 that either the said Sheriff by virtue of said
 attachment, or the said Constable by virtue
 of the alleged Execution, had any authority
 to seize & levy upon said property, or to the pos-
 session of the same, for the purpose of sel-
 ling the same, to satisfy said alleged judg-
 ments, or Executions, - For Plaintiffs state

that on the 30th day of January 1869, Herman Brackvogel and Albert Brackvogel, ~~executors~~ ^{being} indebted to Gustavus T. Waenschen and Charles H. Orthwein, in the sum of two thousand dollars, executed a Deed of Trust, whereby they conveyed all of the Personal Property specified in Plaintiff's Petition, to Plaintiffs, as Trustees, To secure the payment of said sum of money, also the further sum of 8,000, dollars to be advanced by said Waenschen & Orthwein, - and which sums of money were due, and to be paid to said Waenschen & Orthwein, in seven months from the date of said Deed of Trust, and which was only recorded in the recorder's Office of said Jefferson County, on the 6th of September 1869, And Plaintiffs ^{state} that said sums of money remaining due and unpaid to said Waenschen & Orthwein, on the 1st day of August 1869, the Plaintiffs were then, by virtue of said Deed of Trust, entitled to the possession of said Personal Property, in order to make sale thereof, to satisfy said indebtedness of said Herman & Albert Brackvogel to said Waenschen & Orthwein, And Plaintiffs therefore deny that Defendant had any authority to the possession of said Property, -

Plaintiffs therefore pray judgment as in their Original Petition prayed,

Abner Green
3 Attorney for Plaintiffs

In Jefferson Circuit
Court, Sept. Term 1870

Wm. D. Anthony
Plaintiff, vs.
Defendant,

Barber Ranch, &
Others

Declarations

Filed Sept. 8, 1870
C. H. Anthony

William Orthwein and
Louis S. Baur, plaintiffs

against
Isidor Busch, Eliza Cares
and Alfred Mitchel, de-
pendents.

In the Circuit
Court of Jeffers-
on County, Min-
n. s.
September Term
1870.

Now on this day come plaintiffs
by their attorneys, and move the court
to set aside the verdict given by the
jury in the above case and grant a
new trial for the following reasons:

- 1st Because the said verdict is against
the law,
- 2^{ndly} because said verdict is against the
evidence,
- 3^{dly} because said verdict is against
the law and evidence,
- 4^{thly} because said verdict is against the
instructions, given by the court,
- 5^{thly} because ~~said verdict~~ the court
erred in giving instructions for
the defendants, which should have
been refused,
- 6^{thly} because the court admitted illegal
and incompetent testimony for the
defendants, against the objections

of plaintiffs.

7th because the verdict should have been for plaintiff instead of for defendants,

8th because the jury was guilty of improper conduct and utterly disregarded the testimony, given on the part of plaintiffs, and because one of the Jurymen was sleeping, ~~while~~ during part of the examination of the witnesses,

9th ~~because~~

9th because the court excluded testimony offered by plaintiffs, which was competent and legal and should have been admitted,

10th because the jury conversed with people concerning this suit during recess while the trial was progressing, against the prohibition of the court.

11 - Because the jury disregarded the instructions of the Court, and found a verdict contrary the Law of the case as given by the Court.

} A. Green & W. F. Ahlvey,
Attorneys for Plaintiffs

In the ancient
class of Hippocra-
tes. 1799
Sept 10 1870

William D. H.
and others

in
their Book
& others.

Motion
by plaintiffs
for a new
trial.

Filed Sept. 22nd 1870

D. J. Mowry, Clerk.

William Orkwin and
 Louis J. Bauer
 or
 Indor Burk, et al

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
 to assess the damages sustained by
 defendants by the suing out of the
 writ of replevin herein as follows:

Amount of judgment	\$ 156.76
Interest on same	17.50
Costs of suit	20.00
Suit Paid Attorney	25.04
	<u>\$ 219.26</u>

John H. Thomas
 Atty for Defendants

156.76
 17.50
 20.00
219.26

Ortman & Bowe

22

John Burke & Co

Motion to arrest
Deacons.

Filed Sept. 22nd 1875
D. J. Moray, Clerk

William Orthwein }
 and Louis S. Baur, - Plaintiffs }
 Against }
 Isidor Bush, Elisha Barnes, }
 and Alfred Mitchell - Defendants }
 In the Circuit Court of }
 Jefferson County Missouri }

We, the undersigned William Orthwein
^{John B. Nelson}
 Gustavus J. Baer, do hereby acknowledge ourselves indebted to the above
 named Defendants, Isidor Bush, Elisha Barnes,
 and Alfred Mitchell, in the sum of five
 hundred dollars, to be void upon this
 condition, - That, whereas, the above named
 Plaintiffs have appealed from the judg-
 ment of the Circuit Court aforesaid to
 the Second District Court of Missouri, in
 an action wherein the said William Orth-
 wein and Louis S. Baur are Plaintiffs,
 and Isidor Bush, Elisha Barnes, and Alfred
 Mitchell are Defendants; Now if such
 Appellants shall prosecute their ap-
 peal with due diligence to a decision
 in the said Second District Court, and
 shall perform such judgment as
 shall be given by the said District Court
 or such as the said District Court shall
 direct the Circuit Court to give, and if

the 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
that they will pay all damages and
costs which may be awarded against
the said appellants by the said District
Court, - then this Bond shall be null
and void, otherwise to remain in
full force.

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

John S. Crummond. *(Seal)*

Justas. Haenschel *(Seal)*

John B. Nelson *(Seal)*

Approved Oct. 22nd 1870

D. P. Honeycutt

By M. M. M. Dep.

In Circuit Court
Jefferson County

Wm. Rithman's &
Lemuel D. Bond

(vs.)

Levin Bond &

others

Bond

Dec 23rd 1832
Chas. Henry Clark

William Orthwein }
and Louis S. Baur, - Plaintiffs

Against
Isidor Brush, Elisha Gaves, }
and Alfred Mitchell, - Defendants

{ In the Circuit Court of Jef-
ferson County Missouri

This Affiant Charles F. Orthwein

states that the application
by the Plaintiffs in the above entitled cause
for an appeal from the judgment of the Circuit
Court, ^{aforsaid} rendered in said cause, to the Second
District Court of Missouri, is not made for
vexation or delay, but because this Af-
fiant believes that the above Plaintiffs,
the Appellants, are aggrieved by the judg-
ment and decision of said Circuit Court,

Charles F. Orthwein
Sworn to and subscribed before me
this 19th day of October A.D. 1870

Wm. A. Haensler
Notary Public
St. Louis, Mo.



In Chancery Court
Jefferson County

Wm. Arthur's
vs.
Thos. A. Barn

John Bush, and
others
Applicant

Rec'd Dec. 23 1870
Ed. Henry Clerk

William Orthwein, and
Louis S. Baur, — Plaintiffs }

Against

Isidor Bush, Elisha Eaves }
and Alfred Mitchell, — Defendants }

} In the Circuit Court of Jef-
} ferson County Missouri

Be it remembered that on the 22nd day
of September 1870, a suit was then on trial in
the Circuit Court of Jefferson County aforesaid
wherein ~~William Orthwein and Louis S. Baur~~
wherein ~~John L. Talley~~ to the use of Gustavus
J. Wacoushen and Charles F. Orthwein, ^{were} plain-
tiffs, and Frederick Luchtmeyer, ~~and~~ Freder-
ick Volmack, ^{and George Cheatham} were defendants, and while
the same was yet on trial and pending be-
fore said Court and Jury, the Plaintiffs and
Defendants in the above entitled cause, en-
tered into a written agreement signed by
the Attorneys of each of said parties, by which
said Parties agreed that the above entitled
cause should abide by the verdict that
should be rendered by the Jury in the
said Case then on trial, and that Judgment
should be rendered accordingly, and that each
of the Parties in the above cause should have
the same rights of appeal, and the evidence &
in Instructions in the case on trial to apply to

the above entitled cause equally with said case then on trial, - and which written agreement is as follows, To wit, (The Clerk will here copy said agreement)

And whereas, in the said Case of William Orthwein and Louis S. Baum to the use of Gustavus F. Haenschel and Charles F. Orthwein, against Frederick Leuchtenmeyer, Frederick Volinack & George Cheatham, then on trial, the following evidence was introduced, and proceedings had; To wit, -

The Plaintiffs read in evidence a Deed of Trust executed on the 30th day of January 1867 by Albert Brackvogel, Herman Brackvogel & ^{Edward} ~~George~~ Kottlitz to William Orthwein & Louis S. Baum as trustees to the use of Haenschel & Orthwein, and which is as follows; (here copy same) Also a Deed of same date given by Albert, & Herman Brackvogel to said W^m Orthwein & Louis S. Baum, as such trustees, & which is as follows, (here copy same)

Also the return of the Coroner on Replevy wit, as follows (here copy return)

And the Defendants admitted they had possession of the property mentioned in Plaintiffs Petition at the commencement of the 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 out Vineland
for four years. Knows Albert & Herman Brackvogel,
and looked for them, - Was at Dr. Dyers when the boxes
were put in his barn - They were A. Brackvogel's
boxes, I knew them. One was a big trunk and
one a small one. The Sheriff & Cheatham attached
them at Dr. Dyers & took them to De Soto. They had
been in the barn four weeks before this. Dr. Dyer's
barn is about a mile from Brackvogel's - He has
not seen any of those boxes back since the
Sheriff took them, I don't know who took the
boxes to Dr. Dyers. He worked at Dyer's place -
was about the barn at night & the boxes were not there
- and the next morning the boxes & trunks were there.

Richard Collier, - Says I lived last year close
to Vineland, - Don't know when the goods were
moved, I loaned my Wagon, and saw persons
go from Brackvogel's to Dyers after night & saw
at light at his barn - Was uneasy about my team
Brigle, 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 in a wagon.

Fred. Colmack, - Says I was Deputy Sheriff
in 1869, and I went to Vineland three or four times
to levy Executions against the Brackvogel's in 1869

They told me to wait on them and they would pay - I went there on the 4th of October 1869 to levy execution, & levied on some tiff, I had a difficulty to get the Key from a man named Bucher. I delivered property packed, H. & A. Brackvogel to Eaves, - I went down again with Cheatham's attachment and found the Boxes in the second story of Dr. Dyer's Barn, - levied on them and took a list of the goods contained in them, Mr. Leuchterner & myself delivered over to Plaintiffs all the property ^{mentioned} contained in these lists, Haenschel, and Brackvogel both claimed the property - Lidle was Agent for Haenschel & Othman, and he came here and claimed the property for them, The boxes containing the goods were the same I found in Dr. Dyer's Barn, - (Cross examined) Says I delivered the property to Dr. Stegman, the Corner, as well as I can remember, Mr. Mitchell (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 not to give it up. Brackvogel claimed the property and demanded of me to deliver up to him his wife's 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 same)

Elisha Barnes, - 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, and
would beat him, He then let it go,
I levied on the boxes and took an inventory
of the property in them, & employed Mitchell
R. C. Mullin 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 Braackvogel.

Fred, Leuchte Meyer, - 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 Volmash, I made a list of it and attached it to the attachment. This was the goods in the boxes, I think the property was worth \$2,000, as it was very valuable property. There was 206 fine linen towels, napkins &c, in the boxes. I delivered the property to Dr. Stegman so far as I was concerned. Comes 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 & I told him he could have it.

C. W. Thomas, - States, he had dealings with Brackvogel & Co. ^{in January 1869} - and they owed him \$300. - 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, and 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 Orthwein loaned out

Brackvogel - dont know where he boarded,

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 and give me a note, but failed & refused to do it, - I saw the goods in Dr. Dyers barn, and got out an attachment and attached them, I sold the Corn about the 25th of December 1868 & Brackvogel hauled the Corn to his crib in January 1869. -

Defendants - then read ^{Execution} ~~Warrant~~ of ^{Leigeor Bush} ~~Daniel~~ ^{as follows} against Brackvogel & Co., (here copy same) - ~~and also, Execution, & Return thereon (here copy)~~ 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 Haenschel & Orthenius, to secure \$20,000, as follows, (here copy same)

Louis, W. Alford, - Being Shown The Deeds of
I was in 1869 Deputy recorder for Jefferson County &
the 3rd of January 1869, says I have seen these
Deeds before - I recorded them, - I saw them
at one time ^{about sep. 1st 1869} in the hands of Herman Brackvogel
- he brought to me to record, - (Witness is then
asked to state what Brackvogel said about
recording these deeds, To which question,
dictating the statements of Herman Brackvogel,
the Plaintiffs at the time objected, - on the ground
that his statements are mere hear-say, and il-
legal, & incompetent, But the Court overruled
the objection, and permitted the witness to give
the statements of Herman Brackvogel, And to
which decision of the Court, Plaintiffs at the
time excepted,) — The witness then
proceeded to state that Herman Brackvogel
^{at the time he brought the Deeds for record, that he}
said he wanted him (witness) to mark the
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 property, and he wanted to take them back
to make some alterations in them before being re-
corded, - 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 Maenschen & Osthues to be re-
corded, I told Brackvogel if he wanted any

alterations, to make them, as I would not file
them and let him alter them afterwards, -
These Deeds have been altered ^{between the time} ~~since I read~~
I first read them, & when they came back for record
~~then~~, as there was only eight mules stated in
them, when I first read them, and that ^{was} ~~I~~
altered to nine. There were no erasures in
the deeds when I first read them, nor any
interlineations. These deeds now have some
erasures and interlineations, I don't usually
read a deed all through before I record it,
but I did these, or nearly so.

Defendants here closed their testimony, -

And the Plaintiffs, in rebuttal, introduced the following testimony;

Charles Vialle, - Who states, I came to Vineland on the 20th of October 1869. - Haenschel and 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 22nd of October 1869, with his attachment, But I don't know any thing about how the property ^{was} ~~came to~~ taken to Dr Dyer's. After Cheatham brought suit and attached the goods, I notified Haenschel & Orthwein about Cheatham's seizing the property under his attachment; I was then the Agent of Haenschel and Orthwein. I was at Victoria when the Sheriff delivered that 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 Brackvogels, & Mr. Orthwein took supper there once. I think it was about the 20th of October 1869. Edward Kaettlitz was with me I think at Victoria when I goods the goods. I don't know whether he went to St. Louis with the goods or not.

Martin Dinn, - In the fall of 1869 I was at Vine-
land with Mr. Orthwein, He was then running
the Mill for Haenschel & Orthwein, They took possession
of the Mill on the 1st of September 1869, and were
running the mill and 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, Kettlitz was
sometimes at the mill but had nothing to do
with it, Mr. Fiel was Agent at the mill for
Haenschel & Orthwein.

William Brauman, - Says I was living at the
mill at Vine land in the fall of 1869, and 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 constantly - went
away at night, probably to St. Louis and re-
turned next day - Don't know where he board-
ed, They had five or six hands working at the

mill, and had the entire control of the same, Brackvogel had nothing to do with it, Haensch and Orthwein paid all expenses in running the mill, bought tiff, &c,

William Orthwein, - States, I am the Book-keeper and have been since 1863, of the firm of Haensch & Orthwein, - a firm composed of Gustavus F. Haensch and Charles F. Orthwein, they are Commission Merchants in St. Louis, I manage also their financial concerns, and the Paper here produced in Court is a true abstract 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 Herman & Albert Brackvogel, on their checks and drafts during the year ending August 31st 1867, (This memorandum 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

13
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 and decision of the Court the Plaintiffs at the time accepted.)

(The Plaintiffs then attempted 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, and 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 accepted.)

Witness then stated, we received the products of the mill while it was carried on by Brackvogel, and sold the same as Commission merchants, - and charged ourselves with the net proceeds after deducting the Commission 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 Haenschel & Orthwein of thirty seven thousand dollars. This was for advances made to Brackvogel & Co, over and above the products sent to Haenschel & Orthwein to sell on Commission. Said firm of Haenschel & Orthwein paid Brack-

#60

* Here the above
memorandum is
shown to the witness
& the defendant with
drew their objection
to the witness using
it to refresh his
memory, & the wit-
ness stated that
that memorandum
N

vogel, in the shape of drafts, checks, orders, and
as endorsses on their Notes, the several amounts
charged in this memorandum, * which I have
taken from their Books, kept by myself. This
is correct.
Memorandum is a correct statement of the
entries made in the Books of said Firm for money
advanced and paid to Brackvogel & Co. - said
Memorandum or statement is as follows, (here

copy same) By reason of the various
advances made and money loaned to Brack-
vogel & Co, by said Firm they became indebted
to Baensch & Orthwein on the 31st June 1868
in the sum of \$30,000, - and to secure which
a Deed of Trust was taken on the Farm, & Mill
of Brackvogel & Co, of that date, - The Farm was
sold under this deed of Trust & brought by Baen-
schen & Orthwein for \$1,000, - but subject to an
older Deed of Trust in favor of Barthelow, Lewis & Co,
under which it was afterwards sold for \$12,000,
and bought by said Firm.

The two Deeds of Trust executed on the 30th day of
January 1869, are for the same consideration, - that is,
\$2,000, advance to Brackvogel & Co, 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 Baensch & Orthwein after the

of \$10,000, in various
sums as summer
wrote in the city
strat of their
books

the whole amount
taking of said Deeds of Trust from ~~\$20,000~~ on
~~then, making \$4,000, advanced \$4,000 on the same,~~
They then refused to advance any more, as by al-
lowing Brackvogel & Co, the full Credit of \$20,000, for
the land & mill, (although the firm made nothing out
of the land, & got no title to it,) They are still in debt
to the firm of Haenschel & Orstheim in the sum of
\$17,000. And the personal property secured by
the two Deeds of Trust of January 30th 1869, is all
the security they have for said loan of money. -
They are intended to secure \$10,000, and the \$7,000, is not
secured by any Deed. - When Brackvogel got
the loan mentioned in the two Deeds of Trust of 30th
of January 1869, he stated that he had other sources
of getting money besides the proceeds of the mill - that
he expected some from Europe, and some from
a man in New York, whom he expected to become
a partner, - and we relied somewhat on these as-
surances as well as the personal property secured.
We never examined the personal property at the
time, as we had then confidence in Brack-
vogel's honesty, I don't know what portion of
the property is on the farm now, - The farm and
dwelling house is in possession of our Agent
Charles Lick, rented of Manthelaw, Lewis & Co, - I sup-
pose the most of the household property is there,
I have not examined them and cannot
enumerate what articles are there now, - All

The mules, horses, wagons, cattle &c, included in the Deed of Trust of 30th January 1869, were taken by Higgenbotham, 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 30th January 1869, but this Household Property in Controversy. We took Possession of the Mill Property on the 1st of September 1869, but did not think it necessary to take actual possession of the Household Property at that time, ^{but let it remain in possession of Brackvogel} When Maenschen & Orthwein took possession of the mill on the 1st Sep, 1869, they took possession of the Cord wood, and other articles there on the premises, and paid Brackvogel the full value of the same by crediting their general account. We have never disposed of the property now in dispute, - it remains in our possession at St. Louis, - Mr. Lidle is our Agent, and took possession of the Household Property ^{when Brackvogel left there in the winter of 1870} on the farm, by our direction. The reason we did not have the Deeds of Trust of 30th January 1869, as soon as made, was, that Brackvogel told us he expected money from Europe, & from New York, & he thought he could soon pay in back, and he did not want to injure his credit, and we believed his statements, and did not think it necessary to record the Deeds immediately.

When the two deeds of Trust of January 30, 1867, were taken Brackvogel & Co. owed Yaenschen & Orthwein \$2,000, on account for advances, freighting made, (and 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. Herman 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 Trustees in 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, (he copy same) And the Defendant 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 and excepted, but the Court overruled said objections, and gave to the Jury the Defendants said instructions, to which ruling and decision of the Court in giving said in-

structions the Plaintiffs at the time excepted,
The Jury returned the following verdict, (here
copy verdict,) and thereupon the Court en-
tered Judgment for Defendants as follows,
(here copy Judgment,) The Court at the same
time, on motion of Defendants, proceeded
to assess damages for the amount of Defen-
ants debt & Judgment against Mackwood
No, as follows (here copy same) To which the
Plaintiffs at the time objected and excepted,

The Plaintiffs then on the 22nd
day of September 1870, filed their motion
to set aside the verdict, and Judgment of the
Court, & the assessment of damages, and to
grant them a new trial, which motion is
as follows, (here copy motion for new trial)
But the Court overruled Plaintiffs motion
for a new trial, To which decision of the Court
in overruling said motion & refusing to grant a
new trial, the Plaintiffs at the time excepted,
And now in vacation by leave of the Court, ~~the~~
both parties consenting thereto and the same
being entered of record, prays that thus 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

Recd

In Circuit Court
Jefferson County

Wm Arthur
vs Lewis D. Davis

vs,

John Bush Potter

vs of Expositions

Filed Oct. 24th 1870
Chas. J. Harvey, Clerk.

William Orthwein
and Louis S. Baur, - Plffs } Replevin
vs. }
Isidor Bush, Elisha }
Caves, and Alfred Mitchell } Defts, }

Now at this day come
the parties to this suit and file an agree-
ment to abide the decision which may
be made in the Case of William Orthwein and
Louis S. Baur to the use of Gustavus F. Wauson & Charles F. Orthwein
agts. Fred. Leuchtenegger, Fred Volinack, & George Heatham in this Court
Whereupon the jury in the last named
Case returns in Court the following
Verdict. (Here copy) upon which
verdict judgment is rendered for
defendants in that case. Therefore
it is considered that Plaintiffs take nothing by
their writ, and that Defts go \$6. - & have just, for costs,

Print

Case

The decision in
the Chapman
case to govern
in this case

175, 220, 244, 245, 246, 250

Budget Sept 24 1874

Orthurin & Pauer,

Bush, ^{us} Carver & Hitches

For 194 $\frac{26}{100}$

Money put. 50 affs ²⁵ 35 cop. ext. ⁷⁵ with 13 copies ^{1.30}
 Rep 20 agreement ²⁵ 11 bills ⁵⁵ Bonds ⁵⁰

\$ 3.15

1.45

~~1.45~~

Bored

~~Rep. agreement~~

Ingt on ver. motion ⁵⁰ 20

70

4.60

Ingt on motion (rule ⁵⁰ 20 Bill Exp ³⁵ ~~50~~)

1.05

appeal ³⁵ order for Trans ²⁰

55

F.B. making fee Rep ⁷⁵

85

3.15

J. Lucktemeyer Sen 25 Sept

2.00

1 Non est

50

2.50

10.25