

Jefferson County Circuit Court
Case Files - Civil

January 1879

Box

38

Folio 9

Finney, Kemp R.

Outman, R. C.

^{vs.}
Donaldson, James M.

Appeal

Plaintiff appealed from JP J.O.
French on change of venue from
JP A.M. Tyler on replevin of
one horse; bill of exceptions

PLAINTIFF'S BOND.

(IN CASE OF CLAIM FOR DELIVERY OF PERSONAL PROPERTY.)

(Wag. Stat., Page 818, Sec. 5-6.)

Kemp P. Finney & R. C. Outman, Plaintiff, }
 vs. } *Jefferson* County,
James M. Donaldson, Defendant. }
 MISSOURI.
 Before *A. M. Tyler*, a Justice of the Peace of *Valle* Township.

WE UNDERTAKE AND ARE BOUND unto the Defendant

James M. Donaldson
 in the sum of *Two Hundred* DOLLARS,

for the prosecution of the action in the above entitled cause, for the return to the Defendant

James M. Donaldson
 of the following described property, to wit:

*One bright bay horse
 15 1/2 hands high, seven years old -
 as described in a Chattel Mortgage
 executed on the 22 day of March
 1877 by James M. Donaldson
 to Dorothy Wilgar -*

ordered to be delivered to the Plaintiff, *Kemp P. Finney & R. C. Outman*, if return thereof be adjudged, and for the payment to the said Defendant of such sum as may, for any cause growing out of the order in the cause, be recovered against the Plaintiff, and for the payment of all costs of suit.

Approved this *29* day of*October* A. D. 187*8*.

R. Washburn
 Constable *Valle* Township,
Jefferson County, Mo.

Louis J. Rozier
Kemp P. Finney
William Reed
R. C. Outman



222

Hannibal Printing Company, Hannibal, Mo.

PLAINTIFF'S BOND.

No. 29.
Jimmie and
R. C. Deutman Plffs

VS.

Garth D. Dunselmann Deft.

BEFORE

A. W. Dyer
Justice of the Peace.

STATEMENT and AFFIDAVIT in CLAIM for POSSESSION and DELIVERY of PERSONAL PROPERTY. - (J.P.)

(Wag. Stat., pg. 817, Sec. 2, and Amendment of March 14th, 1872.)

STATE OF MISSOURI, }
County of Jefferson } SS.

BEFORE

A. M. Lytle

Justice of the Peace.

Kemp P. Finney & R. C. Outman

Plaintiff, S

AGAINST.

James M. Donaldson

Defendant.

- STATEMENT. -

Plaintiffs state that *they are* lawfully entitled to the possession of *one*
bright bay horse 15 1/2 hands high seven
years old as described in a Chattel Mortgage executed
on the 22. Mch 1877 - by James M. Donaldson to Dorothy M. Lytle

of the value of *One Hundred* DOLLARS,

that the same was on the *29* day of *Oct* 187¹⁰⁰, unlawfully taken,

has been injured, and is now wrongfully detained at the County aforesaid; that the same has
not been seized under any process, execution or attachment against the property of the
Plaintiffs and that the Plaintiff S in great danger of losing said property, unless it be

taken out of Defendant's possession. Plaintiff further state that for the taking and the
detention of said property, and for all injuries thereto *they are* damaged

Twenty-five DOLLARS.

WHEREFORE, Plaintiff pray judgment for the recovery of said property, and

Twenty-five DOLLARS,

damages for the taking and detention thereof, and all injuries thereto.

Kemp P. Finney
R. C. Outman

Kemp P. Finney & R. C. Outman

Plaintiff S, makes oath and says, that, to the best
of *their* knowledge and belief, the facts and allegations contained in the above statement are just
and true.

Kemp P. Finney
R. C. Outman

Subscribed and sworn to before me by *Kemp P. Finney & R. C. Outman* this *29*
day of *Oct* 187⁸.

A. M. Lytle

JUSTICE OF THE PEACE.

221 - P400

The Winchell & Ebert Printing and Lithographing Company, Hannibal, Mo.

STATEMENT AND AFFIDAVIT.

BEFORE

J. M. [Signature]

JUSTICE OF THE PEACE.

Keneth J. Farney &

R. C. Duchman

Plffs.

VS.

John M. Donaldson

Def't.

Claim for Possession and Delivery of Personal Property.

Filed Oct 29 - 1878
H. M. [Signature]

ORDER AND SUMMONS.-J. P.

IN CASE OF CLAIM FOR DELIVERY OF PERSONAL PROPERTY.

(Wagner's Statutes, page 818 sections 3, 4.)

Kemp P. Finney & R. C. Culman

Plaintiffs,

AGAINST

James M. Donaldson

Defendant

Order of Delivery.

The STATE of MISSOURI, to the Constable of the Township of

in Jefferson

County, Missouri—GREETING:

You ARE COMMANDED to take *one bright bay horse*
15 1/2 hands high, seven years old as
described in a Chattel Mortgage
executed on the 22 day of March
1877 by James M. Donaldson to
Dorothy Melgren

of the value of *One Hundred* Dollars and _____ Cents
 from the possession of *James M. Donaldson - deft* and to deliver
same to the Plaintiffs, *Kemp P. Finney*
and R. C. Culman
 upon *their* giving the bond required by law; and you will make due return of
 this order on the *16th* day of *Nov* 187*8*.

AND YOU ARE FURTHER COMMANDED to summon the said *James*
M. Donaldson to appear on said day at my office
 in *Valle* or at the office of my *successor* in office
 of *said Plaintiffs* Township, to answer touching the complaint
 for the unlawful detention of said property.

A. W. Tyler
 Justice of the Peace.

RETURN.

I hereby certify that I executed the within Order and Summons in the County of

Jefferson, State of Missouri, on the *29th* day of *October* A. D. 187*8*, by *Taking the Goods and*

Chattles within described viz one bright Bay horse 15 1/2 hands high Seven years old and Delivering the Same to the within Named Plaintiff

FEE, \$

ORDER AND SUMMONS.

Hannibal Printing Company, Hannibal, Missouri.

Amos M. Arnold

R. L. Dickman

VS.

Plaintiff

BEFORE

Defendant.

J. M. Taylor

Justice of the Peace.

RETURN DAY

Nov-16-, 187*8*

Note.—The Constable, before taking the property from the defendant, must receive from the plaintiff a sufficient bond as provided by law. See Wagner's Statutes, page 818, sections 5 and 6. (The bond is blank No. 142, published by the Hannibal Printing Company, Hannibal, Mo.)

and also cost 29th 1895 3 further
except this cost by making the
same in the present and hearing
of the within named Defendant
James H. Bannelsan

for - - 3.00
Hil - - 50
Banned - - 50
Hearde with
Delivering the
Praperty - 50
Total
\$10.50

of Washburn
Land to the
of Washburn
in of Washburn
County
Hear

Wm P. Finney and
R. C. Cutman

Pltffs

vs
Defendants

James M. Donaldson

Now comes the defendant
James M. Donaldson
in the above entitled
Cause, and makes oath
that he believes that
he cannot have a fair
and impartial trial before
J. M. Tyler, before whom
the above action is
pending; and that he
cannot safely proceed
trial.

James M. Donaldson

Subscribed and sworn to before
me this 16. day of Nov. 1878
J. M. Tyler
Justice of the Peace

my & Cushman
vs

S. W. Donaldson

Off for Charge
of Bureau

Filed Nov-16-78
H. W. Tyler
J. P.

Leah P. Finney and
R. C. Cutman - Affs. } Replevin
as
James M. Donaldson - def. }

1878
Oct. 29 Plaintiffs filed their statement and
affidavit for the claim and delivery of the
following property, viz: One right-bay
horse, 15 $\frac{1}{2}$ hands high, seven years old,
as described in a chattel mortgage
executed on the 22^d March 1877-
by James M. Donaldson to Dorothy
Wiegner, of the value of one hundred
dollars, and claiming twenty-five
dollars damages for the detention
thereof-

Thereupon order of delivery and
summons was issued to
R. Washburn, Const. returnable
at 10. am. Nov. 16. 1878-

Nov. 16. Order and summons returned duly executed.

Nov. 16. The parties appear. On application
and affidavit of the Defendant alleg-
ing that he cannot have a fair
and impartial trial before me,
it is ordered that a change of
venue be granted in this case

and that the same be tried
before J. O. French, a Justice
of the Peace in Valle Township
Jefferson County, Mo.
A. M. Tyler
J. P.

CERTIFICATE OF JUSTICE TO TRANSCRIPT.

(Wagner's Statutes page 849, Section 12.)

STATE OF MISSOURI,

ss.

County of

Jefferson

a Justice of the Peace within and for the County of

Jefferson

and State of

Missouri, do certify the foregoing to be a full true and complete Transcript of the Entries and Proceedings in the

case of

Emory & Co. v. Curdman

versus

James M.

as the same are of record on my Docket, and that the papers thereto attached

are all the original papers appertaining to said cause on file in my office.

WITNESS my hand, this

18th

day of

A. D. 187

Justice of the Peace.

J. M. Tyler

SUBPÆNA FOR WITNESS—J. P.

The STATE OF MISSOURI. To *Julius Mrozek* and
Mother Mrozek

You are Hereby Comanded, To be and appear personally before

me *J. O. French*, one of the Justices of the Peace within
 and for the Township of *Valle*, in the County of *Jefferson*
 State aforesaid, on the *23rd* day of *November* A. D. 187*8*, at the

hour of ten o'clock in the forenoon of that day, at my office in the Township and County aforesaid, to
 testify on the trial of a cause wherein *Emory & Outman*

are Plaintiffs, and

Jas M Donaldson
 Defendant, on behalf of the *Plaintiffs*

and hereof fail not at your peril. And the person or
 officer serving this Writ is commanded to have the same at the time and place aforesaid, certifying
 thereon his return.

WITNESS my signature, this

20th day of *Nov* 187*8*.

J. O. French

Justice of the Peace.

Subpœna for Witness

Finney & Outman

Plff.,

vs.

Joe M. Donaldson

Def't.,

BEFORE

J. V. French J. P.

WITNESSES:

Julius Knapp
Dorothy Knapp

RETURN.

FEE, \$

50

of Washburn

Wells Fargo & Co.

40

Conatache

I hereby certify that I served the within Writ in the County of *Jefferson*
and State of Missouri, on the *21* day of *November* 187*4*, by
reading the same in the presence and
hearing of Julius Knapp and
Dorothy Knapp the within
named

AFFIDAVIT IN APPEAL.

Kemp P Finney, R C Outman
Plaintiffs,

vs.

James McDonaldsen
Defendant,

Suit before

J. Q. French

, Justice of the Peace,

Valle

Township

Jefferson

County, Missouri.

Kemp P Finney, being duly sworn, upon his oath, says,
that this application for an appeal is not made for vexation or delay, but because
he believes the Appellant to be injured by the judgment of the Justice.

K. P. Finney

Appellant.

Sworn to and subscribed before me, this 23 day of November
A. D. 1878.

J. Q. French

Justice of the Peace.

RECOGNIZANCE.

We, the undersigned, Kemp P. Finney, R C Outman,
Thomas H McMullen, Harry Roberts

acknowledge ourselves indebted to

James M Donaldsen

in the sum of

Two Hundred

Dollars,

to be void upon this condition:

WHEREAS, Kemp P. Finney, R C Outman
have appealed from the judgment of J. Q. French, a Justice
of the Peace for Valle Township, in Jefferson County,
Missouri, in an action between Kemp P. Finney and R C Outman,
Plaintiffs, and James M Donaldsen, Defendant:

Now, if on such appeal, the judgment of the Justice be affirmed, or if, on trial anew in
the Circuit Court, judgment be given against said appellants and they shall satisfy
such judgment, or if their appeal shall be dismissed, and they shall pay
the judgment of the Justice, together with costs of appeal, then this recognizance shall be
void; otherwise it shall remain in full force.

ATTEST:

J. Q. French

Justice of the Peace.

K. P. Finney

SEAL

R C Outman

SEAL

Thomas H McMullen

SEAL

Harry Roberts

SEAL

Julius Knorr

SEAL

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AFFIDAVIT AND RECOGNIZANCE

IN CASE OF APPEAL.

H. P. Murray vs. *E. B. G. Putnam* PLFF.

Geo M. Smallwood DEF'T.

BEFORE

J. O. French
Justice of the Peace.

Kemp R. Dimsey and
 R. C. Outman }
 v.s. }
 James M. Donaldson }
 Plffs }
 Defs. }

Replevin

1878
Oct. 29

Plaintiffs filed their statement and
 Affidavit for the Claim and delivery of
 the following property, viz: One bright
 bay horse, 15½ hands high, seven years
 old - as described in a Chattel Mortgage
 executed on the 22nd of March 1877 -
 by James M. Donaldson to Dorothy
 Metzger, of the value of One hundred
 dollars, and claiming twenty five
 dollars damages for the detention
 thereof -

Thereupon order of delivery and
 summons was issued to R Washburn
 Constable, returnable at 10 A.M. Nov.
 16th 1878.

Nov 16, '78

Order and summons returned duly Executed.

Nov 16, '78

The parties appear - on application and
 affidavit of the defendant alleging that
 he cannot have a fair and impartial
 trial before me - it is ordered that
 a change of venue be granted

1
in this cause, and that the same be
tried before J. O. French a Justice
of the Peace in Valle Township Jefferson
County Mo.

A. M. Tyler J.P.

Nov 19, 78 Transcript of Entries and all original
papers in above entitled cause handed
to J. O. French Esqr. Justice of the Peace
Valle Township Jefferson Co. Mo.

A. M. Tyler, J.P.

Nov 19, -78. Received of A. M. Tyler Transcript of En-
tries and all original papers in the above
entitled cause.

J. O. French J.P.

Nov 20-78 Notice issued to Plaintiffs and Defendant
that the foregoing Cause is set for trial
before me at my office in De Soto Mo at
1 P.M. Nov 23rd 1878.

Nov 20-78 Subpoena issued for Julius Knorpp and
Dorothy Knorpp, Wits. for Plaintiff.

Nov 23-78 Subpoena returned served as directed
by Constable Washburn.

Nov. 23-78

The parties appear, and this cause is submitted to the Justice for trial - and upon hearing the testimony produced, I find at the commencement of this suit the right of property and possession in said horse was in the Defendant - it is therefore adjudged by me that the Plaintiffs return said property, or pay the assessed value thereof of one hundred dollars, at the option of the Defendant, and also pay all costs of this suit taxed at $\$8\frac{20}{100}$

Nov 23-78

Now comes the Plaintiff and files Affidavit and recognizance for appeal, and prays an appeal to the Circuit Court of Jefferson County Missouri, which is allowed by me.

J. O. French
Justice of the Peace,

J. P. Fees

Adm Nyle

Affidavit	35	Docketing	10	45
Indexing	10	Monitors	35	45
Order	25	Transcript	25	50
Certificate				15 = 1.55

J. P. Fees

J. O. French

Affidavit & Recognizance on appeal	70
Subpoena	35
Judgements	50
Transcript 404 words @ 10	40
Certificate	55
Total Justice Fees	$\$3.65$

Constables fees —

Serving Summons	35
Mileage	50
Bond	50
Care of Property	50
Serving Subpoena	50
Mileage	40
	<u>\$2.75</u>

Witness fees

Julius Knorps	50
Mileage	40
Dorothy Knorps	50
Mileage	40
	<u>\$1.80</u>

State of Missouri, Jefferson County, ^{S.S.}

I J. V. French justice of the peace,
Certify that the foregoing is a complete
transcript of all proceedings had before
me in the above entitled cause, as
taken and copied from my docket.

Given under my hand this 26th day of
November 1878.

J. V. French, Justice

Kemp P. Finney
R. C. Ruben
James M. Donaldson

Ralph Lewis

4032

Transcript on
change of name

Filed Nov. 29 1878

C. H. K. K. K.

Clerk

Kemp P. Finney & R. L. Cutman, Ex. Adv.
 vs. Plaintiffs, Court Off.
 James M. Donaldson, Sec. Geo.
 Dept. Jan. 1879

Now comes the defendant
 by his attorney and moves
 the court to rule the plaintiffs
 for additional security
 for costs in the above
 entitled cause, for the
 reasons to-wit:

1st. That the plaintiffs, and
 their sureties in the appeal
 Bond are insolvent, and
 unable to pay the costs of this
 suit.

2nd. That they are so unsettled
 as to endanger the officers
 of the court with respect
 to their legal demands.

James M. Donaldson,
 By A. Spring,
 his atty.

Furness & Co. Boston
10

Geo. W. Donaldson

Warrant for Collection
at Bond

FILED

JAN
13
1879

E. H. Morris
CLERK.

STATE OF MISSOURI, }
COUNTY OF JEFFERSON.

To

Jesse Thompson and O. I. Finney

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~~

~~day of~~ *For the week*, 187*7*, 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

Jesse O. Finney and O. I. Finney

~~is~~ Plaintiff, and

James M. Landon

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

Witness, C. THO' HORINE, Clerk of our said

Circuit Court, with the seal thereof hereunto affixed,
ed, at office in Hillsboro, this *15* day of

Jan'y, A. D., 187*9*.

C. Thos. Horine Clerk Circuit Court.

Executed the within (Spa) at the Court
 of Jefferson and State of Missouri on
 the 15th day of Jan 1879 by reading same
 in the presence and hearing of
 Julian Knapp Sheriff
 By J L Weaver Deputy

Jimmy Dubmar
 James McDaniel
 Julian Knapp
 J. D. Dimney

Sheriff's Fee
 JAN 20
 1879
 50
 John A. Horne
 CLERK

Finney & Outman & Replevin
James M Donaldson & an appeal
from Justice

Now come plaintiffs and
move the Court to set aside the
judgment of non suit rendered
herein and grant a trial of said
cause on the merits hereof and
decide the same upon the
testimony and facts for the
following reasons

- 1st The plaintiffs are the real parties
in interest in contemplation of law
- 2^d The defendant has no right to
complain of the nature of the contract
between plaintiffs and their assignors
- 3^d The Court erred in admitting evidence,
on the trial of said cause, as to the
champertous nature of the contract
between plaintiffs and their assignors
- 4th The Court erred in holding that the
assignors of plaintiffs were necessary
parties plaintiffs - therefore by such erroneous holding
forcing plaintiffs to take by way of non party
Deyno & Mullin
for plaintiffs

Outman & Kinney

Donaldson

Not to stand

non must

24-MO

14-mo

ME-81

三才圖會

JAN 27 1879

Elizabeth
Gibbs

Finney and Outman } Instructions for pliffs.

James M Donaldson }

The Court declares the law to be that if from the evidence in the cause, the Court finds the facts to be that defendant executed a chattel mortgage to plaintiffs assignor, to secure the payment of a debt, which mortgage conveyed the horse in question; and that said debt became due, and defendant made default in the payment thereof; and that said mortgage by its terms provided that said Dorothy, the assignor of pliffs, might upon such default, take possession of such horse, and sell him in a manner therein prescribed, to satisfy said debt; and that defendant refused to give up the horse when thus sold; and that ~~said~~ thereupon said Dorothy and her husband, assigned said chattel mortgage to ~~def~~ plaintiffs, and transferred same that the plaintiffs might collect the said debt, by selling said horse, and that plaintiffs were, for the purpose of obtaining the possession of said horse to bring suit in their own name, and for their services were to receive fifty percent of the amount realized from the sale of said horse under such mortgage and the remainder they were to pay over to

Grinnell } 3 Code
Schmidt } Rep 19

18 Mo 564

14 " 428

24 " 389

allard } 29
Almeraud } Mis.
302

Grinnell

said Dorothy and husband, And that the plaintiffs were to pay all costs and charges which might accrue in the collection of said mortgage debt, or in its attempted collection, or in this suit to obtain possession of said home - thus the finding of the Court should be for the plaintiffs for the recovery of said home

Given

2^d

The law is that an assignment in writing of said mortgage, by said Dorothy & husband to plaintiffs best in them the legal interest therein, without regard to the purposes of such transfer, or the conditions upon which it was made

Given

3^d

The law of champerty can only be invoked by the parties to the champertous contract

Finney & Dutman

vs
Jas M Donaldson

Justices with
27 p p p p p refuse

FILED

FEB 6 1879

L. H. Moore
CLERK.

Finney & Outman } In the Jefferson
vs } Circuit Court
James M Donaldson } January 1879

Now Come the plaintiffs and move
the Court to ~~set aside the Judgment~~ grant a new trial of
the said cause, for the following reasons

- 1st The Court erred in admitting illegal
testimony on the part of the defendant
- 2^d The Court erred in refusing to declare
the law as asked for by plaintiffs, in
instructions No 1, 2 & 3,
- 3^d The Judgment of the Court is for the
wrong party

Byrnes & McMullin
for the plaintiffs

Finney & Cutman
vs
Jason Donaldson

Motion for new trial

Filed Feb'y 6 1879
L. H. Hoar
Clerk

8, 26, 60 64, 125, 127
Motion ²⁰, rule ¹⁰/cont ²⁵, Sub ³⁵/inst ⁵⁰, motion ²⁰,
rule ²⁰/order ³⁵, Sub ³⁵/inst ⁵⁰, motion ²⁰, rule ²⁰,
Bill Exp ³⁵, order for app'l ³⁵, 313¹⁰/costs ⁸⁰,
Sub ²⁵, dock ²⁰, ~~Exp ¹⁰~~

Kemp P. Finney^{and}
 R. C. Outman
 Plaintiffs
 vs
 James M. Donaldson
 Defendant

In the Circuit
 Court of Jefferson
 County Missouri

Be it remembered that at the January
 term 1879, of the Circuit Court of Jefferson
 County Missouri, on the 5th day of ~~January~~ February
 1879, said cause coming on to be heard and
 tried, and ~~both~~ ^{all} parties, being present in person
 and by attorneys, both the plaintiffs and the
 defendant waived a jury, and submitted
 the matter at issue to the Court, his Honor
 Louis F. Dimming Judge of said Court, sitting
 as a jury, the plaintiffs to sustain the issue
 on their part offered in evidence a chattel
 mortgage as follows (Clerk will here copy
 chattel mortgage from Donaldson to Dorothy
 Metzger, with the assignment, and all in-
 dersements) to the admission of which chattel
 mortgage in evidence, the defendant objected
 on the ground that it was as a written in-
 strument, the foundation of plaintiffs action
 and had not been filed before process issued,
 and was not filed when the action was begun.

Whereupon the court overruled the objections of
 the defendant and admitted said chattel mort-
 gage in evidence; ^{and the same was read up in evidence} to which ruling and
 decision of the Court in overruling his said

objections, and admitting said chattel mortgage in evidence, the defendant then and there excepted at the time

The plaintiffs then read in evidence an agreement between defendant and me Dorothy Metzger, the assignor of plaintiffs, as follows (Clerk will here copy agreement, above called for)

It was then admitted by the several parties, in open Court, that Dorothy Metzger had intermarried with Julius Knopp, who with her assigned the mortgage in evidence to the plaintiffs = That the debt ~~for~~ which the mortgage was given to secure was due before this action was brought, and had not been paid by defendant, and that the horse, replevied by the plaintiffs, was the identical horse described and conveyed in such chattel mortgage

This was all the evidence offered by the plaintiffs

The defendant to sustain the issues on his part, introduced R. C. Outman one of the plaintiffs, as a witness, who being duly sworn testified as follows =

"My name is R. C. Outman, I live in Jefferson County Missouri, Some-time about March or April 1878, I learned that

Julius Knorpp and his wife, formerly Mrs. Metzger had a chattel mortgage on a horse of Donaldson's, and that Donaldson had run the horse off out of the county, a short time before the debt became due.

Some time in the summer of 1878 I learned where the horse was, and told Mr. Finney. He inquired about it and found out that the horse had been taken by defendant to Wayne County Missouri and left there with his son.

Mr. Finney & my self informed Mr Knorpp and his wife about this, and Knorpp said he could not leave home to go after the horse, and he then employed me and Finney to go to Wayne County and get the horse, so that he could be sold under the chattel mortgage, agreeing that we should bear our own expenses, get nothing if we failed, and if we got the horse and brought him back, we (Finney & I) should have one half of what he fetched when sold under the chattel mortgage. Knorpp then gave us the mortgage, and he and his wife gave us a Power of Attorney to act for them and we went to Wayne County Mo. some time latter part of summer or early in the fall of 1878. We found the horse, in possession of Wm Donaldson, the defendants son, and when

we informed him of our business, he would not give us the horse, but came up to Jefferson County with us, bringing the horse along, and he brought the horse to the defendant and delivered him over to his father = The defendant then refused to give up the horse, and Finney and I then made an agreement with Knopp and wife, that they should assign the chattel mortgage to us, that we would bring suit in our own names, to recover the possession of the horse, in order that the horse might be sold under the mortgage = that we would be at all the expenses of the replevin suit, and have one half of what the horse brought when sold under the mortgage.

Neither Finney or I, paid Knopp & wife any thing for the assignment of the mortgage.

Knopp & wife were to have half of what the horse fetched when the mortgage was foreclosed.

Finney and I have employed attorneys and are bearing all the expenses of this suit. Knopp is liable for none of the expenses. If we are defeated, we pay all the costs, and pay Knopp & wife nothing.

If we recover the horse, and sell him under the mortgage, we get half of what the horse fetched. The horse has already been sold by virtue of the power of sale in the

2

mortgage. The horse was taken out of Donaldson's possession, by the Constable, when this suit was begun, and delivered to Finney and me and we advertised as the mortgage required and sold the horse.

The defendant objected to the above testimony of R. E. Cutman, as to the sale of the horse after being delivered to Plaintiff, ^{by the Constable} as incompetent and irrelevant; whereupon the Court sustained said objection thereto made.

The defendant then introduced Julius Knapp, a witness who being sworn testified as follows:

"I ~~was~~ one of the assignors of this mortgage. It was given to Dorathie Metzger, who is now my wife, to secure the payment of the rent of a farm, rented by Donaldson from her. A short time before the mortgage debt became due, Donaldson run the horse off so I could not get hold of him to sell him. Finney & Cutman told me in the summer of 1878, that the

horse was in Wayne County, Then me and my wife gave them a power of attorney and employed them to go and get the horse, they to pay their own expenses and have one half of what the horse fetched when sold if they got him.

They found the horse but did not get him but he was fetched back to Donaldson who would not give him up, I then made a new arrangement with them.

Me & my wife assigned the mortgage to them, for them to sue for the horse in their own name, and bear all the expense, and if successful they were to pay me half of what they made out of a sale of the horse - They paid nothing for the assignment, and are to pay me nothing if they loose this suit, but are to pay all costs and expenses, and if they recover the horse, we are to divide what is made equally, that is Finner & Hubbs are to have one half and me and my wife one half.

This was all the testimony offered by either party, whereupon the plaintiff asked the Court to declare the law as follows (Here the clerk will insert instructions No. 1. 2. 3 & 4, asked for by plaintiff and marked refused) which instructions were then and there by the Court refused, to which order and ruling of the Court in refusing to give the instructions and declare the law as asked by the plaintiffs, the plaintiffs then and there excepted at the time.

The Court then, for the defendant, gave the following instruction (Clerk will here copy instruction given by the Court) To the giving of which instruction the plaintiffs then and there excepted at the time.

Whereupon the Court rendered a judgment for the defendant against the plaintiffs and thereupon in due time the plaintiffs filed their motion, in said Court for a new trial.

which motion is as follows (Clerk will here copy motion for a new trial) and on the 6th day of ~~January~~^{February} 1879 the said motion coming on & heard by said Court was by said Court overruled to which action of the Court in overruling said motion for a new trial the plaintiff then and there excepted at the time, and on the same day, the defendant then and there in open Court, consenting, which consent was entered of record. said Court gave the plaintiff leave to file a bill of exceptions in vacation within 60 days after the adjournment of Court

And now here the Plaintiff tender this their bill of exceptions and pray that it may be signed, sealed and made a part of the record which is accordingly done this fourth day of March 1879

Louis F. Downing
Judge 2nd Judicial
Circuit Mo

4532
Finney & Outman
Plaintiffs

vs
James McDonald
Defendant

Bill of Exceptions

The within bill is correct.

Attest Wm. J.
atty for deft
Byrnes & McDonald
Jays for Pltffs

Filed Mar 7th 1879
O. W. Harris
Clerk

De Cato. June 2nd 1879.

Mr T. Horne Circuit Clerk

If there should be any witness fees claimed in the case
between Putman viz. Sanabloom before the Circuit Court
I wish you would deduct them from Mr Putmans bill.

J. L. Knorr

Trinity & Outman }
Donaldson

~~J A French Justice~~

Wm Tyler

aff³⁵/dock¹⁰/ind¹⁰/sum³⁰
order²⁵/draw²⁵/cert¹⁵

x.90

.65 / 1.55

J A French

aff⁵⁰ & Recog in appeal

70

Spa³⁵/judgt⁵⁰

85

draw 400 words @ 10^c 40 / cert¹⁵

55

2.10

R Washburn Const.

sum³⁵/mileage⁵⁰/bond⁵⁰

1.35

Care of property⁵⁰ & Spa⁵⁰/mileage⁴⁰

1.40

2.75

Witnesses

Julius Knopp & 1 day & miles

90^c

Dorothy Knopp 1 " 8 "

90

1.80

Rec^d per order June 6th 1879. R C Outman

Ch^o Harris clk.

15 files²⁵/dockets¹⁰/1 Spa²⁵ / 1.10

motion²⁰/rule²⁰/cert²⁵/Sub³⁵/judgt⁵⁰/motion²⁰ 1.70

rule²⁰/order³⁵/Sub³⁵/judgt⁵⁰/motion²⁰/rule²⁰ 1.80

Bill Ex³⁵/order for appl³⁵/513¹⁰/costs⁵⁰ 1.30

Sub²⁵/dock²⁰

445

6.35

Thos J Jones Sheriff. 1 Spa²⁵/calls¹⁵

65
15.20

Judgt 100.⁰⁰

J. J. Cutman

No
Heraldson

Free Bill,

Filed Mar 24 1879
Otho. Hume
Clus