

NEW JERSEY  
Court of Errors and Appeals.

THE H. B. CLAFLIN COMPANY ET  
AL.,

Plaintiffs in Error,

v.

THE ELLIOTT FURNITURE COM-  
PANY,

Defendant in Error.

—

SAME

v.

THE LEWIS-PORTER CABINET  
COMPANY,

Defendant in Error.

—

SAME

v.

SAMUEL P. PORTER,

Defendant in Error.

In Error  
to  
Passaic  
Circuit  
Court.

Points for Plaintiffs in Error.

FRANKLIN M. OLDS,

*Counsel for Plaintiffs in Error.*



## FIRST.

## No demand before suit.

*Woodside v. Adams*, 11 Vr., 417 (430);

5 Am. & Eng. Ency. of Law, 528h;

*Wells on Replevin*, secs. 347 and 371.

## SECOND.

The transactions in question were absolute sales to Crane, not consignments nor conditional sales.

Specific goods were delivered with invoices, "Sold to" or "Bought of," accompanied by bills of lading or orders to deliver to Crane, which were absolute in terms.

The invoices fixed prices of goods to Crane and terms of credit "thirty days," "sixty days," &c. Crane was bound to pay at expiration of terms of credit. Vendor reserved no *jus disponendi*; no right to dictate price or terms of sale by Crane; no rate of commission was fixed or mentioned; no account of sales was to be rendered.

Subsequent dealings of the several vendors with Crane evidence their transactions with him sales and not consignments.

1 *Benjamin on Sales*, Corbin's (4th) Ed., 8 note;

21 Am. & Eng. Enc. of Law, 521, note 2;

*Newmark on Sales*, secs. 25 and 26;

*Tiedeman on Sales*, secs., 8, 86 and 203;

*Shouler on Bailments*, 5;

*Hyde v. Cookson*, 21 Barb., 92;

*Foster v. Pettibone*, 7 N. Y., 433;

*Pierce v. Schenck*, 3 Hill (N. Y.), 28;

*Wood v. Brooke*, 2 Sawy., 576 (581);

30 *In re Linforth*, 4 Sawy., 576 (374);

*Cole v. Berry*, 13 Vr., 308 (313 and 314).

Elliott Furniture Co. avowedly delivered the goods known as "Decker Shipment" without conditions.

*Elliott Case*, page 43, lines 12-29.



As to effect of delivery of bill of lading or shipping receipt, see—

*51 Am. Rep.*, 51 (53);

*Newmark on Sales*, sec. 143;

*Tiedeman on Sales*, sec. 85;

*Wigton v. Bowley*, 130 Mass., 252 (254);

*Hobart v. Littlefield*, 13 R. I., 346;

*Emery v. Irving Bank*, 25 Ohio St., 365 and 366.

### THIRD.

Invoices sent with goods were complete contracts on their face, merged all previous and simultaneous communications, and conclusively evidenced absolute sales.

*Thomas v. Scutt*, 127 N. Y., 133;

*Rogers v. Colt*, 1 Zab., 704 (708);

*Chetwood v. Brittan*, 1 Gr. Chy., 438 (448-9);

*Sprague v. King*, 1 Pugs & B., 251 and 253;

*Newmark on Sales*, sec. 44;

*Tiedeman on Sales*, sec. 83.

Vendors sent these invoices with full knowledge of Crane's insolvent condition. There was no concealment. They were acting under no mistake of fact. Why should they not be bound by the ordinary and elemental rules of contract?

If vendors gave Crane all *indicia* of title to deceive Claflin Company or others, then, *a fortiori*, should Claflin succeed.

*Cole v. Berry*, 13 Vr., 308 (312 at top).

### FOURTH.

Trial Judge should have instructed jury as to legal import of the invoices, bills of lading and other writings, and not left whole question to the jury as one of intention for them to decide.

*Hurff v. Hires*, 10 Vr., 4 (6) in Sup. Ct.;

*Jordan v. Easter*, 2 Ill App., 73 (80);

*Newmark on Sales*, secs. 71 and 143, and cases cited;

*11 Am. and Eng. Enc. of Law*, 241, and cases cited;

*Wigton v. Bowley*, 130 Mass., 252 (254);

*Dows v. Bank*, 91 U. S., 629, 634 and 636;



*Terry v. Wheeler*, 25 N. Y., 525;  
*Livingston v. Eggleston*, 27 Mich., 326.

**Presumption of sale arose.**

(1.) From transfer of the goods.

*Newmark on Sales*, secs. 79, 90, 93, 96.

(2.) From the invoices sent.

(3.) From the bills of lading sent.

*51 Am. Rep.*, 51 (53);

*Newmark on Sales*, secs. 211 and 212.

- 10 And at any rate the jury should have been instructed as to these presumptions, and the necessity of clearly preponderating evidence to overcome them.

*Chapman v. Kerr*, 80 Mo., 158 (161).

**FIFTH.**

If not absolute sales, the transactions with Crane were conditional sales or chattel mortgages, and void as against policy of the Registration Acts,

*Tiedeman on Sales*, sec. 204.

*Woodside v. Adams*, 11 Vr., 417 (428).

- 20 *Cole v. Berry* (13 Vr., 308, 309), contract said to be of doubtful legal import, but considered as conditional sale on appeal because so treated in trial court.

*Hart v. Barney*, 7 Fed. Rep., 543;

*Id.* 27 Meyers Fed. Dec., 671;

*Harvey v. Rhode Island*, 93 U. S., 664;

*Heryford v. Davis*, 102 U. S., 235;

*Dudley v. Abner*, 52 Ala., 572;

21 Am. & E. Ency. of Law, 630, and note (4);

*Id.* 654;

- 30 3 Am & E. Ency. of Law, 437, and note (1);

1 Benj. on Sales (4th Am. Ed.), sec. 452.

Void whether the statutory prohibition be express or only implied.

*Harris v. Runnels*, 12 How., 79 (83).

The Claffin Co. were not only creditors; they were subsequent purchasers or mortgagees in good faith within the meaning of the statutes.

*Tiedeman on Sales*, secs. 51, 231 and 329.



New Jersey Court of Errors  
and Appeals.

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THE H. B. CLAFLIN COMPANY

and

ORLANDER DEMAREST,

*Plaintiffs in Error,*

vs.

THE ELLIOTT FURNITURE

COMPANY,

*Defendants in Error.*

*In Error to Passaic  
Circuit.*

BRIEF OF MICHAEL DUNN, COUNSEL FOR  
DEFENDANT IN ERROR.

**STATEMENT OF FACTS.**

The plaintiff in this case is a corporation of the state of North Carolina, and was represented in New York by William M. Lyons & Co., as agents. The suit is brought in replevin to recover certain goods which, at



the time, were in the possession of the defendants below. These goods had been purchased through William M. Lyons & Co., agents for the plaintiff. They were shipped on consignment by agreement, between Lyons & Co., and Crane, and were to be the property of the plaintiff below until paid for. The first order for goods was obtained about September 16, 1892, and the goods were shipped on October 25, 1892, as will appear by the bill of lading. They were consigned to the Elliott Furniture Company, and by their agents, William M. Lyons & Co., transferred over to Mr. Crane after their arrival in Paterson. None of the goods comprised in the first order was found in the store at the time of replevying. The next shipment made to Mr. Crane was in March, 1893, and the last shipment in May, 1893; and goods belonging to both these shipments were found at that time. The order in May, 1893, amounted to \$591.70 (See page 15) and the balance due from Crane to the plaintiff below, at the time of the replevin, amounted to about \$500. The bills were then past due, and the plaintiff was entitled to demand its goods. The defendants claim that the goods belonged to Mr. Crane, and that they had a right to them. The question in the case then, was whether or not the Elliott Furniture Company was the owner of the goods in dispute. The value of these goods was agreed upon by counsel to be \$433, and of this amount \$100 represented what was known in the trial as the "Decker" goods. (P. 65) The Decker goods were goods that had been ordered by, and shipped to, Mr. A. M. Decker, of Paterson, but were afterwards transferred to Mr. Crane under the same terms under which the other goods had been delivered to him.



The jury found for the plaintiff for the sum of \$433, besides costs, and this writ of error is now sued out by the defendants below.

## I.

*First. There was no error in refusing the motion for non-suit.*

1. Mr. Rossiter, the sheriff, testifies (p. 54) that he made a demand before the suit was instituted.

2. It was unnecessary to prove the incorporation of the plaintiff, as the existence of the corporation had been shown.

The rule of law is that where an action is brought by a corporation, and a plea is filed by the defendant without denying its corporate existence, it is unnecessary to offer in evidence a certified copy of its charter. The defendants, by pleading, admitted its existence.

*Braithwaite vs. State*, 25 N. W., 247.

In *Star Brick County vs. Ridsdale*, 7 Vroom, 229, it was held that a plaintiff corporation need not prove its corporate existence under a plea of general issue or other plea to the merits.

3. In view of the parol testimony and documentary evidence adduced, it was impossible for the court to hold that the contract was one of absolute sale and not of consignment.

The Court, therefore, properly refused the motion to non-suit.

## II.

*Second. The court committed no error in refusing the request to charge.*



1. The contention that the whole question involved was one of law as to the construction of the contract, and that the jury must take instructions from the Court, cannot be supported by the facts involved in the case.

The defendants below contended that certain invoices produced by them, and which accompanied the goods, showed that the sale was absolute. These invoices, however, were mere memoranda showing the goods shipped and price, and in no way showed what the real agreement between the parties was. This agreement not being in writing had to be ascertained from the evidence of the witnesses and from the correspondence that passed between the parties.

There was, therefore, no error in the Court's refusal to charge this request as stated to the Court.

2. The ~~plaintiff~~ <sup>defendant</sup> below assumes that an invoice is a contract in writing. He claims, therefore, that no other evidence could be adduced that tended to vary, alter or contradict the same. It is a well settled rule of law that bills and invoices which are unsigned by the parties, are informal documents, and are not regarded as contracts in writing, and in this respect are an exception to the general rule.

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Hazard *vs.* Loring, 64 Mass., ~~627~~.

Schenck *vs.* Saunders, 79 Mass., 37.

These two cases establish this rule, and in the latter case, the rule is stated thus:

“Bills and even receipted bills are always open to evidence which proves the real terms upon which the



agreement of sale was made between the parties."

3. The contention that the contract is embodied in the invoices is untenable, because the correspondence and the testimony of Mr. Lyons, Mr. Cairns, and Mr. Crane all prove the contrary. The Court properly refused to charge as requested under this head.

4. Whether or not the sending of invoices and the transfer of the bills of lading conclusively show the intention of the parties to pass title to Mr. Crane, was for the jury to determine under all the evidence in the case, and the Court very properly refused to charge as requested on this point.

5. The Court very properly refused the request to charge that the Decker goods, valued at \$100, were sold absolutely to Mr. Crane, because the testimony of Mr. Lyons, Mr. Cairns, and Mr. Crane shows that the agreement between them was that the goods received by him from them should be upon consignment.

These particular goods had been shipped to Mr. Decker by the plaintiff below. Mr. Decker was going out of business, and had no further use for the goods. Mr. Crane, however, needed such goods, and on being notified about the matter, desired that they should be delivered over to him.

pro 10

See Testimony of Mr. Crane, p. 48; Letters, September 16, 1892, and May 15, 1893; Testimony Mr. Cairns, 37, 39; <sup>42+43</sup> Testimony of Mr. Lyons, p. <sup>33+34</sup> 33+34.

It was understood that the plaintiff below would not sell or deliver goods to Mr. Crane, except upon consign-



ment, to be its property until paid for. The Court properly left to the jury the question whether or not the Decker goods should be treated as sold on consignment.

6. The request to charge that no demand was made has no foundation. The testimony of Richard Rossiter above referred to proves the contrary. *psx 118. p. 11*

7. The Court properly refused to charge that this sale being a conditional one was void as being against the statute and against public policy.

The statute referred to, I presume, is that of 1889. The defendants below were not purchasers or subsequent mortgagees in good faith. The goods were not shipped until May 18, 1893, as appears by the bill of lading, while the mortgage from Crane to Claflin was made and recorded August 5, 1892.

There is no evidence in the case showing that the Claflin Company advanced Mr. Crane any moneys, or gave him any credit under their mortgage, during the year 1893. No rights of any innocent third party intervene, or will be affected by recognizing the claim of the plaintiff below as owner of this property.

Therefore, the sale, though being conditional, cannot be said to be void against public policy.

See Campbell Manufacturing Company vs.  
Rockaway Publishing Company, 27 Vr.,

*676. Vermont Works of Brown & Co. Prop. App.*

### III.

*Third. The judge committed no error in his charge.*

1. The question of intention was properly left to the jury.



The plaintiff below contended that the property in the goods was reserved at the time of sale. This contention was supported by the testimony of Mr. Lyons, Mr. Cairns, and Mr. Crane, and also by the letters sent by William M. Lyons & Co., to the plaintiff below at the time the agreement was made to ship goods to Crane. It was evidenced by the fact that all the bills of lading that accompanied the goods were made out to the order of the plaintiff, and after the goods arrived in Paterson, the bills of lading had to be specially transferred to Mr. Crane, before he could get possession of the goods. The defendants below contend that because bills and invoices, giving a list of the goods and the prices, accompanied the goods, and that because the bills of lading were transferred so that Crane could get possession of the goods, this gave Mr. Crane title to the goods. From these disputed facts, the Court very properly left it to the jury to say what the intention of the parties was at the time the contract was made to sell these goods.

2. The second assignment of error does not correctly state the charge of the Court on this question of intention. On page 76, in his charge, the Court uses this language:

"If you gather from the circumstances of the case, that their intention was to transfer the title to the property to Mr. Crane, then your verdict in this case will be for the defendants; for the plaintiff has no right to the goods. If, on the other hand, the intention of the parties was that the title should remain in the Furniture Company, then your verdict will be for the plaintiff."

It is manifest that there was no error in the language



used on this point. It was impossible for the Court to state the matter more correctly.

3. This assignment of error does not give this Court a correct idea of the language used by the judge in reference to the Decker goods. The Court, in his charge (p. 76, l. 35) says:

"It does not appear, that when the Decker goods were turned over, there was any talk in regard to that particular parcel of goods, and the question before you is whether, notwithstanding there was no talk, it was still the understanding between the parties that that parcel of goods was turned over to Mr. Crane on the same terms as the other or not. If you do not believe that that was the understanding, viz.: that the Decker goods were turned over to him just as the others were, why, as to those Decker goods you will say that the full title went to Mr. Crane, and was not reserved, but if you think it was understood between the parties that Crane received the Decker goods under the same arrangement as had expressly related to the other goods, why then, of course, those goods will stand on the same footing as the others."

The letter of May 15, from William M. Lyons & Co., to the plaintiff shows that orders for goods from Crane were only accepted upon condition that the goods were to be sold on consignment. There is no evidence showing anything to the contrary. The mere fact that these goods were transferred to Mr. Crane from Mr. Decker cannot alter the conditions under which the plaintiff furnished goods to Mr. Crane, when they shipped them direct from the factory.



## IV.

*Fourth. The charge of the Court was not unfair to the defendant below or misleading, as will be seen by a reference to the charge.* (pp. 75--78.

## V.

The evidence in the case clearly shows that the agreement between these parties was that the goods should be shipped on consignment, to remain the property of the shipper until paid for. Under this arrangement, Mr. Crane acquired no title to the goods. The letters of September 16, 1892, and May 15, 1893, show that the agents of the plaintiff in this case were constantly on their guard against possibility of loss through foreclosure of the Claflin mortgage. It is unreasonable to presume, that knowing of the existence of this mortgage, the plaintiff would deliver goods at Mr. Crane's store, and make sales in the ordinary course of trade, without any reservation or any protection for themselves. Shipping the goods on consignment and reserving the title afforded them all the protection required as against all persons, except innocent *bona fide* purchasers, or subsequent mortgagees.

## VI.

*If justice has been done by a verdict, though there has been a misdirection of the judge, a new trial should not be granted.*

The above is a well settled principle of law, and is always enforced where matters are brought before this Court on writs of error.



Steelman *vs.* Steelman, 1 Harr., 68;  
 Snyder *vs.* Findley, Coxe, 78; State *vs.*  
 Wells, Coxe, 431; Joslin *vs.* New Jersey Car  
 Spring Co., 7 Vr., 147; Reading *vs.* Reading,  
 4 Zab., 465.

I submit, therefore, that there was no error committed by the Court, and that the verdict rendered by the jury is supported by the evidence. There were disputed questions of fact which the jury alone could determine, and their determination should not be interfered with. The judgment should be affirmed.

Respectfully submitted,

MICHEAL DUNN,

*Of Counsel with Defendant in error.*

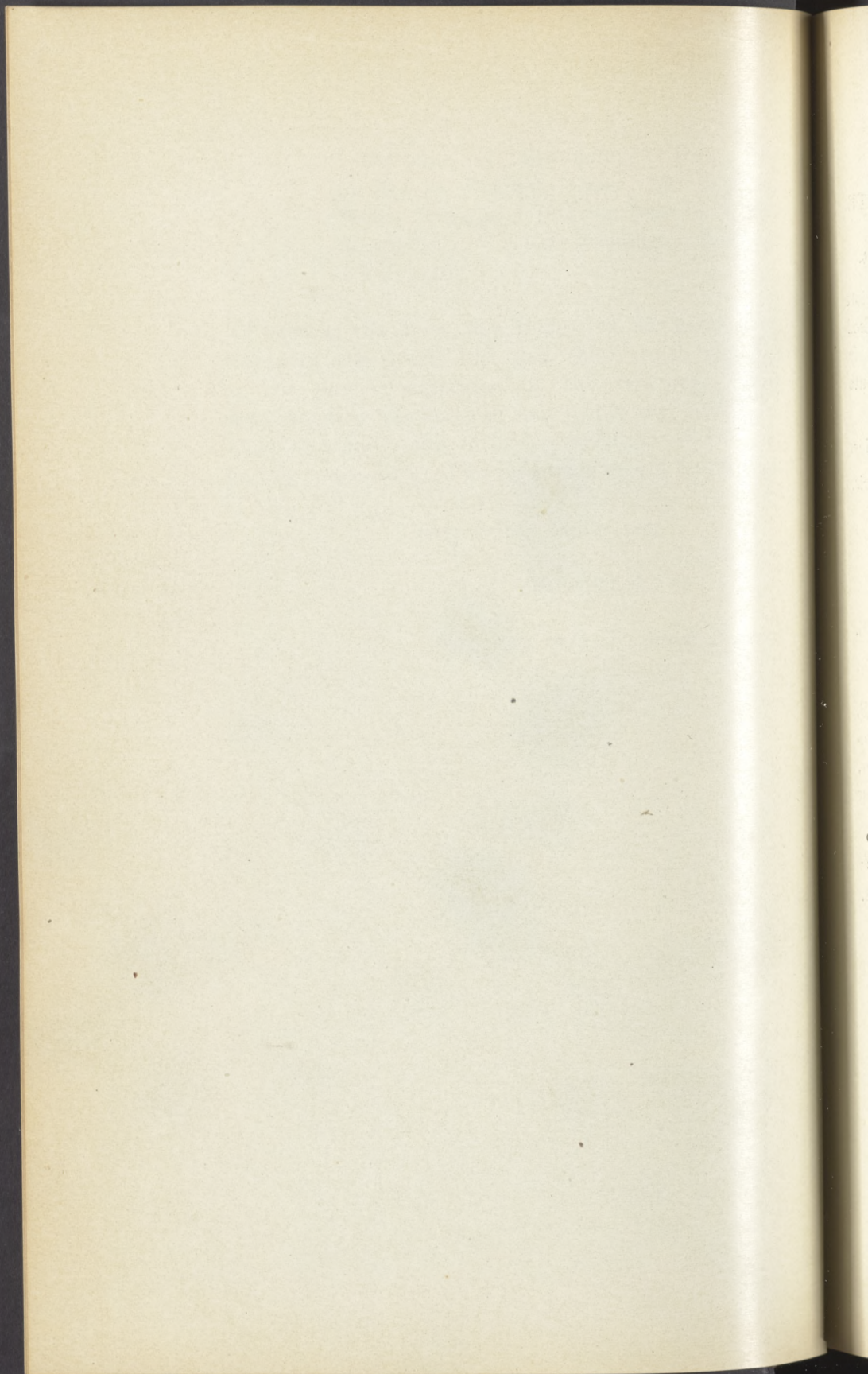


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# EXHIBITS.

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## BILLS OF LADING.

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### RICHMOND & DANVILLE RAILROAD COMPANY.

Through Bill of Lading.

CHARLOTTE, N. C., Oct 25, 1892.

Received of Elliott Furniture Co., in outward apparent good order, inward condition of contents unknown, and for which (viz: condition of contents) this company or any of its connections to place of delivery shall not be responsible, value unknown, to be transported by the Richmond & Danville Railroad Company to ~~act.~~,  
notify F. E. Crane, Paterson, N. J., 1 car. C. Fur.  
19900. C. Reel. K. D., S. K.

(Signed) T. SMITH, Agent R. & D. R. R.



THE SEABOARD AIR-LINE FREIGHT ROUTE.

CHARLOTTE, N. C., March 13, 1893.

Shipped, in apparent good order, by The Elliott Furniture Co., One (1) Car Furniture 18900, marked and numbered as per margin, and to be delivered in like order, loss or damage as hereinafter excepted, unto Order notify F. E. Crane, Paterson, N. J.

(Signed) K. J. FINCH, Agent for the Companies.  
(On the Margin) MARKS AND NUMBERS: CCC & St.  
L. 17599.

THE SEABOARD AIR-LINE FREIGHT ROUTE.

CHARLOTTE, N. C., May 18, 1893.

Shipped, in apparent good order, by the Elliott F. Co., One (1) Car Furniture 15000, marked and numbered as per margin, and to be delivered in like order, loss or damage as hereinafter excepted, unto Order Notify F. E. Crane, Paterson, N. J.

(Signed) K. J. FINCH, Agent for the Companies.  
(On the Margin) MARKS AND NUMBERS: CCC & St.  
L. 19755.



## LETTERS.

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New York, September 16, 1892.

ELLIOT FURNITURE CO.,

CHARLOTTE, N. C.

GENTLEMEN:—

Order sent you last night for account of F. E. Crane, should have been accompanied by subjoined explanation, but boy put letter into mail box before we were aware of it.

Some few months ago Crane interested some men of means in his affairs and in his confidence that the deal—changing the firm from, as it then existed, into a stock company, would be consummated and that money promised would be forthcoming, made business obligations, which individually he could not meet at maturity. He has the finest and best equipped



place in the state of New Jersey, and we have no doubt the failure on the part of men in question to supply funds, was a scheme on their part to secure the business, and oust Mr. Crane altogether, or continue him as an employee on a salary. Mr. Crane, however, would neither play second fiddle nor be downed, and in the emergency he called his creditors together, and effected a compromise. We learn from him that H. B. Claflin & Co., will honor his drafts to the extent of \$4,000 for the purchase of goods, and while he will not hesitate to use the sum named, he wishes to foster the sum, and wishes the current business to take care of a portion of the obligations until he is on his feet again. To this end he submits the following proposition, on the acceptance of which you will execute the order. He will pay \$250 in cash advance, balance to be paid, one-half in 30 days, and one-half in 60 days, as means of security to you, and in evidence of good faith on his part, you can send the goods to yourselves, by consignment. It is to be understood that the goods are not to be paid for as sold, as is usually the case under such conditions of shipment, but as a safeguard against loss to you by possible failure, on his part, to deep his agreement) and the goods so shipped are in every sense of the word, your property until fully paid for. Our firm (E. Schloss & Co.) have accepted the proposition, and will execute order at hereinbefore stated. Mr. Crane has by far the finest plant for the transaction of the furniture business in the State of New Jersey. He is a worker and is doing a good business now, and



is only a question of a very short time, when he will be on the top. He knows that we have confidence in him, and he was frank enough to open his books and show that he is really doing the business that justifies him in speaking so hopefully of his future. We trust you will see your way clear to accept the proposition, not on account of the commission there is in this order, but because we have faith in his ability to win, and we want the house we represent to share in his prosperity.

We steered Wm. Neeley & Co., clear of a house where he can get the suits he wants in 36 hours time, on the assurance that we had advise from you that his car is now en route. This is in explanation of the telegram to you this evening, asking you to ship at once, to save countermand. If you will poke your Cabinet-makers, Finishers and Packers up, and so obviate the necessity on our part of devoting most of our time trying to account to customers for delay in shipping, we could devote more time to selling. If Mr. Crane's order is accepted, write us when you will ship so we can notify him.

Kindly acknowledge enclosed order.

Yours very truly,

WM. M. LYONS & CO.



CHARLOTTE, N. C., SEPT. 19, 1892.

MESSRS. W. M. LYONS & CO.,

GENTS:—Your favor of the 16th inst. to hand, and noted. Respecting the merits of Crane's case we know nothing, but relying on your judgment, we will accept order of Crane. Will have to have some kind of an agreement. This you can execute similar to one given (or made) by E. Schloss & Co. Can strain a point and get off within 10 or 15 days.

Yours truly,

THE ELLIOTT FURNITURE CO.

NEW YORK, MAY 15, 1893.

THE ELLIOTT FUR. CO., CHARLOTTE, N. C.

GENTLEMEN:—We neglected to state when Crane's order was sent in, that he is in a hurry for the goods. You need not fear to ship as the goods will be sold on consignment, and your property, until sold as per conditions of all previous shipments. We accept orders from him only under these conditions, so that if Claflin Company ever shuts down on him, we will be protected. Don't fail to exercise care in packing these goods.

Yours,

WM. M. LYONS & CO.



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## N. J. Court of Errors and Appeals.

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| THE H. B. CLAFLIN COMPANY<br>AND ORLANDO DEMAREST,<br><i>Plaintiffs in Error,</i><br><i>v.</i><br>THE ELLIOTT FURNITURE<br>COMPANY,<br><i>Defendants in Error.</i> | } | <i>In Error<br/>to Passaic<br/>Circuit<br/>Court.</i> | 10 |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------|---|-------------------------------------------------------|----|

STATE OF NEW JERSEY, ss :

The State of New Jersey to JONATHAN DIXON, Esq.,  
Jugde of our Circuit Court, at Paterson, in  
and for the county of Passaic, or such  
[L. s.] Justice of the Supreme Court of the State of 20  
New Jersey as shall hold such Circuit Court,  
greeting:

Forasmuch as in the record and proceedings, and  
also in the giving of judgment in a certain plaint  
which was in our Circuit Court, holden at Paterson,  
in and for the county of Passaic, between the  
Elliott Furniture Company, plaintiffs, and the H. B.  
Claffin Company and Orlando Demarest, defend- 30  
ants, in an action in replevin, manifest error hath  
intervened to the great damage of the said defend-  
ants, the H. B. Claffin Company and Orlando Dem-  
arest, as it is said ; we being willing that the error,  
if any there be, should in due manner be corrected  
and full and speedy justice done to the parties  
aforesaid in this behalf, do command you, that if  
judgment be thereupon given and affirmed, then you  
distinctly and openly send, under your seal, the  
record and proceedings aforesaid, with all things  
touching the same, to our Judges of our Court of 40



Errors and Appeals in the last resort in all causes, at Trenton, on the fourteenth day of May next, together with this writ, that the record and proceedings aforesaid being inspected, we may cause to be further done thereupon, for correcting that error, what of right and according to law and custom of the State of New Jersey, ought to be done.

Witness, our Chancellor and President Judge of our said Court of Errors and Appeals at Trenton, 10 aforesaid, this twenty-sixth day of April, A.D. 1895.

HENRY C. KELSEY, *Clerk.*

FRANKLIN M. OLDS, *Attorney.*

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#### RETURN.

20 I, JONATHAN DIXON, Judge of the Circuit Court of the county of Passaic, do herewith in the foregoing schedule send to the Judges of the Court of Errors and Appeals in the last resort in all causes, the record and proceedings mentioned in the within writ of error, wherein the Elliott Furniture Company was plaintiff, and the H. B. Claflin Company and Orlando Demarest were defendants, with all things touching the same, as I am within com-  
manded.

30 Witness, my hand and seal, this tenth day of May, A.D. eighteen hundred and ninety-five.

JONATHAN DIXON, *Judge.* [SEAL.]



## SCHEDULE.

Passaic County Circuit Court, of the fifth day of October, in the year of our Lord one thousand eight hundred and ninety-three.

PASSAIC COUNTY. *ss.*:

The H. B. Claffin Company and Orlando Demarest, the defendants in this suit, were summoned to answer the Elliott Furniture Company, a body corporate, the plaintiff therein, wherefore they took 10 the goods and chattels of the said plaintiff, and unjustly detained the same against sureties and pledges, until, &c. ; and thereupon the said plaintiff, by Michael Dunn, its attorney, complains: For that the said defendant on the twenty-fifth day of September, in the year eighteen hundred and ninety-three, in the city of Paterson, in the county of Passaic, took the goods and chattels, to wit: Fifteen No. 25 chamber suits; ten No. 3 chamber suits; two No. 26 chamber suits; three No. 21 20 chamber suits; ten No. 27 chamber suits; two No. 18 bedsteads; one No. 16 bedstead; five No. 2 bedsteads; four No. 1 bedsteads of the said plaintiff, of great value, to wit, of the value of five hundred and sixty dollars, and unjustly detained the same against sureties and pledges, until, &c.

Wherefore, the said plaintiff says that it is injured, and has sustained damage to the amount of one thousand dollars, and therefore it brings its suit, &c. 30

And the said defendants, the H. B. Claffin Company and Orlando Demarest, by FRANKLIN M. OLDS, their attorney. come and defend the wrong and injury when, &c., and say that they did not take the said goods and chattels in the said declaration mentioned, or any or either of them, or any part thereof, in manner and form as the said plaintiff hath above thereof complained against them. And of this they, the said defendants, put themselves upon the country, &c. 40



And for a further plea in this behalf the said defendants, the H. B. Claflin Company and Orlando Demarest, by leave of the Court here for this purpose first had and obtained, according to the statute in such case made and provided, say that the plaintiff ought not to have or maintain its aforesaid action thereof against them, because they say that the goods and chattels in said declaration mentioned at the said time when, &c., were the property of the  
 10 said the H. B. Claflin Company, one of the defendants, and not of the said plaintiff, as by said declaration is above supposed and alleged. And this they, the said defendants, are ready to verify. Wherefore, they pray judgment if the plaintiff ought to have or maintain its aforesaid action thereof against them; and they also pray return of the said goods and chattels, together with costs in this behalf, according to the form of the statute in such case made and provided, to be adjudged to  
 20 them, &c.

Therefore, let a jury thereupon come before the Court aforesaid, at Paterson aforesaid, on the fourth Tuesday of April next ensuing, by whom, &c., who neither, &c., to recognize, &c., because as well as, &c., and the same day is given to the parties aforesaid at the same place. At which day before the Court aforesaid, at Paterson aforesaid, come the said parties by their respective attorneys aforesaid, and the jurors of the jury whereof mention in within made  
 30 are respited between them from day to day until the fourth Tuesday of September then next ensuing; at which last-mentioned day before the Court aforesaid, at Paterson aforesaid, come the said parties by their respective attorneys aforesaid, and the jurors of the jury whereof mention in within made, also come, who to speak the truth of the matters and things within contained, being chosen, tried and sworn upon their oaths, say they find  
 40 that the said defendants did take certain of the goods and chattels in the declaration of the said



plaintiff mentioned and set forth, and did detain the same, and they assess the damages which the said plaintiff hath sustained by reason of the said unjust detention above-mentioned over and above its costs and charges by it about its suit in this behalf expended at the sum of twenty-six dollars, and they assess the value of the goods and chattels so taken and detained, and in said declaration and by stipulation of the respective attorneys, specified at the sum of four hundred and thirty-three dollars. 10

Judgment signed October 25, 1894.  
JONATHAN DIXON,  
*Judge.*

Therefore, it is considered that the said plaintiffs do recover against the said defendants their said damages, and also the sum of sixty-four dollars and sixty-six cents, for their costs and charges by them about their suit in this behalf expended, now here taxed, and by the Court here adjudged to them with their assent; which said damages, costs and charges in the whole amount to the sum of five hundred and twenty-three dollars and sixty-six cents. And the defendants in mercy, &c. 20

|              |          |
|--------------|----------|
| Damages..... | \$459 00 |
| Costs.....   | 64 66    |
|              | <hr/>    |
|              | \$523 66 |



# Passaic County Circuit Court.

|    |                                                    |                       |
|----|----------------------------------------------------|-----------------------|
|    | THE ELLIOTT FURNITURE COM-<br>PANY,                | } <i>In Replevin.</i> |
|    | <i>Plaintiff,</i>                                  |                       |
| 10 | <i>v.</i>                                          |                       |
|    | THE H. B. CLAFLIN COMPANY<br>AND ORLANDO DEMAREST. | }                     |
|    | <i>Defendants.</i>                                 |                       |

Before Hon. J. DIXON, J. S. C., and a Jury.

PATERSON, N. J., October 2, 1894.

Appearances: For plaintiff, MICHAEL DUNN;  
for defendants, FRANKLIN M. OLDS.

20 **William M. Lyons**, a witness on behalf of the  
plaintiff, being duly sworn, testifies as follows:

*Examined by Mr. Dunn:*

Q Where do you live?

A In the city.

Q What is your business?

A Furniture and commission merchant.

Q What relations do you bear to the Elliott Fur-  
niture Company?

30 A I am their Northern representative.

Q Where are they located?

A At Charlotte, North Carolina, and is a corpo-  
ration of that State.

Q Did you, as their representative, have any  
dealings with Mr. Crane, of this city?

A Yes, sir.

Q Were you present at the time when Sheriff  
Rossiter made a demand for certain goods belong-  
ing to the Elliott Furniture Company?

40 A Yes, sir.



Q And were those goods surrendered up—by whom was the demand made?

A By Mr. Demarest.

Q And who was he?

A The representative of the H. B. Claflin Company.

Q At the time, where was the demand made?

A At F. E. Crane's store.

Q Who was in possession of the store?

A Mr. Demarest and others. 10

Q And they represented the Claflin Company?

A Yes, sir.

Q Were the goods surrendered up then?

A No, sir.

Q Was a writ of replevin served then?

A Yes, sir.

Q Did you go through the store with the Sheriff and identify certain goods claimed by the Elliott Furniture Company?

A Yes, sir. 20

Q Now tell us what goods you found there belonging to the Elliott Furniture Company?

A Seven No. 25 beds; fourteen No. 25 dressers; fifteen No. 25 washstands; four No. 27 beds; nine No. 27 dressers; ten No. 27 washstands, and one No. 16 bed.

*By Mr. Olds:*

Q What are you reading from?

*Witness:* From this list.

*Mr. Olds:* Where did you make that list from? 30

*Witness:* From the original copy that I had in the book.

*Mr. Olds:* That you took down at the time?

*Witness:* Yes, sir.

*Mr. Olds:* Have you compared it?

*Witness:* This is a copy of the one that the Sheriff had.

Q Please read it.



A Five No. 2 beds ; eight No. 3 beds ; four No. 3 dressers ; two No. 21 washstands ; two No. 21 washstands ; two No. 18 beds ; four No. 1 beds, on store floor complete ; one No. 25 suit ; one No. 3 ditto ; one No. 26 ditto ; one No. 21 ditto ; one No. 27 ditto.

*By the Court :*

Q These suits you found on the store floor, complete ?

10     *Witness :* Yes, sir.

*The Court :* And the other goods ?

*Witness :* Were scattered through the building.

Q Now, the goods that you found there were only a portion of the goods that were mentioned in your writ ?

A Yes, sir.

Q Now, will you please—have you footed up the values of those goods ?

20     A Yes, sir.

Q How much do they amount to ?

A \$492.77.

Q And is that the value of which there were bills of Mr. Crane ?

A Yes, sir ; consigned to Mr. Crane.

Q Now, when was the first of those goods shipped to Mr. Crane ?

A On October 25, 1893.

30     Q Ninety-three ?

A 1892—this was made out in ninety-three, I see—we give here the entire transaction.

*Mr. Olds :* What is the witness reading from ?

*Witness :* From this—exhibiting a paper.

*Mr. Olds :* What is that paper ?

*Witness :* A paper received from the factory, signed by the president, and has the seal of North Carolina.

40     Objected to ; objection sustained.



*By the Court :*

*Q* What do you know of the shipment of those goods ?

*Witness :* We sent the order, with letters, to the factory, and of course telling them all about Mr. Crane and the arrangement made with him in regard to consignment.

*By the Court :*

*Q* What do you know about the shipments— 10  
anything ?

*Witness :* I can no more than say that the order was shipped from the factory.

*By the Court :*

*Q* You don't know anything about that except what you have been told by others ?

*Witness :* No more than what I know from the factory ; we got our commissions for that sale ; if I didn't receive the commission, the goods were not 20  
shipped.

*Q* Did you take the order for the goods ?

*A* Yes, sir.

*Q* And when the first car load was shipped here, tell us what, if anything, you know about the delivery to Mr. Crane ?

*A* The first car that was shipped here to Paterson was marked " Wm. M. Lyons & Co.," and consigned to us, and then we transferred the goods over to Crane by consignment. 30

*By the Court :*

*Q* When was that ?

*Witness :* Well, I can tell you—

*Q* What is this ?

*A* A copy of the letter sent to Mr. Crane by William M. Lyons.

*Q* Are you a member of that company ?

*A* Yes, sir.

*Q* Was that in reference to that first car ? 40



A I believe it was ; that is a letter dated September 14, 1892.

Q Now what, if any conversation, did you have with Mr. Crane, after that letter, in reference to this order ?

A Mr. Crane came over to our place in regard to these goods a number of times ; they were not coming forthwith, and he paid us \$250 on account.

Q Now, before that—in reference to the terms—  
10 the interview ?

A He came up to our place, and wanted some Elliott suits, and I told him I didn't see how we could sell him while Claffin & Company were holding a mortgage over his head ; and he said : " I like the goods very much."

Q When was this ?

A When we originally started with him after his first failure, and he said : " Whatever goods you sell me, you can consign them to me, and you  
20 will have no difficulty ;" and the first payment we received on them was to apply on the goods, and the property was to belong to the Elliott Furniture Company until paid for.

Q Just turn to page 15, letter of September 15 ?

A Here it is.

Q Just read what the communication was that you sent accompanying this order ?

Witness reads to the Court and jury letter of  
30 September 16.

Q Now, I show you this letter, dated September 19, 1892, and ask you what that is ?

A This is a letter from the Elliott Furniture Company.

Q In response to the one you have just read ?

A I can tell better after I have read it.

Q To whom is it addressed ?

A William M. Lyons & Co., Charlotte, N. C., and dated September 9, 1892.

40 Witness reads same to the Court and jury.



*Q* Read out this letter to you of September 21, 1892?

Witness does as directed.

*Q* Now, then, this letter I show you, dated September 28, 1892?

Witness reads the same to the Court and jury.

*Q* Now, look at that paper; what is that?

*A* That is a power of attorney.

*Q* From whom to whom?

10

*A* From the Elliott Furniture Company to William M. Lyons.

*Q* Dated when?

*A* October 24.

Witness reads power of attorney to the jury.

*Mr. Olds*: Is that the original?

*Witness*: That is—October 24, 1892.

*Q* Is that the original?

*A* Yes, sir.

20

*Q* I show you this letter, dated October 24, 1892?

*A* Yes, sir.

Witness reads the same to the Court and jury.

*By the Court*:

*Q* When this letter had been written, you had not received the order for which he had sent the check for \$250?

*Witness*: No, sir; we hadn't received it.

30

*By the Court*:

*Q* And then he asked you to return him the money which you had sent to the other company?

*Witness*: Yes, sir.

*Q* Now turn to the letter in which the order that you received was described—September 16—can you say whether or not the goods mentioned in this paper are the goods referred to in that letter?

Objected to.

40



Q Can you say whether or not, mentioned in that order, were the goods which you identified in the store as belonging to the Elliott Company ?

A Yes, sir.

*By the Court :*

Q I understand, now, those goods which you saw in the store, and the ones that you have spoken about, are on that yellow paper—those are the goods embraced in your order of September, 1892 ?

10 *Witness :* I don't know whether they were all just of that order.

Q Whether they are a part of it ?

A Yes, sir.

Q Tell us what portions belong to that order ?

A Well, the biggest portion of goods that I found in the store at that time, were the goods on the last shipment.

*By the Court :*

20 Q We are talking now about the shipment in September, 1892 ; this was in September, 1893, when you went there ?

*Witness :* I don't think I saw any goods there of September, 1892.

Q Just look at that order and see what goods were there ?

*Mr. Olds :* Is that the original statement—I wish to object to that statement.

30 Objection refused, as being too late ; exception allowed.

*The Court :* As a memorandum he may use it now.

*The Court :* So far as I can recollect, no goods that he saw in the store of September, 1893, were goods that he had ordered in September, 1892.

Q Can you tell us by referring to the order in September, and to the memorandum before you, whether any of the same goods were there or not  
40 when the replevin was made ?



A As I understand you, you want to know now whether any of these goods were there, that I had before, were of the goods September, 1892?

*The Court:* Yes.

*Witness:* I didn't see any goods there of September, 1892.

Q I show you another letter dated Nov. 18, 1892?

*By the Court:*

Q I will ask you whether you know when the goods which you saw in the store in September, 1892, have been shipped to Crane? 10

*Witness:* I believe they were shipped somewhere around in September—I should judge in May or June.

*The Court:* That is a mere inference.

*Witness:* That is about the last order, and I know he was entirely out of goods then, about the middle of May; I remember telegraphing that he was in a hurry for the goods. 20

*The Court:* And you think those goods must have been part of the last shipment that he made in May or June?

*Witness:* Yes, sir.

Q Whose letter is that, and to whom?

A By Wm. M. Lyons to F. E. Crane.

Q What date?

A Nov. 18, 1892.

Q What are you reading from? 30

A That is a copy taken from the copy-book.

*Witness reads letter in question to the Court and jury.*

Q Now, I show you this, which is a copy of Mr. Olds in that same book—letter to F. E. Crane?

A New York, Nov. 5, 1892, to Mr. F. E. Crane.

*Witness reads letter to the Court and jury.*

Q What order does that refer to, can you tell us? 40



A About one of the first orders taken from Crane.

Q What month was that?

A I should judge about Nov. 6.

Q November would be the eleventh month—what is that you have in your hand there?

A Bill of lading of the Danville and Richmond Company—that is a copy of the bill of lading sent the Railroad Company—couldn't find the original  
10 so we had to get a copy of it.

Q You tried to find the original?

A Yes, sir; we may have handed him over the original to get the car.

Q That you think is a duplicate of the bill of lading referred to in that letter?

A Yes, sir; that is Oct. 25, 1892.

Q Now, I also show you a copy of letter to the Elliott Furniture Company, and ask you who wrote that—what is the date?

20 A May 15, 1893.

Witness reads letter to Court and jury.

Q Can you say whether any of those goods were found in the place at the time?

A What is the date of the bill of lading?

Q May 15, 1893.

Mr. Olds: Has he got another bill of lading there?

Witness: Yes, sir.

Q Those are the last goods that he found in the  
30 store?

A Yes, sir.

Q Can you tell—were all the goods that you found there a part of the car of May 18?

A Yes; I think that was the date, somewhere around about that.

Q Now, do you remember how that order was sent in?

A It was sent in just the same as all other orders that were sent in—under the same arrange-  
40 ment.



*Q* I show you this paper—can you tell me what that is?

*A* This is a letter from the Elliott Furniture Company to us.

*Mr. Olds:* The date?

*Witness:* It doesn't seem to be dated; it is a part of a letter.

*Mr. Olds:* There appears to be another page to it?

10

*Witness:* It was found among the bunch.

*Q* I show you this book and ask you what it is?

*A* That is the book that we use for entering the amounts of the orders of the different factories that we sold to.

*Q* Turn to May 18, and tell us whether you found anything there with reference to Mr. Crane's order of May 13?

*A* (Witness reading)—“F. E. Crane, Paterson, N. J., \$591.70, May 13, 1893.”

20

*Q* What did you understand by that date and entry?

*A* That is the order sent from the factory.

*Mr. Olds:* What is the amount?

*Witness:* \$591.70.

*Mr. Olds:* What page is that on?

*Witness:* 111.

*Q* I show you this letter of November 2, and ask you if—

30

*A* 1892?

*Q* Yes?

*A* (Witness reading)—“New York, November 2, 1892.”

(Witness reads letter to the Court and jury.)

*Q* Now, how much is due from Mr. Crane to the Elliott Furniture Company, on shipments made to him?

*A* Altogether due, I think, is four hundred and ninety—no, stop; something near \$600; I haven't 40



the right amount : I think you have the statement, Mr. Dunn.

Q Is that the statement ?

A I can't remember the figures, but I remember the amount that we replevied was either a little more or a little less.

Q You have the statement of that ?

A That was \$490—I remember that ; but the amount due was somewhere around \$475 or \$500, I  
10 don't remember which.

Q Will you state—you refer there in one of your letters to Lawson & Co.—what relation do you bear to them ?

A They are partners of Wm. M. Lyons & Co.

Q And you spoke about the terms that they were having with Mr. Crane ?

A Yes, sir ; I am not a member of the firm of Lawson & Co., but they're a member of Wm. M. Lyons & Co.

20 Q What were the terms, if you know, on which Lawson & Co. was selling Mr. Crane ?

Objected to as immaterial and irrelevant, and also that this witness has not shown his competency.

Objection overruled on the last ground.

Q Do you know what the conditions were that Lawson & Co. were selling Mr. Crane ?

A I do.

30 Q How do you know ?

A Because I was a party that sold him.

Q Please state what that bargain was ?

Objected to ; objection overruled.

A The bargain between Mr. Crane and Lawson & Co. was that whatever goods that he might get from them was to be consigned and the property to remain as Lawson & Co.'s until paid for.

Q And how were those goods delivered to Mr. Crane ?

40 (Question withdrawn.)



Q Were the goods delivered by Lawson & Co. to Crane, under agreement ?

A Yes, sir.

Q And was that agreement recognized afterwards by Schloss & Co. by a payment to Lawson & Co. for goods that were there delivered under that agreement ?

A It was.

Q Do you recollect of showing this paper to Mr. Crane, and Mr. Crane acknowledging this statement 10 to be correct ?

Objected to ; objection sustained.

*Cross-examined*, by Mr. Olds :

Q Where is the original book from which this copy is made that you produced here to-day of the goods ?

A I don't know where it is.

Mr. Dunn : Look at that.

Witness : Yes, it is on a sheet—it is here. 20

Mr. Dunn : You have, then, the original ?

Witness : Yes, sir ; I thought it was in the book, but it is in the sheet.

Q How do you know what goods were shipped by the Elliott Company to Crane, other than that your commissions were paid on the orders that you sent in ?

A I know by the statement that the Elliott Company has sent me of goods to Crane. 30

Q In course of business ?

A We do it this way—we sent the order out to the factory, and the factory executes the order, and if it's not executed they return the order to us, and I know in that way that the order was filled.

Q You would infer, in the usual course of business, that the order had been filled, but how do you know what goods were sent ?

A The order went to the factory, and if the order isn't filled the original order is returned to us. 40



Q Then, of your own knowledge you don't know what goods were shipped, or at what price?

A I know that the entire orders have been shipped.

Q Let me ask you a word in regard to the memorandum made at the time of the replevin of the goods that you have produced here; I notice it is simply sheets of paper—two of them on different colored paper and four on other paper—were they  
10 all made at the same time?

A I will have to look at the paper to see—I would have to compare this—this, I think, was in this way, that in going back to the office, I figured out the amount after making up the sheets—this could have been the paper that I had over there at the store or had in a book; that is where the old original memorandum was estimated.

Q On second thought, do you think that the two ecru were on the original memorandum made at  
20 the time of replevin, and that these yellow pieces of paper may have been made in New York city?

A Yes; that is what I mean; it may, or it may not; if I had them I could say that they were—for I could compare the ecru sheets with the other ones.

Q Can you tell now, why you have erased the articles described were not ecru sheets?

A Going through to make a tally and make them into suits.

Q Are you positive that all the goods marked on  
30 the ecru sheets were found in the store at the time?

A Yes, sir.

Q Have you seen the original list made by the sheriff at the time of the replevin?

A Well, a list I made—

Q But didn't the sheriff make a list?

A Yes, sir; I think so.

Q You hadn't compared your list with his?

40 A I never saw the sheriff but one time.



*Q* Was Mr. Demarest present at the time of replevin, also?

*A* I think it was Mr. Demarest and a number of other people in the employ of the Claflin Company.

*Q* Did Demarest make a list?

*A* That I don't remember.

*Q* After you were through with the execution of the writ—identifying the goods, &c.—did you compare your list with the sheriff, or with Demarest?

*A* That I don't remember.

10

*The Court:* How do you identify the goods as being the goods of the Elliott Furniture Company?

*Witness:* By going through the building, finding such pieces, and I knew the patterns and the construction of our goods, that I could pick them out anywhere—out of hundreds—the other clerks saw them, also.

*Q* You have samples in New York?

*A* Yes, sir.

*Q* Was there not a good deal of difficulty, however, in ascertaining the goods as you went through the Crane store?

20

*A* Well, all these goods were piled up, and we had to pull away goods

*Q* Isn't it true that in many instances you failed to find the whole suit?

*A* Yes, sir; sometimes a bureau, sometimes the washstand on the main floor, but we found complete suits.

30

*Q* You have read and referred to a number of letters, some sent by you to the plaintiff company, and some of the plaintiff company to you, and some sent to and received from Crane?

*A* Yes, sir.

*Q* The first letter you read, I think, was one dated November 14, 1892, by yourself to Crane?

*A* I believe so; yes, sir.

*Q* So we have your proposition covering so and so—are you positive that the interview at which 40



the terms of the proposed sales were gone over, were prior to this letter ?

A Yes, sir.

Q Where was that interview ?

A At my office.

Q At New York ?

A Yes.

Q Who was present ?

A I can't tell—my stenographer may have been  
10 present and my office boy—maybe Mr. Cairns.

Q Did you have a stenographer in the fall of 1892 ?

A No ; I don't think so.

Q Then if anybody was present, it was your office boy ?

A Either Mr. Cairns or one of the boys—office boy.

Q Who is Mr. Cairns ?

A My book-keeper and financial man.

20 Q You wrote that letter to Crane ; it was followed by that of September 16, two days later, by you to the Elliott Furniture Company ?

A Yes, sir.

Q A long letter ?

A Yes, sir.

Q That was followed by their letter in reply to you, dated September 19, 1892 ?

A I think there was such a letter.

30 Q Just refer to them ; I ask you if your letter of September 16 was followed by their reply on the 19th ?

A Yes, sir.

Q Then the next letter in the correspondence is your letter of September 21, 1892 ?

A Yes, sir.

Q Then their other letter to you of September 28, in which they say that Crane sent them a check for \$250 ?

40 A Yes ; here's the letter.



Q Next you referred to a power of attorney of October 24th?

A Yes, sir.

Q Now, then, you wrote a letter—

A October 24th—let's see—September 19th, I think I have one.

Q That is the date of the power of attorney?

A Yes, sir.

Q I think you read, also, a letter by Elliott of the same date?

10

A That is the power of attorney.

Q No; a letter?

A A letter from the Crane people, of October 24th, signed by Mr. Bassu.

Q This letter from Crane's store to you?

A Yes, sir.

Q Does your letter book show a letter by you to Crane of Oct. 24, 1892?

A I haven't read that one for I—

Q No, I ask you if your letter-book shows such a letter Oct. 24, 1892—the same date as this letter by Crane to you—from Lyons to Crane?

20

Witness reads letter of Oct. 24.

Q In other words, when Mr. Crane wrote to you that his patience was exhausted and he wanted his goods or his money back, you wrote him immediately about Schloss & Company's matter, also said that the other goods could be expected in a few days?

Objected to; question withdrawn.

30

Q You have had something to say that Claffin & Company recognize Lawson's account?

A Yes, sir.

Q Surrendering their goods?

A Yes, sir.

Q Is that a fact?

A Yes.

Q And isn't it also a fact that Lawson & Company had also their original invoice marked "On consignment?"

40



A No, sir ; I am not aware of that ; I simply place the orders with them, and if they mark their bills it is unknown to me.

Q Do you know that a year ago when this matter was in active argument among us that Lawson & Company's goods were returned because they had actually marked their goods on consignment ?

A I don't remember.

Q You recognize their bills ?

10 A Yes, sir ; I am not a partner of theirs, but they are a partner in our house, and I am selling agent for them.

Q Look at these invoices from Lawson to Crane and state whether they're noted on consignment ?

A I find here two, and find some "as before" mark ; here is one here marked "as before;" there is a consignment Dec. 27.

Q Never mind that ?

A There is only two that I find, so far.

20 Q Did you identify those as Lawson's statements and Lawson's bills ?

A Yes, sir.

Q Does your letter book show a letter by you to Crane of Oct. 26, 1892 ?

A Here it is.

Q That is not read—please read it ?

Witness does as directed.

Q Have you a letter of Nov. 2, 1892 ?

A Yes, sir ; here it is.

30 Q To Elliott Furniture Company ?

A I think it has been read.

Q Nov. 2—saying "on receipt send us copy of bill of lading ?"

A Yes, sir.

Q Does this all pertain to the first order of goods ?

A That I cannot state—I would have to sit down quite a while to trace it up.

Q How many orders went to Crane ?

40 A Considerable.



Q More than two orders?

A Yes, sir; I should judge three or four of them.

Q Will your order book show?

A I don't know that I have all of them here or not.

Q What time does that book cover—from what time to what time?

A This is an old book, formerly of the firm of Lyons—we used this up; I think it dates from 10 September 16, 1892.

Q To what date?

A That would be a hard thing to say when we stopped using this old book.

Q Is it copied in ledger form under each party?

A Yes, sir; I can turn to the Elliott and let you know all about it.

Q Do so, then—first order is what date?

A That is a pretty hard thing to tell; it is kind of mixed up—I have it here—March 24, 1892, on page 108.

Q What is the last of Elliott's?

A Running down to June 29, 1892.

*Mr. Dunn:* Ninety-two or ninety-three?

*Witness:* Ninety-two the page closes.

Q Did you not give us the amount of the second order sent for Crane from that book?

A I believe I did.

Q What is it?

A I will tell you—\$591.70.

Q What is the date of that?

A May 13.

Q Why did you say that the last date of the Elliott orders was in March?

A June, I said.

*By the Court:*

Q Which June?

*Witness:* June, 1892.



*The Court:* You have been telling us that this first order was September, 1892.

*Witness:* Well I have got confused.

*Mr. Dunn to Mr Olds:* I call on you to produce the original orders of F. E. Crane.

Court adjourns for the day.

10

Oct. 3, 1894, 10 A M. Examination resumed.

*Q* Take the letters which were produced yesterday so that you may further identify the correspondence?

*Witness* does as directed.

*Q* Have you a letter written by the plaintiff company to your firm, Nov. 30, 1892?

20 *A* I will look, and see—I haven't a copy of it here.

*Q* Have you the original letter?

*A* It may be in the book.

*Q* No, written by the Elliott Company to your firm, Nov. 30?

*A* Yes, sir, I have.

*Q* Please read it?

*A* "Charlotte, N. C., Nov. 30, 1892."

*Witness* reads letter.

30 *Q* Who received that letter?

*A* Well, either I or one of the firm in New York.

*Q* Do you remember the fact that such a letter came to your house in New York?

*A* Yes, sir.

*Q* Did you telegraph the plaintiff company in regard to notes?

*A* In regard to telegraphing, I can't say—such a thing we do; if we can get the mail off in the morning, it will reach North Carolina next morning at

40



9 A. M.; we either send a letter or telegram—I can't tell which.

Q Examine your record book and see if you sent a letter shortly after November 30 in answer to this ?

A I don't find such a letter in this book here.

Q Do you recollect what your reply was in response to this letter of November 30 ?

A I should think we would send word to the Elliott people; let me read that letter again; in 10 answer to that letter, I would say—or we would say—everything was satisfactory under the agreement.

Q Did you ever see any of the notes that Crane sent the Elliott Company ?

A I did not.

Q Do you know, as a matter of fact, whether he ever sent an endorsed note ?

A He did not.

Q Do you know whether the two notes here men- 20 tioned were finally accepted by the Elliott Company ?

A Yes, sir.

Q Do you know whether Crane finally paid those notes of November, 1892 ?

A He did; yes, sir.

Q Have you a letter written by your firm to the Elliott Company April 14, 1893—no such letter has yet been referred to by you ?

A April 14, 1893 ? 30

Q Yes.

*Mr. Dunn :* We have no objection to Mr. Olds reading his copy.

Mr. Olds reads letter.

Q Do you recollect writing such a letter ?

A Yes, sir; I do.

Q You have already referred to a letter of your firm to the Elliott Furniture Company of May 15, 1893 ?

40



A Yes, sir.

Q You say, "We neglected to state when Crane's order was sent in in the hurry for the goods ;" you have also reported from your order book an order of nine hundred and seventy of May 13 ?

A This letter reads altogether different to May 15.

Q What is that letter ?

A I think May 15.

10       Witness reads letter.

Q That is the letter to which you referred to, and my point of inquiry is directed to the entire contents of the letter ; I see you have also given us from your order-book an order two days before May 13—is that the order to which you referred May 15 ?

A. No ; I referred here to a March order, given in March, to the best of my knowledge.

Q Well, where is your order for March—any  
20 correspondence relating to the March order ?

A That will naturally refer to the May order, I should judge.

*Mr. Dunn :* Now he asks you to refer to the March one ?

*By the Court :*

Q In whose handwriting is that letter of May 13 ?

*Witness :* Mr. Cairns' ; we have a bill of lading coming in here on May 18 ; I don't know whether  
30 this letter has anything to do with this bill of lading—and if we sent an order a day or two before ; the goods could not have arrived in Paterson.

Q Well, could they be shipped from North Carolina as quick as that ?

A No, sir.

Q What does the bill of lading refer to ?

A To one carload of furniture to Crane, Paterson, N. J.

Q Would that be the March order, or that May  
40 order ?



A It looks to me as the March order.

*Mr. Dunn :* No ; that is the May order—the witness is confused.

*Witness :* That would be the May order.

Q What bills of lading have you in your hand ?

A May 18 and March 13.

Q Bills of lading ?

A Yes, sir.

Q In your evidence you only gave us reference 10  
to two bills of lading—one of October 25 and another of May 18—do I understand, now, that you have there a third bill of lading ?

A Yes, sir.

*Mr. Dunn :* That was referred to in evidence yesterday.

*Witness :* There are three carloads altogether ; that is the October one.

Q Your recollection is now that there were three 20  
carloads shipped by the Elliott Furniture Company to Crane ?

A Yes, sir.

Q And your recollection is that the three bills of lading represented those several shipments ?

A Yes, sir.

Q And yesterday you referred to us a bill of lading of October 25, 1892, and May 18, 1893 ; now you produce a third bill of lading, March 13, 1893 ; where did you get these three documents ? 30

A We sent word to the Elliott Furniture Company to make duplicates of all for the goods that were shipped.

Q And these documents have been sent you ?

A Yes, sir.

*Mr. Olds :* I understand you make no objection to these copies ?

*Mr. Dunn :* No.

*Mr. Olds :* We offer them in evidence. 40



*Q* Now, in the natural course of business, would the invoices be sent by the plaintiff company, or by you?

*A* By the factory.

*Q* And would they, in the ordinary course of business, be dated about the same date as the bills of lading?

*A* Yes, sir; occasionally we were liable to go down and have a car go on—say the 12th of the  
10 month—and the bills of lading not returned until the 13th—that may tell us but they're signed at the company's office.

*Q* You have given us, from your order-book, the amounts and dates of the two orders of the plaintiff's company by Crane—first one, May 13, 1893, \$591.70, and one September 16, I think; what was the amount of that order?

*A* September 16—what year?

*Q* 1892, the first order; turn to your order-  
20 book.

*The Court:* Never mind about that.

*Q* Then it is your recollection that there were three separate independent orders?

Court objects to question as repetition.

*Q* Have you any further correspondence than that produced by you, and referred to relating to this transaction?

*A* Not that I know of, except one or two letters that we didn't read yesterday.

30 *Q* A letter is found here among your bunch, and is as follows: "New York, March 17, 1893; Mr. F. E. Crane, Paterson, N. J."

Counsel reads letter.

*Q* This letter is signed "W. M. Lyons & Company," and doubtless refers to the shipment and the bill of lading of March 13?

*A* Yes, sir.

Letter offered in evidence.

*Q* Another letter, dated New York, March 12,  
40 1893, signed "Lyons & Company?"



Counsel reads the same. Letter offered in evidence.

*Q* Another letter is found, dated New York, September 26, 1892, to the Elliott Furniture Company, by William M. Lyons & Company, and saying, "Did you get the check from F. E. Crane; you will report, &c."?

Letter read, and offered in evidence.

*Q* The date of the last letter pertaining to the last shipment, which is perhaps a shipment which 10 covers the goods in question, seems to be May 18, and you produce a letter here of May 15, and the bill of lading of May 18; how did you turn that over to Crane—by letters to him, the same as the other shipments?

*A* No; after the first shipment was made, we had considerable trouble, because the goods were marked.

*By the Court :*

*Q* State how they were marked ?

20

*Witness :* They were marked to us on the bill of lading, as you will see, and they were lying here for some time; and then we notified the railway company there was a car load of goods in Paterson for us that we wanted Crane to get, and when he gave his orders afterwards he told us to ship the goods, and not mark them—as if they were consigned the people would talk about it.

*Q* The bills of lading all read alike—"Notify 30 F. E. Crane?"

*A* Well, they may read that way; I never looked over them; they may be that way.

*The Court :* Can you recollect any instructions as to last shipment of the goods?

*Witness :* No, I cannot; it was done by the bookkeeper.

*Q* Was this bill of lading sent to you as the two former ones were?

40



A I can't say.

Q I mean the original bill of lading on the last shipment?

A I can't say, as I am out of town a great deal.

Q Look at the paper now shown you and state what it is?

Question withdrawn and put in another form.

Q Is this bill which I am now showing you one which you first presented for these same goods, 10 when this question came up a year ago?

A What bill is this? This bill is not dated and I cannot say.

Q I don't ask you about the date, I ask you if that is a paper that came from your firm after Crane's failure—just when the question came up about your rights to have these goods a year ago?

A I don't understand your question.

*The Court:* He wants to know whether your firm sent out that paper? 20

*Witness:* We did.

*The Court:* After his last failure?

*Witness:* I couldn't say. The question if we we had sent a bill for any of Elliott's goods—well, as we have a power of attorney to act for them we have a right to send a bill and collect moneys all over our territories.

Q Well, that bill was for some goods?

A I can't say what goods, but some goods pur- 30 chased from the Elliott Company.

Q Look at that invoice and say whether that is the original invoice for the first shipment?

A Yes, sir; it looks like it.

Q October 25, 1892?

A Yes, sir, because it is Mr. Elliott's handwriting.

Q Look at the further paper I show you, and say whether it is a continuation of the same goods, October 25, 1891?

40 A It looks to me as a duplicate.



*Q* Are they duplicates—see if they call for the same goods?

*A* Yes, sir.

*Q* Are they both in Mr. Elliott's handwriting?

*A* Yes, sir, it looks that way.

*Q* A further invoice shown you, dated March 11, 1893—is that the original invoice?

*A* Yes, sir.

*Q* For the shipment in question here, March 11, or March 13, the same as the bill of lading? 10

*A* Yes, sir.

*Q* Do you recognize the handwriting of the letter now shown you, dated April 6, 1893, to F. E. Crane?

*A* Yes, sir.

*The Court:* A genuine letter from the Elliott Company?

*Witness:* Yes, sir.

*Q* I show you a promissory note, purporting to have been signed by Crane and the Elliott Furniture Company, for \$182 89, dated June 12, 1893— 20  
do you know anything about the note?

*A* I don't keep the books, so I don't know.

*The Court:* Is it a genuine note?

*Witness:* Yes, sir; Mr. Elliott received that, too, and signed it by himself.

*Q* His own endorsement?

*A* Yes, sir.

Original invoices offered in evidence. 30

*Q* Are you able to say, having now in hand the original invoices of October 25, 1892, and March 11, 1893, whether any of the goods which you have identified as being replevied, are included in those invoices?

*A* It is in the March and May shipments; there are none in October, at all.

*Q* Please identify on the list which you have given us here, the goods in the March shipment?

*A* That I cannot say, because our patterns are 40



alike ; they were making a No. 3 suit for the last three years, and it may have come in the March or June shipment, or any other shipment.

*Q* What have you there?

*A* I have twenty No. 3 suits.

*Q* The March shipment is for No. 3 suits?

*A* Twenty No. 3 of the suits.

*Q* What would that mean?

*A* They were bedsteads complete, and washstand  
10 and dresser complete.

*Q* You have found eight No. 3 beds, four No. 3 dressers, and two No. 3 washstands?

*The Court :* Was this furniture that you found at the time of the replevy, oak furniture?

*Witness :* Yes, sir.

*Q* But you have been unable to say or identify in which shipment it came?

*A* Yes, sir, that would be hard to say.

20 *Q* In this shipment of October 25, there are twenty-five oak suits, No. 23—how do you know that those are not in the list?

*A* When Mr. Crane placed his order with us he was out of them goods, I think.

*Q* How do you know?

*A* I have got his word for that.

*Q* You don't know except by hearsay?

*A* I don't know ; I have his word only.

*Q* You have a letter book just placed before  
30 you—what is that?

*A* The order-book of Wm. M. Lyons & Company.

*Q* And have you before you a letter-press copy of the order sent the Elliott Furniture Company?

*A* On what date?

*Q* On the May order?

*A* That is September—here it is now.

*Q* Have you taken any steps to get the original order from the other people?

40 *A* No, I have not



*Mr. Dunn :* That is a letter-press copy?

*Mr. Olds :* I am satisfied that it is a genuine copy.

Counsel reads same to the Court and jury.

*Q* You say it is an order that, so far as you know, remains unpaid for?

*The Court :* Witness answered that several times.

*Q* Have the two first orders, so far as you know, 10 been paid up in full?

*A* We always paid on account—he would give notes and run along that way.

*Q* Do you know whether the two first orders have been paid in full?

*A* I can't say.

*Q* You have replevied one No. 16 bed; five No. 2 beds; also seven No. 21 beds, dressers and suits, and other goods not marked in this order—how do you identify them as goods not paid for? 20

*The Court :* He has told you that he could not identify any of them.

*Q* When this trouble first came up, Wm. Lyons & Company claimed those goods as belonging to them?

*A* On behalf of the Elliott Company.

*Q* But you claim title to the goods?

*A* As Northern representative, with power to act.

*Q* Under your power of attorney, you attended 30 to all these transactions to the plaintiff company?

*A* Yes, sir.

*Q* And turned the goods over to Crane when there was difficulty in getting them?

*A* Yes, sir; we also turned over one lot of goods that went into this, which we mentioned, and that Decker also turned over.

*Q* Those goods are not in this suit?



A Yes, the Decker goods are.

*The Court:* Explain that?

*Witness:* The goods shipped here to A. C. Decker, he (Decker), he said that he was going out of business, and said that he couldn't use the goods; he said he had seen Crane who said that it was just what he wanted—he was a little short on that class of goods; to the best of my knowledge it was ten No. 3 suits.

10 *The Court:* And this was turned over to Crane?

*Witness:* Yes, sir.

*The Court:* Shipped to Decker?

*Witness:* Yes, sir.

*The Court:* Which Decker didn't want?

*Witness:* Yes, sir.

*The Court:* And then turned over to Crane?

*Witness:* Yes, sir.

20 *The Court:* Ten No. 3 suits?

*Witness:* Yes, sir.

Q And had you negotiated the Decker order?

A One of our salesmen did.

Q Have you a copy of the order in the letter book?

A I don't know.

Q Have you a memorandum of the order in the order book?

A I think we have.

30 Q Turn to it and give us the amount and date?

*Mr. Dunn:* I will look it up.

Q After you forwarded the order of the Decker goods, what next did you know of it?

A That's all—no more than we transferred the Decker goods over to Crane.

Q How did you effect that?

A It was done in the office of one of our salesmen.

40 Q Was the bill of lading sent to you by the Decker Company?



A The Decker Company notified us that they would not take the goods.

Q Have you any original data about this matter?

A I don't think that I have?

Q The goods came to Paterson, and Decker didn't want them?

A Yes, sir.

Q And have you a recollection whether you came to Paterson or Decker came to New York, or how 10 that matter was managed?

A The matter was managed through one of our salesmen.

Q You didn't attend to it at all?

A No, sir.

Q Do you know of your own knowledge that Crane got those goods?

A Yes, sir; they were transferred to Crane.

Q How do you know of your own knowledge?

A Giving Mr. Crane the order for the goods. 20

Q Did you give him the order for the goods?

A It came from my firm.

Q Did you give the order—do you know personally?

A It is on my books.

*By the Court:*

Q That is the money?

*Witness:* Yes, sir.

Q Have you any letters on your books pertaining to Crane? 30

A Mr. Cairns is trying to find that for me.

*Counsel:* That's all.

*Re-direct, by Mr. Dunn:*

Q Here's the original bill to Decker for those suits?

A It was for eight No. 25 oak suits and four No. 21 oak suits.

Q And ten of those suits were delivered? 40



A No ; I think all of them—the books there will show the transaction.

Q Have you ever seen this Decker invoice before to-day ?

A Yes, sir ; it came from Decker, returned to us.

Q When ?

A About the time it was marked there.

Q I show you this letter, addressed to Michael  
10 Dunn ; just look at that now and see if you can say anything ?

Objected to by the Court.

**Henry R. Cairns**, witness on behalf of the plaintiff, being duly sworn, testifies as follows :

20

*Examined* by Mr. Dunn.

Q Now, Mr. Cairns, what is your business ?

A I am a bookkeeper for Wm. M. Lyons & Co. and E. Lawson & Co.

Q Are you acquainted with Mr. F. E. Crane ?

A Yes, sir.

Q Did you have any negotiations with him on behalf of the house which you represent ?

A I did.

30 Q Now, beginning in September, 1892, and just prior thereto—just state to us what the first transactions were that you had with him in reference to delivering goods to him on behalf of the Elliott Furniture Company ?

A The conversation held between Mr. Lyons and Mr. Crane was in relation to a carload of furniture which Mr. Crane wanted to get of the Elliott Furniture Company.

*The Court :* This conversation was in your presence ?  
40



*Witness :* Yes, sir.

*The Court :* Go on.

*Witness :* Mr. Lyons told me that the Elliott Furniture Company couldn't ship him, in view of the fact that he had had trouble, and he believed he had lost something on a prior transaction, and that he was anxious and willing to help ; but any sales made to him by the Elliott Furniture Company would have to be in the shape of a consignment ; that he couldn't expect an order in any other way. 10

*Q* Anything said of the Claflin mortgage ?

*A* Mr. Crane said that there was a mortgage hanging over him, and that it was difficult for him to obtain credit, and that he wanted us to assist him as far as possible ; he realized that we couldn't sell him outright, and that he was willing to order these goods with that distinct understanding that they were to come as consigned.

*Q* What was done in pursuance of that conversation ? 20

*A* With that understanding I think I made out the order personally.

*Q* Have you the order there ?

*A* In the order-book ; yes, sir.

*Q* Tell us what the date of the order was ?

*A* The order was taken on Sept. 15—order number 158 ; the amount was \$848.00.

*Q* What was done in pursuance of shipping that order ?

*A* I wrote to the Elliott Furniture Company explaining the whole matter, and told them to ship the goods to Crane—the bill and bill of lading to us. 30

*Q* Is that the letter ?

*A* Yes, sir ; Sept. 16.

*Q* And afterwards, in pursuance of that, were the goods shipped ?

*A* The goods were shipped.

*By the Court :*

*Q* Do you know ?



*Witness :* Yes, sir.

*By the Court :*

*Q* Ever see them ?

*Witness :* I did not.

*Q* How do you know that the goods were shipped ?

*A* From the conversation with Mr. Crane.

*Q* And do you know also from any other source ?

10 *A* Yes, sir.

*Q* What other source ?

*A* From the fact that the commission was paid us on the shipments.

*Q* And do you know from any other source—making collections or anything of that kind ?

*A* Yes, sir ; I was in Mr. Elliott's office in Charlotte, North Carolina, in company with Mr. Lyons ; we went over the account, and Mr. Elliott called our attention—

20 *Q* No, but in your dealings with Mr. Crane ?

*A* We collected \$250 in advance and remitted that to the Elliott Furniture Company.

*By the Court :*

*Q* Did you make any further collections on the shipments ?

*Witness :* I am not positive whether the notes came to us and we transmitted them.

30 *Q* After that did you take any further orders from Mr. Crane ?

*A* Yes, sir.

*Q* What were the dates of those ?

*A* I don't recollect.

*By the Court :*

*Q* One on March 13 ?

*Witness :* Yes, sir.

*Q* Turn to it ?

*A* On Feb. 10, order number 78, \$708.

40 *Q* Can you tell us what that order covered ?



*By the Court :*

*Q* That is the order in the book there ?

*Witness :* Yes, sir.

*Q* What does it contain ?

*A* This contains the name and the amount, the original copy signed here.

*By the Court :*

*Q* Where is the order itself—the order that gives the details ?

10

*Q* Is this it ?

*A* Yes, sir.

*Q* Is that a copy of the original order ?

*A* Yes, sir ; the order is made out by me.

*Q* What page is it on ?

*A* On 121 of the order-book.

*Q* Can you say to us on what terms that order was shipped to Mr. Crane ?

*A* Yes, sir.

*Q* What were they ?

20

*The Court :* Tell us how you know the terms on which they were shipped to Mr. Crane ?

*Witness :* I made the terms with Mr. Crane.

*The Court :* Made the terms with him ?

*Witness :* Yes, sir.

*The Court :* Tell us what it was you made with him.

*Witness :* That the goods were to be consigned.

*Mr. Olds :* When was this ?

30

*Witness :* Feb. 10.

*Q* Go ahead.

*A* On arrival of the car, notes were to be issued covering the amount of shipment, but it was distinctly understood that it was to be considered as a consignment until the notes matured and were paid—that the goods were Elliott's until the account was fully paid.

*Q* Does that letter, dated March 17, correctly

40



state the amount due to them by the plaintiff for that car?

(Witness reading) "Herewith please find bill of lading from car."

Q Is that the amount for that car?

A Yes, sir.

Q Turn to the order of May; when was that shipped?

10 *The Court:* Now, as I understand it, an agreement was made between Mr. Lyons and Crane with regard to the September order?

*Witness:* Yes, sir.

*The Court:* And another was made between Mr. Crane and you with regard to the February?

*Witness:* No, sir; the agreement was to cover every shipment.

*The Court:* But that was made with Mr. Lyons?

20 *Witness:* Yes, sir.

*The Court:* You have just told us you have made an agreement.

*Witness:* I confirm the original agreement.

*The Court:* And what was that talk?

*Witness:* To the effect that these goods were to be considered as consigned in accordance with the previous agreement.

30 *The Court:* And that was the talk?

*Witness:* Yes, sir.

*The Court:* That he was to give notes for the amount on the arrival of the goods?

*Witness:* Yes, sir.

*The Court:* At what time?

*Witness:* Thirty, sixty and ninety days, I think.

Q Now tell us about the May order?

40 A Under order 255, May 13, \$591.70.



*Q* Now I view the original order there in your order-book?

*A* Yes, sir.

*Q* Just tell us what page it was found on?

*A* Page 218, it is on.

*The Court :* Now do you know of any bargain being made with regard to that order?

*Witness :* That order was taken in the office.

*The Court :* I ask you do you know of any bargain being made with regard to the giving of it? 10

*Witness :* Yes, sir.

*The Court :* Between whom was the bargain made?

*Witness :* Between Mr. Lyons and I and Mr. Crane.

*The Court :* Tell us what the talk was then?

*Witness :* He complained of the manner in which the goods came in, and we promised to exercise more care in packing; he also spoke of French plates being put in one suit. 20

*The Court :* What else?

*Witness :* About the original agreement?

*The Court :* What about that?

*Witness :* That these were to come as consigned, also, and he was to give notes as usual.

*Q* Do you know that these goods were shipped?

*A* Yes.

*Q* Do you know that they were delivered to Mr. Crane? 30

*A* Yes, sir.

*Q* Tell us what you know about their being delivered?

*A* From Mr. Crane's acknowledgment of their receipt.

*Q* Did you see them in Mr. Crane's store?

*A* No, sir.

*Q* After that, were there any other goods delivered? 40



ered to Mr. Crane by the Elliott Company that has been spoken of as the Decker goods?

*A* Yes, sir.

*Q* Tell us what you know about that transaction?

*A* I know that Decker wrote us to the effect—

*Mr. Olds* : Where is the letter?

*Witness* : That I can't say.

10 *Q* Tell us what you did with reference to the Decker goods?

*A* We transferred them to F. E. Crane.

*The Court* : Who did?

*Witness* : William M. Lyons & Company.

*The Court* : And what did you do with reference to it?

*Witness* : I signed the original invoice with an order.

20 *Q* I show you this, and ask you if that is the original invoice?

*A* Yes, sir.

*Q* Now, who made the arrangement with reference to the transfer of those goods to Crane?

*A* That I don't remember.

*Q* Do you remember how many suits were transferred to them?

*The Court* : You say that you sent that paper to somebody?

30 *Witness* : Either that or another.

*The Court* : And where did you get it?

*Witness* : From the Elliott Furniture Company.

*The Court* : By mail?

*Witness* : Yes, sir.

*The Court* : Did you do anything more than that?

*Witness* : I wrote the transfer, if it was written,  
40 and I believe it was.



*The Court:* Did you do anything else with reference to that Decker furniture?

*Witness:* That was all that was to be done.

*The Court:* Did you do anything else?

*Witness:* No.

*Q* That is all you did?

*A* Yes.

*Q* Did you have a conversation with Mr. Crane with reference to it all—taking the goods? 10

Objected to.

*A* Yes, sir.

*Q* Now, state what the conversation was which you had with Mr. Crane, with reference to the taking of the goods before he took them?

*A* We called his attention to the Decker shipment, and asked him if he could use them; he said they were just such goods as he wanted.

*The Court:* And where was this talk?

*Witness:* In the office in my presence. 20

*Q* Was there anything said about the conditions on which he should take them?

*A* There wasn't, no; because it was distinctly understood that—

Objected to.

*The Court:* Was there anything said with regard to the terms on which he should take them?

*Witness:* No.

*Q* Do you know whether he got them or not, of 30 your own knowledge?

*A* Yes, sir.

*Q* Do you know how many suits he got on that shipment?

*A* The entire shipment.

*Q* Do you know at what price it was put in to him at?

*A* Ten dollars a piece.

*The Court:* That means ten dollars a suit?

*Witness:* Yes sir. 40



*The Court :* And that wasn't the price at which they had originally been billed ?

*Witness :* No, sir.

*Q* Afterwards, did you have anything further to do in reference to collecting the money due from Mr. Crane to the Elliott Company, before the foreclosure of the mortgage ?

*A* Yes, sir.

10 *Q* Just tell us what you did in reference to that ?

*A* I went to Crane's store.

*Q* When was this ?

*A* Some two or three weeks before the foreclosure.

*Q* Tell us what occurred there ?

*A* I told Mr. Crane that there were rumors on Canal street,

Objected to.

*Q* What was the amount that you went there to collect on behalf of the Elliott Company ?

20 *A* I don't recollect the exact amount—it was in the neighborhood of \$500.

*Q* What instructions did you have when you went there in reference to the matter ?

*A* To either get the amount or get some satisfaction from Mr. Crane—that we would be protected or remove the goods.

*Q* Well, what was done there in pursuance of those instructions ?

30 *A* After conversing with Mr. Crane and the conversation with Mr. Porter—he seemed to be very excited—and we decided to leave the goods there ; Mr. Crane assured us—

Objected to.

*The Court :* You did nothing ?

*Witness :* We allowed the goods to remain.

*Q* Did you have any further negotiation with Mr. Crane with reference to the goods before the foreclosure ?

40 *A* Yes, sir.



Q When was the next ?

A On behalf of Schloss & Co.

Q You are the book-keeper also, for Schloss & Co. ?

A Yes, sir.

Q Do you know what arrangements they had with Mr. Crane as to delivering goods to him ?

A Yes ; that all goods were to be consigned and to be their property until fully paid for, and any article remaining in the store, in the event of 10 trouble, not paid for, they should recover at the time of the trouble.

Q What was done in reference—was any money owing to Schloss & Co. ?

A Yes, sir.

Q And do you know whether or not the Elliott Furniture Company had been paid, or is their bill still unpaid—about \$500 ?

A There is an amount still unpaid.

20

*Cross-examination*, by Mr. Olds :

Q How do you know there is anything due the Elliott Company, of your own knowledge ?

A There would be no occasion for my going to the store at all, if there was nothing.

Q Yes ; but how do you know that there was anything due—you simply inferred that from your instruction ?

A I am aware of it from the fact that I was pretty conversant with the bills of the Elliott Furni- 30  
ture Company in relation to him.

Q When you went to him did you have a bill or statement in your hand ?

A No, sir.

Q Did you have anything to show the exact amount ?

A No, I didn't.

Q Know what shipments were unpaid for ?

A It wasn't necessary ; no, sir.



Q Even if you were satisfied that there was something due or unpaid, you don't know on what shipments they were, or what amounts?

A I knew about the amount; yes, sir.

Q Did you know whether the Decker goods were paid for or not?

A No, they were not.

Q Did you know sufficiently the price of the three pieces that went to him of the Decker suits,  
10 and their several values?

A Yes, sir.

Q You say that the suits were transferred to Decker at \$10 a suit?

A Charged him \$100 for the total account.

Q That is a different price from what they were billed at?

*The Court:* The bill is here showing that.

Q Do you know the value of the beds or dressers,  
20 or washstands?

(Question withdrawn.)

Q Did you testify that on each of these three several orders there was a separate and independent conversation in your office in New York with Crane as to the terms on which the shipments were to be made?

A There was a conversation on two occasions; I am positive of that.

Q Just two?

30 A The first and the last.

Q Those are the only two occasions that you are positive about, but you have testified that you had personally made the bargain on February 10 for the shipment here of March 11 or 13?

A In so far as sending in the order.

Q And you testified that you recollected distinctly and definitely a conversation then with Crane and yourself making the bargain, did you not?

40 A I remember distinctly having a conversation



with Mr. Crane relative to goods ordered through us from the Elliott Company.

*Q* But you are not able to say now whether it was the February order or the May order, are you?

*A* I don't recollect the date.

*Q* Do you know whether Mr. Crane made a settlement by note, as proposed?

*A* I know that he issued notes, but whether they were paid or not, I don't know.

*Q* The notes were notes issued covering the entire amount of his purchase?

*A* I am of the opinion that they were on account—I don't think they covered any specific amount.

*Q* Well, did he not give notes covering the total amount of his purchases, the May purchase and the Decker purchase, as well as other purchases?

*A* I am sure that he gave notes.

20

**Frank E. Crane**, a witness on behalf of the plaintiff, being duly sworn, testified as follows:

*Examined* by Mr. Dunn:

*Q* What is your business?

*A* Furniture dealer.

*Q* Were you engaged in September and August, 1892?

30

*A* Yes, sir.

*Q* Did you, in September or August of that year, have occasion to procure the shipment of any goods to you from Mr. Lyons, from the Elliott Furniture Company?

*A* I did.

*Q* Will you state now—can you tell us about when it was that you had this understanding, or any other understanding or arrangement with them, about the time or month?

40



A To the best of my knowledge, I think it was in September.

Q Now, will you just tell us what was said by you to them, when the arrangement was made between you?

*The Court:* Just give us the conversation.

Q As to the shipment of the goods to you?

A I went to Mr. Lyons' office; I think, if I remember right, Mr. Cairns, the book-keeper, was  
 10 sitting there at the desk, and I told him I would like to get a lot of cheap suits, as I wanted to make a special run on them, knowing they were the cheapest goods in the market; I didn't know where else to go; Mr. Lyons refused to ship in a general way—he said they would only be grabbed by Mr. Claflin—that was their reputation, and I asked him if there could not be some understanding, or if he  
 20 couldn't ship on consignment where they would be protected, for I didn't want them to lose anything by me, and they would be helping me out by their shipping to me; and he said the only way would be to send them on consignment, and for us to pay for them as we sold them, he said; about the first, however, the understanding was that he wouldn't ship unless we paid him so much down in the first place, and in notes for the balance, and guarantee prompt payments, and that the goods—it was distinctly understood that the goods were to belong to the  
 30 shippers until such time as the bills were paid.

Q What was done in pursuance of that first conversation?

A I ordered a car lot.

Q Did you receive it?

A I did, after waiting some time.

Q I show you this letter, and ask you if that was sent from your house, and pertain to that transaction, October 24?

A This was written by my manager, and in reference to the first order.  
 40



Q Now, after that, do you remember how those goods came to Paterson—whether they came direct to you, or how?

A I think they were billed to the Elliott Furniture Company?

Q How did you get them?

A By an order from Lyons & Co., I think.

Q And afterwards did you give any further order for goods?

A Yes, sir, I did; and where I ordered any car 10  
lots I invariably sold out the lot before I would order another car, for it was a large amount to order at one time.

Q Do you recollect when your next order was sent in?

A I think two or three months after—I don't remember the day.

*The Court:* Do you know of February 10, 1893, if there was an order of that date, would that be 20  
the next one?

*Witness:* Yes, sir, because it would take us at least from two or three months to sell out a car.

Q Now what was done with reference to the procurement of the goods in that car?

A It was understood in the first place that all goods shipped at that time or thereafter were to be sent on consignment.

Q Do you remember receiving the second car?

A Yes, sir. 30

Q And how were they shipped—that is, to whom were they addressed?

A That I am not clear; in regard to that I don't remember. I think they were shipped or marked for the Elliott Company.

Q Do you remember having some conversation with them about their shipping them direct to you?

Question withdrawn.

Q After that, when did you next receive any 40



goods from them, or give them any orders for goods?

A I should think about the same length of time.

*The Court :* Do you remember how many car lots you got altogether?

*Witness :* Only three.

*The Court :* And the next one is May 13?

*Witness :* Yes, sir.

10 *Q* After that do you remember getting any other goods from them that had been shipped to Decker?

A Yes, sir.

*Q* How many suits did you get there, and what was the price?

A I think something in the neighborhood of fifteen suits; I don't remember the amount.

*Q* Do you remember how much you were to pay for the suits?

A We got a rebate. I think the Lyons Com-  
20 pany wrote to me asking me if we could use them.

*Mr. Olds :* Have you the letter?

*Witness :* No; all those letters are in the possession of Claflin at the present time. I had them on the file, and they were there.

*Mr. Olds :* We have no such letter at all; I have produced all letters pertaining to the case.

*Q* State how you came to take the Decker goods?

30 A They wrote to me and told me that Mr. Decker was going out of business, or they came late; and it was said that the goods did not arrive in time for Mr. Decker.

*Q* And the price stipulated to be paid by you?

A I think \$100 for the lot.

*Q* Now at the time that you were foreclosed on, how much were you owing to the Elliott Company?

A I think it was about in the neighborhood of \$500; it might exceed that a little, but I don't re-  
40 member the entire amount.



*Q* Do you remember having had a conversation with Mr. Cairns shortly before Claflin foreclosed on you, with reference to their accounts?

*A* Yes, sir.

*Q* Do you remember going over the invoice at that time and figuring it up?

*A* Yes, sir.

*Q* Was that owing to them on account of any special car, or on account of the shipments made to you? 10

*A* The shipments that had been made entirely.

*The Court :* Did you give notes for two shipments?

*Witness :* I couldn't tell you whether I did give notes for the last car or not, for the reason that I have no memorandum.

*The Court :* Had you given notes for the previous car lots?

*Witness :* Yes, sir. 20

*The Court :* But you're in doubt about the third?

*Witness :* Yes, sir.

*The Court :* Do you remember about the Decker lot?

*Witness :* I don't think I paid for that.

*The Court :* Are you able to tell us from which lot of furniture—which was the Elliott furniture in your store at the time of the replevin?

*Witness :* Certainly; in the last lot. 30

*The Court :* The May shipment?

*Witness :* Yes, sir.

*The Court :* The Decker and the May shipment?

*Witness :* Yes, sir; because I got them about the same time.

*The Court :* Was there anything in your first shipment?

*Witness :* No, I think not—if there was any at all there could only be one of three suits—it was a 40



cheap line of goods, and we always made a run on them.

*The Court :* To draw customers ?

*Witness :* Yes sir.

*The Court :* Do you think all of September and February orders had been sold before the replevin ?

*Witness :* Yes, sir ; I think they had all been sold before the replevin ?

10 *Cross-examined, by Mr. Olds :*

*Q* The foreclosure came toward the first of September or August, '93 ?

*A* Yes, sir.

*Q* The first shipments were fully paid for ?

*A* I think they were.

*Q* Look at the notes shown you June 12, '93, made by yourself to the Elliott Furniture Company, and say whether that isn't one of the notes given on account of his last shipment, and which you paid  
20 before your trouble came ?

*A* I think this was for the second lot we had ; after our giving notes in the first place, we tried to arrange so that we could pay the notes, or give a note, or would send on the cash, and if we should fail any time in that, then we would resort to sending them a note to hold it off a little longer.

*The Court :* That is a note of June, for how much ?

30 *Witness :* \$182.

*The Court :* On what time—thirty or sixty days ?

*Witness :* Two months.

*The Court :* That note has been paid ?

*Witness :* Yes, sir.

*The Court :* But you think it's on account of the second shipment, the order of February 10 ?

*Witness :* I think I remember distinctly giving notes for the first of March promptly, and after pay-  
40 ing those so promptly the Elliott Company had



more confidence, and we gave them every reason to be so, and tried to take care of them as much as we possibly could.

*Q* And whose handwriting is the body of this note ?

*A* George M. Roe.

*Q* Who is he ?

*A* A brother-in-law of mine—a book-keeper in my place at that time.

*Q* Where is he now ? 10

*A* In New York.

*Q* Where does he live ?

*A* I couldn't tell you—he moved there recently from Newark.

*Q* And where does he work ?

*A* I couldn't tell—he hasn't a position at all now.

*Q* Do you remember this sufficiently so as to say that you settled the entire shipments by notes, and this is the last one ? 20

*A* I don't remember so.

*Q* I hand you invoice of October 25, '92—see whether all the invoices that you received were substantially of that form—here are two more, that you may examine them ?

Witness does as directed.

*The Court :* Do you recollect whether the last invoice was substantially right—the one that you have in hand ?

*Witness :* I think they were ; I never received any different. 30

*Q* The last shipment—do you know what became of the original bill of which copies have been produced by Mr. Lyons ?

*A* At my store.

*Q* Do you know what became of them ?

*A* I don't ; he put them aside—I think filed them away somewhere, but I had changed book-keepers two or three different times, and, I am sorry 40



to say, that the books and papers were somewhat mismanaged.

*Q* All the bills of lading produced, three in number, read, "Order, notify F. E. Crane"—were they all turned over to you substantially in the same manner by the Lyons Company?

*A* I think they were—I think so.

10

**Richard Rossiter**, a witness on behalf of the plaintiff, being duly sworn, testifies as follows:

*Examined* by Mr. Dunn:

*Q* Sheriff, did you serve the writ of replevin in this case on behalf of the Elliott Furniture Company?

*A* I did.

20 *Q* Before serving the writ did you serve a demand?

*A* I did.

*Q* Have you the demand here that you served in this case?

*A* I have a copy.

*Q* On whom was that served?

*A* I served it on Mr. Demarest; I found him at the store—at Mr. Crane's store.

*Q* Is that the demand?

30 *A* Yes, sir.

*Q* Have you the marks—did you find all the goods in the demand?

*A* No, all the goods were not found.

*Q* The goods were not given up when the demand was served?

*A* No, I served the writ, and took formal possession.

*Q* And then a bond was given back by the defendants?

40 *A* Yes, sir.



Q And they retained the goods?

A Yes, sir.

Q Can you tell us what was done—who identified these goods for the Elliott Company?

A Mr. Lyons, he was at the store, and he and Mr. Demarest went through the goods; Mr. Demarest represented Mr. Claflin, and Mr. Lyons the Elliott Company; I endeavored to check off by the demand list, and we found some broken suits, and some difficulty in keeping track of them, but Mr. Demarest and Mr. Lyons agreed together to go through the store and take a list of the goods in the book which Mr. Demarest had, and they agreed afterwards before me, the goods they found, and the list was given to Mr. Lyons, from the memorandum made by Mr. Demarest, and inspected by Mr. Lyons. 10

Q And do you recollect anything being said to have that done for convenience, and that they treated the goods in the suits as all being found? 20

A They agreed there together, what Mr. Lyons identified to the satisfaction of Mr. Demarest from his memoranda would be agreed upon by both parties, and generally my list is checked off, yet it is not actually correct on account of the broken suits.

Q That is the list that you have there?

A Yes, sir.

Q What do the marks there indicate—they are straight marks up and down? 30

A It indicates what we found.

Q Each one of those indicate a number of a suit?

A Yes, but in the broken suits I don't know how many pieces were found, I didn't continue my checks longer.

*Cross-examined*, by Mr. Olds:

Q Did Lyons and Demarest both make lists of the goods found as you went through the place? 40



A No, sir ; I didn't go through the whole store ; I only went on the first floor and the second, and waited until they ransacked the store and found what goods they did.

Q Did they make their own lists ?

A Mr. Demarest made a list of the goods that he had admitted to Mr. Lyons, or that Mr. Lyons claimed was his, and Mr. Demarest admitted, from the marks, were his ; and they both agreed there in  
10 my presence, and Mr. Demarest took a list in a small book, and he called off to Mr. Lyons the different goods, and they located the broken suits.

Q And they agreed in your presence that day ?

A Yes, sir.

Q So that this was the only transaction at the time of the execution of the writ ?

A Yes, sir.

Q And it resulted ultimately in Demarest dictating from the small book ?

20 A My remembrance is that Mr. Demarest had a small book and had the articles of furniture entered in that book, or on a paper in the book. He took a book and called off to Mr. Lyons, in my presence, the different articles put down.

Q And didn't he write on the back of the demand which you then handed him, only using a book simply for a rest ?

A Well, possibly ; I had an idea that he had used the book.

30 Q Did you get a true list yourself of what they agreed you had found that day under the writ ?

A No, sir.

Q Then when you returned that you had taken the goods found in the writ, that wasn't technically or strictly true ?

A The understanding was between them that they had agreed on the list of goods.

Q When you made a return of all the goods named in the writ, that technically wasn't true ?

40 A No, sir.



Q Do you remember what time of day the replevin took place—whether in the afternoon or forenoon?

A It was in the evening.

Q Were there several writs executed at the same time?

A Yes, sir.

Q You went there and handed Mr. Demarest a demand?

A Yes, sir.

10

Q And on his refusal to surrender the goods you then executed the writ?

A Yes, sir.

Q You had the writ with you as well as the demand when you went to the store?

A Yes, sir.

Demand offered in evidence.

Plaintiff rests.

20

**Frank E. Crane, re-called.**

*Examined by Mr. Olds:*

Q You are acquainted with Mr. Demarest, the employee of the Claffin Company?

A Yes, sir.

Q And is he the gentleman who came to see you several times with reference to the account of Claffin & Co., and prior to foreclosure?

30

A He came to see me to go over and take account of stock.

Q He came to see you?

A Yes, sir, to take account of stock.

Q When he came to see you before the struggle, did you not say to him in your store that you had no consigned goods?

A No, sir; I am positive I never said any such thing.

40



Q Except some bamboo furniture goods?

A No, sir; I couldn't say it and tell the truth.  
Cross examination declined.

Defendant's counsel moves for a nonsuit on the ground—

First, That there was no demand prior to the institution of the suit;

Second, That the incorporation of this plaintiff company has not been shown;

10 Thirdly, That the contract here is one of sale and not consignment.

Motion denied.

#### TESTIMONY FOR THE DEFENDANTS.

**Orlando Demarest**, being duly sworn, testifies as follows:

Q Are you in the employ of the Claffin Company of New York City?

20 A I am.

Q Connected with the law department?

A Yes, sir.

Q One of their so-called outside men?

A Yes, sir.

Q Who managed practically the concern of their customers, when needing personal management outside of their New York offices?

A Yes, sir.

Q You are one of the defendants in this suit?

30 A Yes, sir.

Q Are you the defendant that Claffin & Company placed in charge of the Crane goods on foreclosure of their chattel mortgage?

A Yes, sir.

Q And you heard Sheriff Rossiter's testimony as to what took place at the time of replevin?

A I did.

Q Look at the paper shown you, and state whether you made a memorandum at the time of  
40 the replevin, and if so, whether that is it?



A At the time of the replevin I made a memorandum right on the back of a copy of the writ; here's my memorandum on the back that I made.

Q Was Mr. Lyons present?

A He was by my side when I made this.

Q You and he went to the store trying to identify these goods as far as could be?

A Yes, sir.

Q And did you afterwards give him a copy of that statement or list, or what was done? 10

A My impression is that he had a copy himself, and instead of taking an exact copy like this, I think he reduced it to suits.

Q Compare the list which he has produced—read the list which you have made, and see whether on reduction to suits it will amount to the same thing?

A These are single, and those arranged in suits, one No. 25 bed, and No. 3 bed.

*The Court:* Did you find any No. 25 dresser or 20 washstand?

*Witness:* Did I find a 25 dresser and washstand?

*The Court:* Yes.

*Witness:* But I found here seven 25, and they're mixed up.

*The Court:* Do I understand those may be complete suits when altogether?

*Witness:* Yes, sir. 30

*The Court:* How many 25 dressers did you find altogether?

*Witness:* There appears to be fourteen here.

*The Court:* Only twenty-five 14 dressers?

*Witness:* Yes, sir.

*The Court:* How many 25 beds did you find?

*Witness:* There appears to be eighteen 25 beds.

*The Court:* How many 25 washstands did you find?

*Witness:* Fifteen. 40



*The Court :* How many No. 27 beds did you find in your list ?

*Witness :* Five.

*The Court :* How many 27 dressers ?

*Witness :* Nine.

*The Court :* And how many 27 washstands ?

*Witness :* Ten.

*The Court :* Now, how many No. 16 beds did you find ?

10 *Witness :* One.

*The Court :* How many No. 2 beds did you find ?

*Witness :* Five.

*The Court :* How many No. 3 beds did you find ?

*Witness :* Nine.

*The Court :* How many No. 3 dressers ?

*Witness :* Four.

20 *The Court :* How many No. 3 washstands ?

*Witness :* One.

*The Court :* Look again ?

*Witness :* Only one.

*The Court :* Well, there is a deficiency there ; this is all that you found ?

*Witness :* This is as I had it at the time.

*The Court :* How many No. 22 beds did you find ?

*Witness :* Two.

30 *The Court :* How many No. 22 dressers ?

*Witness :* There should be three.

*The Court :* How many No. 21 dressers ?

*Witness :* I only find one.

*The Court :* How many No. 21 washstands ?

*Witness :* One.

*The Court :* How many No. 26 beds did you find ?

*Witness :* Two.

*The Court :* And dressers ?

40 *Witness :* I didn't find any.



*The Court :* Now washstands—how many No. 26 washstands ?

*Witness :* None.

*The Court :* How about No. 18 beds ?

*Witness :* Two.

*The Court :* How about No. 1 beds ?

*Witness :* Four.

*The Court :* Have you anything else on your list than you have already given us ?

10

*Witness :* No, sir.

*Q* Mr. Demarest, on taking possession of Mr. Crane's store, did you carefully go through all of his papers, correspondence, vouchers, books, &c., and gather up all that you could pertaining to the several replevined suits—among others everything that pertains to the Elliott Furniture Company ?

*A* Yes, sir ; when the writs came in I went through the different correspondence.

*Q* And what did you do with the papers you 20 found ?

*A* I put them all together in that envelope, and classified them, and turned them over to Claflin's attorney.

*Q* Did you find any invoice for the last shipment of goods, or do you recollect ?

*A* I can tell by looking at the envelope.

*Q* Look at the papers shown you, and say whether that is everything you found ?

30

*A* Well, these are the papers that I turned over to you.

*The Court :* Do you recollect that that is everything that you found relating to this suit ?

*Witness :* As to the exact number of papers.

*The Court :* If it's everything that you found.

*Witness :* No, I wouldn't say that, because I don't see any man that can remember sufficiently of that.

40



Defendant offers in evidence the original chattel mortgage by F. E. Crane to the Claffin Company, dated Aug. 5, 1892, and recorded in Book Q of Chattel Mortgages of Passaic county, at page 178. Also bill of sale of Crane to the Claffin Company, dated Aug. 29, 1893.

Q I hand you statement of the Claffin Company to Frank E. Crane. Look at that and see whether you can recognize the amount of invoice from  
10 Crane to the company at the time of foreclosure.

Objected to.

Q Have you ever seen these statements?

Objected to.

Q Was there a large debt due at the time of foreclosure?

A Yes, sir.

Q About how much was it—a small debt or a large debt?

20 A A large debt.

Q Has the debt ever been liquidated in any way by foreclosure or otherwise?

A No, sir.

Q Do you remember going to Mr. Crane's store just before foreclosure, in reference to this account?

A Yes, sir.

Q And having a conversation with him in reference whether any goods were consigned?

A Yes, sir.

30 Q What did Mr. Crane say in reference to that?

A Well, it is customary to ask a number of questions about his estate and general matters, and among them I asked if he had anything consigned—consigned goods, and he said that he had for one small amount, I don't remember the company, but it was a dealer of bamboo goods, easels and music racks, and I said are you sure that is all that you have in your store, and he said that he ought to know what he had in his store; I asked him several  
40 questions of that kind.



*Cross-examined*, by Mr. Dunn :

Q When was this conversation—how long before the foreclosure ?

A About a week.

Q And the foreclosure took place what date when you took possession ?

A I can't give you the date.

*The Court :* The latter part of August ?

Q About August 27 ?

10

A About that time.

Q And the sale took place Sept. 14 ?

*Mr. Olds :* I admit that the sale took place Sept. 14.

Q In reference to this matter about which there seems to be a variance between your statement and our demand, what does that one 25 mean—a suit complete ?

A No, sir ; a bedstead.

Q And so with 27 ?

20

A Yes, sir.

Q Do you recollect that there were several suits complete there ?

A Yes, sir ; but we didn't take them as suits—had them down separately.

Q Down on the lower floor, did you take them as suits there ?

A No, sir ; Mr. Lyons, when he would find a certain article, he would say, "Here's a bed, go to the next thing."

30

Q But there's nothing on your memoranda to indicate whether it is a bed or suit ?

A When the thing was fresh in my mind I made this other memorandum reducing it to suits, on the floor before they were touched or removed.

*The Court :* When was that ?

*Witness :* Right after it took place.

*The Court :* What do you mean ?

*Witness :* Several days after.

40



*The Court :* But this original memorandum, in a number of cases, does not indicate what it is—whether a suit, or bed, or washstand, or dresser—in a number of cases is that right?

*Witness :* No; as far as it is there it isn't marked; but they were beds.

*The Court :* These down here—are they marked?

*Witness :* I marked them as beds, because there were so many of them I have marked—I found there  
10 a 21 dresser, and the next a dresser.

*The Court :* When did you cross those lines off—now, here, when you were calling them off—

*Witness :* I suppose when I called them off to Mr. Lyons I crossed them out.

*Q* Do you recognize that paper as being the paper upon which Mr. Lyons made copies of the list which you called off?

*A* No, sir; my recollection is that Mr. Lyons  
20 took it down in that little memorandum book—I never saw them.

*Q* They came from the Elliott Furniture Company?

*A* I don't know; they may have come from the printer; I can't testify as to that.

*Re-direct, by Mr. Olds :*

*Q* Where was Mr. Crane's book?

*A* In the office of the Claffin Company.

*Q* In New York?  
30

*A* Yes, sir.

*Q* Do you know whether this last shipment was settled by notes or not?

*A* The record is that they were settled by notes. Objected to.

*Mr. Dunn :* I ask that the answer be stricken out.

*The Court :* You don't know anything about it of your personal knowledge?

*Witness :* No, sir; I wasn't present.  
40



*Re-cross*, by Mr. Dunn :

Q As to the amount of money that he was owing to Claffin & Co—you don't know anything about it?

A Only from their books; that is the only method that I have for obtaining information.

Court adjourned for recess.

10

1.30 P. M., examination resumed.

Mr. DEMAREST, recalled.

*Examined* by Mr. Olds :

Q After the informal talk, during recess, when Mr. Lyons and you compared your respective lists together, what do you say now as to those numbers in which Mr. Lyons has marked complete suit?

20

A After his Honor called my attention to the differences that had been marked, I have tried to remember, and come to the conclusion that where there are no marks must have been suits.

*The Court* : So that Mr. Lyons is right?

*Witness* : This individually, and the term "lots" above that, indicating, is complete, and there is no doubt about it; I am positive.

*The Court* : The memoranda of the goods found there are correct?

30

*Witness* : Yes, sir.

It is further stipulated, between counsel for the respective parties, that all of the goods mentioned on the statement presented by Mr. Lyons were found at the time the Sheriff executed his writ, with the exception of two No. 18 beds, one No. 16 bed, four No. 1 beds, five No. 2 beds, two No. 26 beds.

Also, that there was due plaintiff, and these goods were worth the sum of \$133, and those goods, worth

40



\$433, were all included in the shipment, and the Decker shipment, and that the amount of \$100 is apporportioned to the Decker shipment, which is agreed upon as seven No. 25 suits and three No. 21 suits.

Defendants rest.

10 *Mr. Olds:* If your Honor please, under the stipulations made between the counsel, there are no questions to be addressed to the jury, under my conception of the case. I wish to present to your Honor my requests to charge.

*The Court:* Pass them up.

*Mr. Olds:* I will put them in *pro forma* shape; they're fragmentary here.



## EXHIBIT.

---

### *CHATTEL MORTGAGE AND AGREEMENT.*

Made at Paterson, N. J., August 5th, 1892, by 10  
and between Frank E. Crane, of Paterson, N. J.,  
of the one part, and The H. B. Claflin Company, a  
corporation organized under the laws of New Jer-  
sey and doing business in New York City, of the  
other part.

Whereas, Said Crane, a retail furniture dealer at  
No. 211 Main avenue, Passaic, Passaic county, N.  
J., and at Nos. 79 and 81 Broadway, Paterson, Pas-  
saic county, N. J., is indebted to said The H. B. 20  
Claflin Company, wholesale dry goods dealers, for  
merchandise heretofore delivered in the sum of two  
thousand and seventy dollars and eighty-two cents  
(\$2,070.82);

And whereas, Said Crane is largely indebted to  
others also and has requested said company for an  
extension on their claim and for advances of cash  
and merchandise, to enable him to continue in busi-  
ness, and as inducement thereto, (1) has made a state-  
ment of his financial condition to said company, the 30  
truthfulness of which he hereby warrants; (2) has  
made an assignment to said company of all his book  
accounts, amounting in face value to \$ , 90  
per cent. of which at least are warranted good and  
collectible; and (3) is willing to mortgage both his  
said stores and all his property now or hereafter  
therein.

Now, therefore, in consideration of the premises  
and the mutual covenants herein, said parties have  
agreed and do agree as follows:



## FIRST.

The H. B. Claflin Company grant Mr. Crane an extension of three months on his said indebtedness of \$2,070.82—*i. e.*, until November 5th, 1892, the same to bear interest from the date hereof.

## SECOND.

10 The H. B. Claflin Company this day advance Mr. Crane thirty-five hundred dollars (\$3,500) in cash to enable him to pay certain items of indebtedness to others, said (\$3,500) to bear interest from the date thereof.

## THIRD.

The H. B. Claflin Company agree and bind themselves to advance Mr. Crane hereafter cash to the amount of four thousand dollars (\$4,000) and merchandise to the amount of thirty-five hundred dollars (\$3,500)—*i. e.*, they agree hereafter to advance Mr. Crane \$7,500 altogether.

20 All future merchandise advances hereunder to be strictly for Mr. Crane's own business, and all to be and remain the property of said company until actually in Mr. Crane's stores, upon arrival wherein the same shall at once be subject to the lien of this mortgage.

30 All future cash advances shall be used for the benefit of Mr. Crane's furniture business and be paid on his call, but in such directions and to such persons or firms and for such specific purposes as may from time to time be agreed upon by Mr. Crane and William B. M. Jordan, Esq., credit clerk of said The H. B. Claflin Company. The primary intent of the agreed \$4,000 cash advance is to enable Mr. Crane to make satisfactory settlements with his other creditors. All cash advances to bear interest from the date of advance.

## FOURTH.

Said Crane grants, bargains and sells unto said The H. B. Claflin Company, its successors and as-  
40 signs forever—



All the goods, chattels and personal property, described as follows, to wit :

(1.) One white horse, "Frank ;" one roan horse, "Billy," and one roan mare, "Nellie ; five wagons (viz., two top business wagons, two open business wagons and one top buggy) ; seven sets of harness, lot of stable implements, hay, feed and provisions, one hair picker—said property being now at his factory, or stable property, at No. 93 River street, Paterson, N. J—together with all horses, wagons, harness and personal property now or hereafter at said premises. 10

(2.) All present and future leases of his said stores—one at No. 211 Main avenue in Passaic, Passaic county N. J.; the other at Nos. 79 and 81 Broadway, Paterson, Passaic county, N. J.—and the benefits of all the terms and covenants thereof.

(3.) The good will of his business at Passaic and Paterson. 20

(4.) All the stock of furniture, carpets and bedding, and all the machinery and office and store fixtures and furniture, and all the goods and chattels and personal property of every kind now or hereafter in, upon or about said store buildings, and each of them, and the premises adjacent thereto, or to either.

#### FIFTH.

Said Crane shall and will forever warrant and defend said goods and chattels and the property hereby granted and sold against all parties whomsoever. 30

#### SIXTH.

Said grant and sale and this mortgage are upon condition, nevertheless, that if said Crane shall—

(1.) Well and truly pay unto said The H. B. Claffin Company, its successors and assigns, all his indebtedness to them, future as well as present, to wit : 40



|        |                                               |                    |
|--------|-----------------------------------------------|--------------------|
| (a)    | The old merchandise account,                  | \$2,070.82         |
| (b)    | " cash advance of this date,                  | 3,500.00           |
| (c)    | " " agreed to be hereafter<br>advanced,       | 4,000.00           |
| (d)    | Merchandise agreed to be here-<br>after sold, | 3,500.00           |
| Total, |                                               | <u>\$13,070.82</u> |

Together with interest as agreed.

10 And also all other indebtedness hereafter arising in their favor, whether for cash loans or for merchandise to be sold and delivered, even if in excess of the amounts above agreed upon.

(2.) Shall keep the mortgaged property insured against fire for the benefit of the holder hereof and assign the policies.

(3.) Shall allow an inspection of the mortgaged property at all times.

All of which he, said Crane, promises to do—  
Then this mortgage to be void.

20

#### SEVENTH.

In case of default at any time in making payment of said indebtedness, or any part thereof; or in case the mortgaged property shall at any time be sold or removed from the said stores, or either of them, in bulk, or in unusual quantities, or with intention, or so as in effect to impair or jeopardize the security of the holder thereof; or in case Mr. Crane shall allow  
30 any attachment, judgment, distress warrant or other lien to be entered up of record or put upon his property, or any part thereof; or in case his business, or his ability to do business, shall be stopped for any cause and the security of the holder hereof thereby jeopardized or impaired—then, and in every such case, the entire amount for which this mortgage is or may be a lien, if not already due, shall at once be and become due and payable, and the holder hereof may enter said or any stores, build-  
40 ings, stables or premises whatsoever where the said mortgaged goods or any part thereof are or may be



placed and impound the same, or take and carry them away and sell the same in bulk or otherwise, retaining out of the proceeds in the first place all costs and charges of the sale, including watchmen's fees and one hundred dollars (\$100) as an attorney's fee; and in the second place all the indebtedness of Mr. Crane for which this mortgage is or may be security, cancelling the several portions thereof in any order they may see fit, and rendering the overplus, if any, to Mr. Crane, his legal representatives 10 or assigns. If the proceeds of sale are insufficient to pay all claims of The H. B. Claffin Company, its successors or assigns, Mr. Crane shall pay the deficiency.

## EIGHTH.

It is, of course, understood that Mr. Crane may carry on his business as usual heretofore, notwithstanding the making of this mortgage.

In witness whereof, said parties have hereunto set their hands and seal in triplicate the day and year 20 first above written.

F. E. CRANE, [SEAL.]

D. N. FORCE, [SEAL.]

*Treasurer of the H. B. C. Co.*

Subscribing witnesses :

FRANKLIN M. OLDS,

SAMUEL H. WALKER.

STATE OF NEW JERSEY, }  
COUNTY OF PASSAIC. } ss:

30

Be it remembered, That on this fifth day of August, A.D. 1892, before me, a Master in Chancery of New Jersey, personally appeared Frank E. Crane, who I am satisfied is the grantor or mortgagor in the foregoing mortgage named, and I having first made known to him the contents thereof, he did acknowledge that he signed, sealed and delivered the same as his voluntary act and deed.

FRANKLIN M. OLDS,

*Master in Chancery of New Jersey.* 40



STATE OF NEW YORK, } ss :  
COUNTY AND CITY OF NEW YORK. }

Be it remembered, That on this fifth day of August, A.D. 1892, before me, a Master in Chancery, appeared Samuel H. Walker, who, being by me duly sworn, doth depose and make proof to my satisfaction, that he well knows the corporate seal of The H. B. Clafin Company, one of the parties named in the foregoing mortgage; that the seal thereto affixed is the proper corporate seal of the  
10 said company; that the same was so affixed thereto, and the said mortgage signed and delivered by Dexter N. Force, who was, at the date and execution thereof, treasurer of said company, in the presence of the said deponent, as the voluntary act and deed of the said company, and that the said deponent thereupon signed the same as subscribing witness.

SAMUEL H. WALKER.

20 Sworn to and subscribed before me, a  
Master in Chy. of N. J., at New  
York, N. Y., August 5, 1892; all of  
which I certify. }

FRANKLIN M. OLDS,

*Master in Chancery of New Jersey.*

STATE OF NEW YORK, } ss :  
COUNTY OF NEW YORK. }

Dexter N. Force, being duly sworn, upon his oath  
30 says as follows :

I am the treasurer of The H. B. Clafin Company, the mortgagee in the foregoing mortgage named, and the owner and holder thereof. The true consideration of said mortgage is as follows : On the date of the same, to wit, on this date, August 5th, 1892, Frank E. Crane, of Paterson, N. J., the mortgagor in said mortgage named, owes said The H. B. Clafin Company, for merchandise heretofore sold and delivered by said company to said Crane at his request  
40 the sum of two thousand and seventy dollars and



eighty-two cents (\$2,070.82.) He also owes said company, for cash this day loaned and advanced to him by said company at his request, the sum of thirty-five hundred dollars (\$3,500); and said company has agreed, as in said mortgage set forth, hereafter to advance to Mr. Crane the further sum of \$4,000 in cash, and also merchandise to be used in his business to the amount of \$3,500; and said mortgage has been given as security for the payment of said indebtedness, to wit:

10

|                                        |             |
|----------------------------------------|-------------|
| (1) The old merchandise account afore- |             |
| said,                                  | \$2,070.82  |
| (2) The cash advance of this date,     | 3,500.00    |
| (4) " advance of cash as agreed upon,  | 4,000.00    |
| (4) " " " merchandise as               |             |
| agreed upon,                           | 3,500.00    |
| Total,                                 | \$13,070.82 |

And deponent further says that the amount due and to grow due upon said mortgage, as near as he can state, is the sum of \$13,070.82, with interest on 20 \$5,570.82 thereof from this date, and interest on future cash advances from the dates of the same, respectively.

D. N. FORCE.

Sworn to and subscribed at New York )  
City, N. Y., August 5, 1892, before )  
me, a Master in Chancery of N. J. )

FRANKLIN M. OLDS,

*Master in Chancery of New Jersey.*

[Endorsed.]

30

Frank E. Crane  
to

The H. B. Claflin Co.

Chattel Mortgage, dated August 5, 1892.

Received in the clerk's office of the County of Passaic on the 5th day of August A.D., 1892, at 4.05 o'clock in the afternoon, and recorded in Book Q of Chattel Mortgages for said county, on pages 178, &c.

A. D. WINFIELD, *Clerk.* 40



## Passaic County Circuit Court.

|    |                                                    |    |   |                     |
|----|----------------------------------------------------|----|---|---------------------|
| 10 | THE ELLIOTT FURNITURE<br>COMPANY,                  | v. | } | <i>In Replevin.</i> |
| 20 | THE H. B. CLAFLIN COMPANY<br>AND ORLANDO DEMAREST. |    |   |                     |

MICHAEL DUNN, Attorney for Plaintiff.

FRANKLIN M. OLDS, Attorney for Defendants.

### BILL OF EXCEPTIONS.

Be it remembered, that on the second day of  
 20 October, 1894, at a Circuit Court holden at Paterson,  
 in and for the county of Passaic, before his Honor,  
 JONATHAN DIXON, Esq., one of the Justices of the  
 Supreme Court of Judicature of the State of New  
 Jersey and Judge of said Circuit Court, the issue  
 joined in the above stated cause between said par-  
 ties came on to be tried by a jury for that purpose  
 duly empaneled; the testimony in the cause having  
 been concluded and both parties having rested the  
 cause, and said Judge being about to charge the  
 30 jury, the counsel for the defendants requested his  
 Honor, the Judge, to charge and instruct the jury  
 as follows, viz:

*First.* The whole question is one for the Court—  
 one of law—as to the construction of the contract,  
 and jury must take instructions from the Court.

*Second.* The preliminary transactions, conversa-  
 tions and correspondence cannot be considered as  
 varying, altering or contradicting the contract as  
 40 subsequently made in the invoice.



*Third.* The contract is embodied in the invoice of May 18, 1893, which was like those of October 25, 1892, and March 13, 1893.

*Fourth.* The sending of these invoices and transfer of bill of lading conclusively indicate intention of parties, and passed title when followed by possession in Crane.

*Fifth.* In particular, the \$100 Decker goods were absolutely sold to Crane, no reservation or terms of sale being made at the time and the goods transferred on an unconditional order. For this, anyway, plaintiff cannot recover. 10

*Sixth.* No demand prior to suit, and therefore verdict must be for defendant.

*Seventh.* No proof of incorporation of plaintiff company, and therefore must be verdict for defendant.

*Eighth.* Sale was a conditional one and therefore void, as being an evasion of New Jersey statute, as to such sales as against public policy. 20

His Honor, the Judge, declined to so charge the jury in said cause as above requested, except as charged in the charge hereunto annexed. Whereupon counsel for the defendants made exceptions to said opinion of said judge and prayed the said judge to set his hand and seal to this bill of exceptions.

And it is sealed accordingly.

JONATHAN DIXON, *Judge.* [L.S.] 30

Whereupon said Judge proceeded and charged the jury as follows :

Gentlemen of the jury :—There is but one question left in this case, and that is the question to which counsel for the plaintiff has addressed his remarks—the question whether it was the intention of the Elliott Furniture Company and Mr. Crane, when the goods shipped under the order of May, 1893, 40



and the Decker goods were delivered to him, that that should be a transfer of the title to Mr. Crane, or whether it was the intention of the parties, notwithstanding the delivery of those goods to Mr. Crane, that the title should remain in the plaintiff. Before the delivery to Mr. Crane the goods belonged to the plaintiff, and they had a right to deliver them to Mr. Crane on such terms as they chose, and the question is as to the intention which they and Mr.  
 10 Crane had when those goods were delivered over to him.

If you gather from the circumstances of the case that their intention was to transfer the title to the property to Mr. Crane, then your verdict in this case will be for the defendant, for the plaintiff has no right to the goods. If, on the other hand, the intention of the parties was that the title should remain in the Furniture Company, then your verdict will be for the plaintiff, for the value of the  
 20 goods the title of which they so retained, and which were replevined from the defendant in September, 1893. Now, you see this question of intention is one of fact to be settled by testimony in the cause, and we have several species of testimony. In the first place, you have the evidence of the witnesses, Mr. Lyons, Mr. Cairns, Mr. Crane, testifying that at the various conversations between Mr. Crane and Mr. Lyons, or Mr. Cairns, with regard to the reception of the goods from the Elliott Furniture Com-  
 30 pany, it was bargained that the goods should remain the property of the Elliott Furniture Company until they were fully paid for—that is the testimony of those three gentlemen. It does not appear that when the Decker goods were turned over, there was any talk in regard to that particular parcel of goods, and the question before you is whether, notwithstanding there was no talk, it was still the understanding between the parties that that parcel of goods was turned over to Mr. Crane on the same  
 40 terms as the others or not. If you do not believe



that that was the understanding, viz., that the Decker goods were turned over to him just as the others were, why, as to those Decker goods you will say that the full title went to Mr. Crane, and was not reserved, but if you think it was understood between the parties that Crane received the Decker goods under the same arrangement as had expressly related to the other goods, why then, of course, those goods will stand on just the same footing as the others. Now, besides the testimony of those 10 three witnesses you have the letters, some of them, and perhaps all of them, which were sent by Mr. Lyons from New York to his principal, the Furniture Company in North Carolina. The earliest letter of importance is that of September 16, 1892, beginning, "Order sent you last night for account of F. E. Crane should have been accompanied by subjoined explanation, but boy got letter into the mail-box before we were aware of it," and in that letter he said to the Elliott Furniture Company, after speak- 20 ing about the Claflin mortgage and Mr. Crane's general position financially, "To this end he submits the following proposition, on the acceptance of which you will execute the order—he will pay \$250, cash in advance, the balance to be paid half in thirty days and half in sixty days, as a means of security to you and evidence of good faith on his part. You can send the goods to yourselves by consignment. It is to be understood that the goods are not to be paid for as sold, as is usually the case 30 under such conditions of shipment, but as a safeguard against loss to you through possible failure upon his part to keep his agreement, and the goods so shipped are in every sense of the word your property until fully paid for," which Mr. Lyons wrote to the Furniture Company, his principal. After that Mr. Crane sent to the Furniture Company his check for \$250, and after that they shipped him the goods which he had ordered, but they addressed



them to themselves, the Elliott Furniture Company, and he afterwards received them. Now, then, these gentlemen all say that the subsequent bargains were on the same footing, and we have here a letter of May 15, which was a very short time after the last order went in. It is again from Mr. Lyons to the Furniture Company, and this letter says: "We neglected to state when Crane's order was sent that he was in a hurry for the goods. You need not  
 10 fear to ship, as the goods will be sold on consignment and your property till sold, as per conditions of all previous shipments." The letter book says particularly: "Your property till sold as per conditions of all previous shipments—we accept orders from him only under these conditions, so that if the Claflin Company shuts down upon him we will be protected;" and shortly after that the goods so ordered were shipped again to the Elliott Furniture Company at Paterson, and delivered over to him—  
 20 the bills of lading in reference to all these shipments being made out to the Elliott Furniture Company.

Now, that is the evidence which the plaintiff offers to prove to you, that it was the intention of the parties that the property in these goods should not pass out of the Elliott Furniture Company until the goods were fully paid for. If you believe that was their intention with regard to all the goods—the Decker goods included—why then your verdict  
 30 will be for the plaintiff, for the value of those goods, \$433, with interest from September, 1893. If you think the intention did not cover the Decker goods, you deduct \$100 and give the plaintiff a verdict for \$333. If you think that intention did not exist as to any of the goods, and there was an absolute sale to Mr. Crane, then render your verdict for the defendant.

Whereupon counsel for the defendants made the following exceptions to said charge of his Honor,  
 40 the said Justice, and praying that his Honor, said



Justice, would set his hand and seal to this bill of exceptions:

I will ask an exception, therefore, to that portion of the charge directing the jury that a "question of intention is one of fact to be determined by them."

Also, that the question left is one of intention, namely, whether it was the intention of the parties when the shipment of May, 1893, was made and the Decker goods turned over to them, to reserve title or not. 10

I also ask an exception, that if the jury gather from the circumstances of the case that it was the intention of the plaintiff not to pass title, that they must adjudge for the plaintiff.

Also, if the jury think it was implied or understood between the parties that the Decker goods stood on the same footing as the others, then that they should adjudge it was like the others. 20

And it was sealed accordingly, subject to the language of the charges as hereinbefore set forth at length.

JONATHAN DIXON, *Judge*. [L. S.]



## N. J. Court of Errors & Appeals.

|    |                                                                                     |                                                                |
|----|-------------------------------------------------------------------------------------|----------------------------------------------------------------|
|    | <hr/> THE H. B. CLAFLIN COMPANY<br>AND ORLANDO DEMAREST,<br><i>Pltfs. in Error,</i> | )<br><i>In Error to</i><br><i>Passaic Cir-</i><br><i>cuit.</i> |
| 10 | v.                                                                                  |                                                                |
|    | THE ELLIOTT FURNITURE COM-<br>PANY,<br><i>Defts. in Error.</i>                      |                                                                |

---

### ASSIGNMENT OF ERRORS.

And now at this day the plaintiffs in error assign the following causes of error :

20 *First.* Because said Circuit Court erred in denying the motion for nonsuit on the grounds—

(1.) That there was no demand made for the goods prior to the institution of suit ;

(2.) That the incorporation of the plaintiff, The Elliott Furniture Company, had not been shown ;

(3.) That the contract was one of absolute sale and not of consignment.

*Second.* Because the Judge of said Circuit Court erred in refusing to charge the jury as requested—

30 (1.) That the whole question is one for the Court—one of law—as to the construction of the contract, and jury must take instructions from the Court ;

(2.) That the preliminary transactions, conversations and correspondence cannot be considered as varying, altering or contradicting the contract as subsequently made in invoice;

40 (3.) That the contract is embodied in the invoices of May 18, 1893, which are like those of October 25, 1892, and March 13, 1893 ;



(4.) That the sending of these invoices and transfer of bill of lading conclusively indicate intention of parties and passed title when followed by possession in Crane, the vendee;

(5.) That in particular the \$100 Decker goods were absolutely sold to Crane, no reservation or terms of sale being made at the time and the goods being transferred on an unconditional order, for which reason plaintiff cannot recover;

(6.) No demand made prior to suit and therefore verdict must be verdict for defendant;

(7.) That if the sale was a conditional one it is therefore void as being an evasion of the New Jersey statute as to such sales, and as against public policy.

*Third.* Because the Judge of said Circuit Court erred in charging the jury—

(1.) That the question of intention is one of fact to be determined by them. Also, that the question left is one of intention, namely, whether it was the intention of the parties when the shipment of May, 1893, was made and the Decker goods turned over to them, to reserve title or not;

(2.) That if the jury gather from the circumstances of the case that it was the intention of the plaintiff not to pass title, they must adjudge for the plaintiff;

(3.) That if the jury think it was implied or understood between the parties that the Decker goods stood on the same footing as the others, then that they should adjudge it like the others.

*Fourth.* Because the charge of the Judge of said Circuit Court was, as a whole, unfair to the defendants, misleading to the jury as to questions of fact, and erroneous in its statements of law.

FRANKLIN M. OLDS,

*Att'y for and of Counsel with Plaintiffs in Error.* 40



## N. J. Court of Errors & Appeals.

|    |                                                    |   |                     |
|----|----------------------------------------------------|---|---------------------|
| 10 | THE ELLIOTT FURNITURE COM-<br>PANY,                | } | <i>In Error to</i>  |
|    | <i>Defendants in Error,</i><br><i>ads.</i>         |   | <i>Passaic Cir-</i> |
|    | THE H. B. CLAFLIN COMPANY<br>AND ORLANDO DEMAREST, |   | <i>cuit.</i>        |
|    |                                                    |   | <i>Joinder in</i>   |
|    | <i>Plaintiffs in Error.</i>                        |   | <i>Error.</i>       |

And hereupon, afterwards, the said The Elliott  
 Furniture Company, by MICHAEL DUNN, its at-  
 20 torney, comes into Court and says that there is no  
 error either in the record and proceedings aforesaid,  
 or in giving the judgment aforesaid; and it prays  
 here that the Court here may proceed to examine as  
 well the record and proceedings aforesaid as the  
 matters aforesaid assigned for error; and that the  
 judgment aforesaid, in manner aforesaid given, may  
 in all things be affirmed.

MICHAEL DUNN,

30 *Att'y for and of Counsel with Def'ts in Error.*



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# New Jersey Court of Errors and Appeals.

The H. B. CLAFLIN COMPANY  
and  
ORLANDO DEMAREST,  
*Plaintiffs in Error,*  
*vs.*  
SAMUEL P. PORTER CABINET  
COMPANY,  
*Defendant in Error,*

**In Error to Passaic  
Circuit.**

## STATEMENT OF FACTS.

Samuel P. Porter claims titles to certain goods in question in this case which were found in the H. B. Claflin & Company and Orlando Demarest, who was acting as their agent in the latter part of August, or the early part of September, 1893.

Mr. Porter, the plaintiff below, in the year of 1892 and 1893, had a store in New York, and was representing as Eastern agent several companies engaged in the business of manufacturing and selling furniture, whose factories were located in the west.

The goods in question were ordered through Mr. Porter, from different houses and shipped by them on those orders to Frank E. Crane, at Paterson.



Frank E. Crane was at the time and prior thereto engaged in the furniture business at Paterson.

In July, 1892, Mr. Crane became financially embarrassed and made a settlement with his creditors. On August 5th, 1892, he made and executed to the H. B. Claflin Company, a chattel mortgage, covering among other things all stock of furniture and other goods and chattels contained in the store. Also covering after acquired property (case, page 49, 20.)

Afterwards, about the month of March, 1893, Mr. Crane called upon Samuel P. Porter, at his office in New York, to see what arrangements he could make to procure goods for sale in his store, from the houses represented by Mr. Porter, he having a demand for that class of goods.

That it was then and there arranged between himself and Mr. Porter, that he would ship him goods, on consignment, the goods to be the property of the shippers until paid for, and that the same was to be paid for in 30 days and 60 days.

It also appears from the orders offered in this case as exhibits, that the goods were ordered in keeping with this arrangement and understanding and were shipped by the different shippers to Mr. Crane and at the time of Mr. Crane's failure in August, 1893, were in the store when the defendants took possession of them.

All these bills were past due. About two weeks prior to the closing of the store, Mr. Porter, on behalf of these shippers, went to Mr. Crane's store to get the goods in question, and take them back, and that Mr. Crane requested him to allow them to remain and that if Claflin, foreclosed on him, that Mr. Porter could get in and get his goods without any trouble, that he had showed him on the floor. (p. 9, l. 15.)

It also appears from Mr. Porter's testimony that he



collected from Mr. Crane all the money paid on account of any of these goods (p. 8.)

Mr. Crane corroborates Mr. Porter's testimony as to the terms and conditions upon which the goods were shipped to him (pp. 31 and 32). He testifies "the goods were to be the manufacturers, until paid for," and that he said to Porter, "you can send them in on consignment." And Porter said to him, "they are our goods until such time as they are paid for," and Mr. Crane said, "yes" (p. 32, l 10). He also testifies that the amounts as stated by Mr. Porter to be due to the different manufacturers for goods shipped was corrected.

The orders for these goods, as will appear by the exhibits, were all guaranteed by Mr. Porter, after Mr. Crane's failure.

All the shippers charged the goods to Mr. Porter, on his guaranty, and assigned and transferred the title of the same to him,

This was done prior to bringing of this suit of replevin. The defendant below rebonded and detained and disposed of the goods.

It was stipulated and agreed at the trial that the value of the goods taken was \$363.13, and the damages for detention was the interest on this amount for a year if plaintiff below was entitled to recover. The jury found in the favor of the plaintiff for this amount.

The defendant below offered in evidence invoices, which accompanied the different shipments from the different houses.

The evidence showed that these invoices were mere memoranda, giving a list of the articles shipped and the price.

The evidence also showed what the real conditions were as to ordering and shipping the goods, and that Mr. Crane never had title to them and that they belonged to Porter.



## POINTS.

## I.

*First.*—THERE WAS NO ERROR IN THE REFUSAL OF THE COURT TO CHARGE AS REQUESTED.

(1) *The Contract was not against public policy.*

The weight of evidence clearly establishes the fact that the goods and chattels in this case were shipped to Mr. Crane upon the clear and explicit understanding and agreement that they were shipped to him on consignment and that they were to remain the property of the shippers until paid for, and there was nothing in the case that would justify the inference or suggestion that this contract was against public policy. The fact that immediately after learning that Crane had failed the goods were charged to Mr. Porter on his guarantee and that they transferred to him all their right, title, and interest in the goods proved beyond question that the goods were shipped by the different houses under the terms of the original orders sent to them by Mr. Porter and in keeping with the agreement made between Mr. Porter and Mr. Crane. See case p. 30.

(2) *The contention that the construction of the contract is one for the Court is not tenable under the circumstances that exist in this case.*

The defendant below contended that the invoice which accompanied the delivery of the goods was a contract, while the plaintiff below contended that it was simply a memorandum showing what goods were shipped and the prices charged therefor, and that the real contract was the verbal arrangement previously made between Porter and Crane. The invoice did not show the real agreement of the parties.

(3) *The defendant below contended that the invoice which accompanied the goods was a contract in writing*



and that no parol evidence could be offered that tended to vary, alter or contradict the same.

The defendant below is wrong in his assumption on this point. These invoices are informal documents and form an exception to the general rule of evidence, as has been settled in the case of *Hazard vs. Loring*, 64 Mass., p. 627, and in *Schenck vs. Saunders*, 79 Mass., p. 37. It is held in both of these cases "that bills and even receipted bills are always open to evidence, which proves the real terms upon which the agreement of sale was made between the parties." The defendant below is in error in assuming that the invoice should be regarded as a written contract.

(4) *The defendant below contends that these invoices conclusively indicates the intention of the parties in making these sales and when followed by possession vested title in Mr. Crane.*

It is manifest from the authorities cited above that there is no law to support this contention.

(5) *No demand was necessary to be made prior to the suit.*

The court could not charge this request without committing an error. In actions of replevin the statute only requires a demand where the plaintiff seeks to recover the costs in case of judgment by default, but where pleas are filed and the right of the plaintiff is contested, it is not necessary in such a case to prove a demand.

(6) *The Court properly refused to charge that this sale ; being a conditional one, was void as being against the statute of the state and against public policy.*

The statute of 1889 says that such sales are void as against subsequent mortgagees and purchasers in good faith, unless the agreement for sale is in writing and recorded as required by the provisions of the act: In this case we have no subsequent mortgagee or purchaser in good faith. There is no evidence in the case



that shows that the rights of any innocent third parties intervenes, or will be affected by recognizing the claim of the plaintiff below as owner of this property. See *Campbell M'n'f'g Co. v. Rockaway Pub. Co.*, 27. Vroom, 676. On page 41 Mr. Crane says that for several months before his failure he paid cash for all goods purchased from the Claflin Co.; on page 42, he told them before the foreclosure of their mortgage that there were goods in the store on consignment. He also told Mr. Demarest early in the summer that there were goods there on consignment. There is not a particle of evidence in the case anywhere showing that during the year 1893, there was a single dollar of cash advanced by the Claflin Co., to Mr. Crane, or that he was owing them, for any goods purchased during that year, any of the moneys which they claim to be due to them on their chattel mortgage. The mortgage was made and recorded August 5, 1892, nearly a year before the goods in question in this case were ordered and delivered. The court could not charge the request.

(7) *The court properly refused to charge that the transfer of title to Porter by the several corporations, was insufficient in law.*

The examination of the assignment and transfer of title shows that they were sufficient in each case. They were made in the ordinary course of business. The goods had been shipped by the different companies represented by Mr. Porter as agent and broker, upon the express understanding (as will be seen by reading the orders sent to them), that they were to ship the same on consignment, and that the goods were to be their property until paid for. They were to be paid for in thirty days in some cases, and sixty days in others. In each and every case Mr. Porter guaranteed the order. The evidence shows on page 30, line 10, that after the different shippers learned of Mr.



Crane's failure, the goods were charged to Mr. Porter and paid for by him. These shippers then transferred to Mr. Porter all their right, title and interest in the goods, with authority to recover the possession of the goods or their value. They had ~~received~~<sup>reserved</sup> title and had right to transfer it. I will refer to the sufficiency of the assignment more at length in the fourth point of the brief.

## II.

*Second*—THE JUDGE COMMITTED NO ERROR IN HIS CHARGE.

(1) *The defendant below claims that the court erred in stating that the Plaintiff produced writing that put the title in him.*

On page 56, line 10, of the charge the Court said that "Mr. Porter produces here some writings from these several former owners which put the title to these goods in him, unless at the time those writings were made the title to the goods was in Mr. Crane." An examination of the assignment and transfers of title will show that this charge was correct. They sold these goods to Mr. Crane upon the terms and conditions mentioned in the order sent by Mr. Porter. They reserved title until the goods were paid for and they had a right either before or after default in payment to transfer and assign their interest in this case to any person they saw fit. It was especially proper to transfer them to Mr. Porter after they had charged the goods to him and received pay for them from him. Their action in so doing was in the ordinary course of their business, Benjamin on sales, page 399, section 426. The following rule is stated :—"The interest retained by the seller in goods bargained and delivered on condition



of payment, may also be sold subject to the rights of the buyer in possession either before or after default."

See also *Burnell vs. Marvin*, 44 Vt., 277; *Hubbard vs. Bliss*, 12 Allen, 590.

(2) *The plaintiff in error complains that the Court committed error in allowing the jury to determine whether the sales were absolute or conditional, reserving title.*

The Court was obliged under the evidence as it existed at the time the case closed to leave this question to the jury and there was no error in so doing. The written orders then in evidence and now as exhibits in the case show the terms on which the goods were ordered from the respective companies. The defendants offered in evidence invoices from the same companies which indicates that the sales were absolute. These invoices were subject to explanations and it then became a question for the jury to say what was the intention of the parties at the time the sale was made.

(3) *The plaintiff in error under the third objection made to the charge does not correctly state the language of the Court on the question of estoppel.*

On page 59, line 30, the Court used this language:—"If Claflin & Co. did give increased credit to Crane because the goods were in the store, without anything more than that, why that would not avail them, that wouldn't work estoppel against the western companies. If Claflin and Co. had seen these bills which the western companies had sent, or if Mr. Crane had told them on the strength of those bills that he had bought the goods that were in the store out and out, and thereupon Claflin & Co. had given him more credit than they otherwise would have done, then those western houses would be estopped from setting up the truth." From this it will be seen that the Court correctly states the law as defined by the Court of Errors



in Campbell M'fg Co., *vs.* The Rockaway Publishing Co., 27 Vroom, 676.

### III.

*Third.*—THIS ASSIGNMENT OF ERROR IS TOO GENERAL.

A reference to the charge is the best refutation that can be made of the statements contained in this assignment.

### IV.

*Fourth.*—THERE WAS NO ERROR IN ADMITTING EVIDENCE.

The plaintiff in error contends that the Court improperly admitted in evidence the assignments or transfers of title to Mr. Porter from the Harrisburg Furniture Co., the Connersville Cabinet Co., The Indiana Furniture Co., and the Armstrong Furniture Co., upon the ground that these four companies are corporations, and that there was no evidence authorizing such transfer.

The assignments or transfers of title to Mr. Porter were admitted as evidence upon the following facts being proved :

(1) The testimony (p. 13) shows that Mr. Porter represented the Harrisburg Furniture Co., as broker ; that he had sent to it the original orders which were produced and read to the jury, and which are exhibits in the case ; that in pursuance of these orders, the goods were shipped on consignment to Mr. Crane, the company reserving title in keeping with the orders until the goods were paid for. Mr. Porter testifies (p. 15) that the title to the goods shipped to Mr. Crane by this company and replevined in this suit, was transferred to him, on September 5th, 1893, by the assignment and transfer produced at the trial, signed by



John K. Royle, the business manager and secretary of the company; and that those goods were charged to Mr. Porter and paid for by him. (*P. 72-75 Exhibit*)

(2) Page 15, Mr. Porter testifies that he was also representing the Connersville Cabinet Co. as broker; and that goods were shipped by that company to Crane on consignment on his order dated May 10 or 12. See Exhibits, p. 75 and were to be their property until paid for. He says that afterwards, on August 31, 1893, the title reserved by the company in this case was transferred to Mr. Porter, and the assignment and transfer is signed by the company, by R. C. Wright, its secretary. Mr. Porter says (p. 16) that it is Mr. Wright's genuine signature. He also testifies that these goods were charged to, and paid for by him.

(3) The testimony (p. 16) shows that Mr. Porter also represented the Indiana Furniture Company, as broker, and that he ordered goods from that company to be shipped to Mr. Crane on consignment, and on condition that the goods were to be theirs until paid for, as will appear from the orders of March 23 and May 13, 1893, to this company, on page 77 of Exhibits; and that after the Crane failure, some of the goods shipped by the company were replevined in this suit; that the title to these goods (p. 17, 1, 30) had been transferred to Mr. Porter, September 1, 1893; and that the assignment which is an exhibit in the case (Exhibits, p. 80) was signed by George M. Sniks, its secretary, whose signature, Mr. Porter testifies (p. 17, 1, 33) that the signature of the secretary is his genuine signature.

(4) The testimony on page 18 shows that Mr. Porter also represented the Armstrong Furniture Company; and that he had ordered goods to be shipped to Mr. Crane on consignment by that company. See Order, p. 80-81 Exhibits. In keeping with the terms and Conditions of this order, the goods were shipped to Mr. Crane, and that no part of the same had been



paid; that afterwards, September 7, 1893, the goods were assigned and transferred to Mr. Porter by the Armstrong Furniture Co. The transfer is signed by the Company, per J. G. Komes, the secretary, and Mr. Porter testifies that he knows that that is his genuine signature (p. 19)

On page 30 Mr. Porter testifies that the goods of all these different companies shipped by them to Mr. Crane, on his order, were charged to him and paid for by him, after the shippers learned of Mr. Crane's failure; and that this was done on the date of the respective assignments; that he had guaranteed the orders to the different parties.

### REMARKS.

With these facts proved, it was the duty of the court to admit these assignments in evidence, and it was proper for the Court to charge the jury that the assignments were sufficient in law to transfer to Mr. Porter the title to these goods, which had been reserved by the different companies at the time the goods were ordered to be shipped to Mr. Crane. It was a transaction in the ordinary course of the business of these companies. The goods had been shipped by them to Mr. Crane on the terms and conditions of the orders received from Mr. Porter, and on the strength of Mr. Porter's guaranty. These companies, on learning of Mr. Crane's failure had a perfect right to charge these goods to Mr. Porter, and to receive pay for them from him, as they did. They also in the ordinary course of their business had a perfect right to transfer the title reserved by them to Mr. Porter.

I contend, therefore, that the testimony was sufficient before the Court to justify the admission, as evidence, of these assignments and transfers by the four different companies above mentioned, without any



further or other proof or authority for making the transfers.

The rule of law applicable to acts of corporations in reference to such matters is well settled in our state. In *Brahn v. Jersey City Forge Co.*, 9 Vr., 78, Justice Van Syckel, in delivering the opinion of the Supreme Court, speaking of the acts of officers and agents as being binding upon a corporation, says: "It is not necessary to prove an express authority; it may be presumed from circumstances which show the concurrence of the principal in his acts." In *Crawford v. Longstreet*, 14 Vr., 329, Justice Knapp, in rendering the opinion of the Supreme Court, after reviewing other cases, says: "It may here be considered as settled law, that a corporation, when acting within the scope of its power, stands, in respect to its ability to contract, substantially upon the same footing as do natural persons. Contracts made on its behalf by authorized agents, though by parol, are express contracts, and, as in the case of individuals, the law will, on ordinary grounds, imply promises against it." He also states that since the decision in *Bank of Columbia vs. Paterson*, 7 Cranch, 304, the doctrine as to requiring all instruments executed by a corporation to be sealed with their common seal, has received slight recognition; and that since the decision in *Baptist Church v. Mulford*, 3 Halst., 182, the subject has been considered at rest in this state. He says further, that in the transaction of ordinary business, it is unnecessary to use the corporate seal.

See also *Am. & Eng. Enc. Law.*, Vol. 4, 242; *Spelling on Private Corporations*, Vol. 1, Sec. 178.

In 2 *Kent's Comm.*, \*291, the doctrine is stated as follows:

"Corporations can now be bound by contracts made by their agents, though under no seal, and also on implied contracts to be deduced by inference from cor-



porate acts, without either a vote, or deed, or writing."

This is especially the case where acts are of daily necessity or too insignificant for the trouble of a seal. It is also the case where the act to be done must be done immediately, and cannot wait for the formalities of a seal.

From these authorities, it is manifest that in this case it was unnecessary to show any other facts than those proved to justify the court in admitting in evidence the four assignments and transfers from these corporations to Mr. Porter.

Mr. Porter testifies as to the existence of the corporation and as to the genuineness of the signatures of the secretaries of the respective companies to the assignments. The companies had received pay from him for these goods, and thereby acquiesced in and ratified the action of their secretaries executing these assignments. The bills were past due at the time the assignments were made, and the goods, although in the possession of Crane, became Porter's by virtue of these assignments and transfers. There was no error, therefore, in the admission of the assignment and transfer in evidence.

The defendants below also produced the original invoices sent to Mr. Crane from these different houses for the goods in question. The value of the goods in this suit retained by the defendants below was agreed upon by the parties in the case as being \$363.13, and if the plaintiff was entitled to recover, he was entitled to judgment for this amount, with interest. The jury found for the plaintiff.

I, therefore, contend that the court committed no error in the charge to the jury upon the question of title.



## V.

WHERE JUSTICE HAS BEEN DONE BY A VERDICT, THOUGH THERE HAS BEEN A MISDIRECTION BY THE JUDGE, A NEW TRIAL SHOULD NOT BE GRANTED.

*Steelman v. Steelman*, 1 Harr., 68; *Snyder v. Findley Coxe*, 78; *State v. Wells, Coxe*, 431; *Josiln v. New Jersey Car Spring Co.*, 7 Vr., 147.

In *Reading v. Reading*, 4 Zab., 465, the Court refused to reverse the verdict. In this case there was an admission of error by the defendant in error, accompanied with a request to reverse the judgment. The court refused to reverse the judgment, because it was satisfied that a correct judgment had been rendered in the case.

In the case under consideration, the only question before the Court was whether or not Mr. Porter had title to the goods in dispute. The original orders to the different companies, in the handwriting of Mr. Porter, which were produced at the trial, and which are exhibits in this case, show the conditions on which the goods were shipped by the companies. The testimony of Mr. Porter and Mr. Crane show the conditions and terms upon which the goods were shipped to Mr. Crane. (See testimony of Mr. Porter, p. 18; testimony of Mr. Crane, p. 31, 1, 35, p. 32). From this testimony it will be seen that these goods were shipped on consignment and were to be the property of the shippers until paid for. Mr. Crane (p. 32, 1, 25) corroborates Mr. Porter as to the bills for the goods in question being due and unpaid. The title to the goods was lawfully assigned and transferred to Porter, and he was the owner and entitled to recover.

I submit therefore, that under the evidence adduced in the case, there was no error committed by the Court



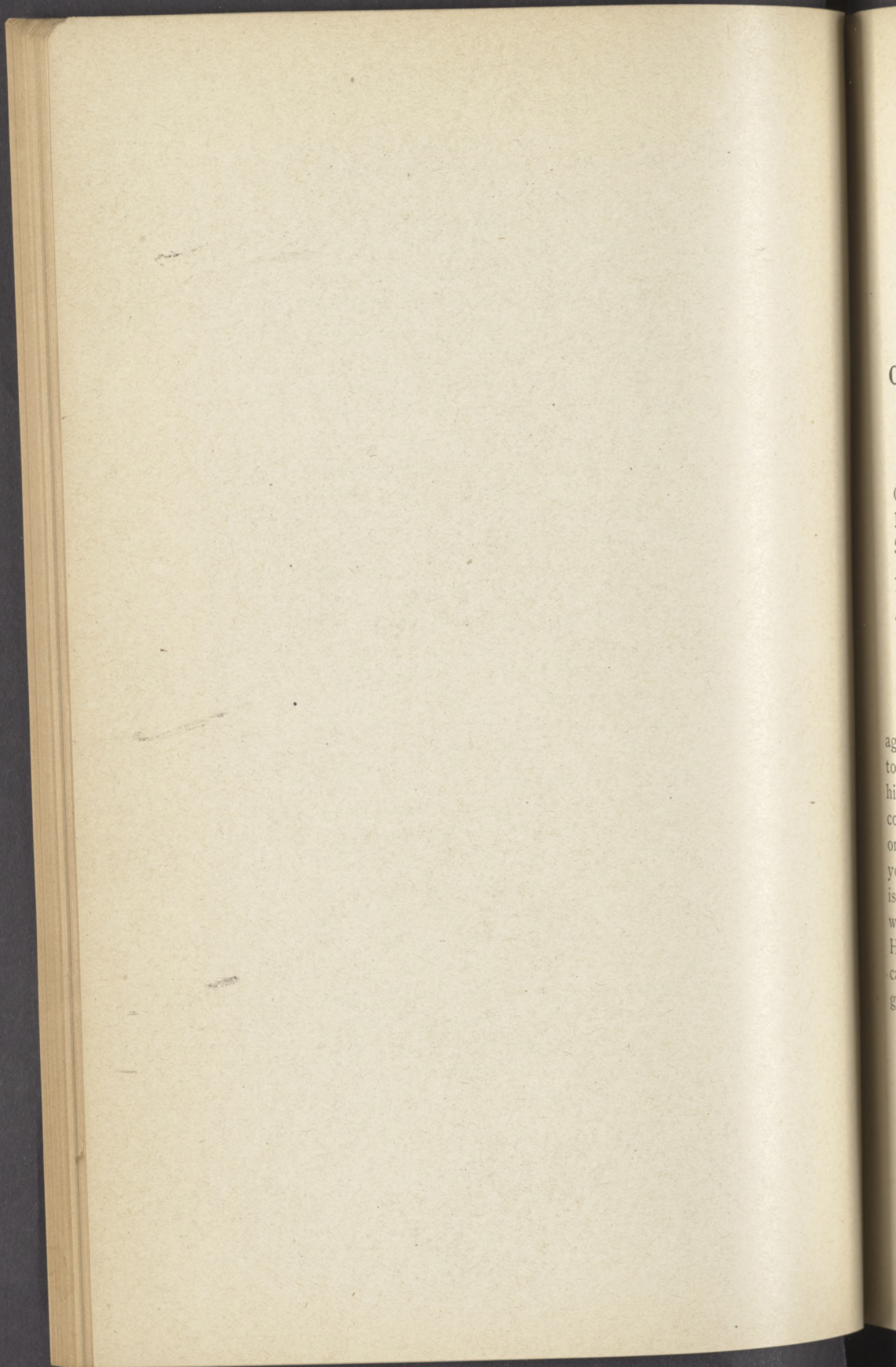
that the verdict of the jury is supported by the  
evidence, and that the judgment below should be affirm-  
ed.

Respectfully submitted,

MICHAEL DUNN,

*Attorney for and counsel  
for Defendant in Error.*







## PLAINTIFFS' EXHIBITS.

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### I.

#### Orders to Ring, Merrill & Tillotson.

(Case page 8.)

(1)

Date Apl. 13, '93.

Order No. 216.

Messrs. Ring, Merrill & Tillotson,

Ship to F. E. Crane,

At Paterson, N. J.

How ship—best route.

Terms: see below.

When—at once.

F. O. B. Saginaw.

1 No. 159 Suit, ant.

\$30.

This man compromised with his creditors some time ago. H. B. Claflin & Co. advanced him some money to settle his old affairs and took a chattel mortgage on his goods. I have refused to sell him on open account, but have agreed to ship him anything he wants on consignment. He has agreed to this and will pay you in 30 days; if not, the suit is yours until sold. He is a live, bright fellow, means well, and I think, from what he says, is in a place where he can make money. His proposition makes us safe. If he don't pay, you can charge the account to me, and I will see that we get our pay.

(Signed) S. P. PORTER.

I am selling him for other houses on these conditions.

(Signed) P.



(2)

(Case page 8.)  
Date May 6, '93.

Order No. 238.

Messrs. Ring, Merrill &amp; Tillotson.

Ship to F. E. Crane.

At Paterson, N. J.

How ship—best route.

Terms : as below.

When—at once.

F. O. B. Saginaw.

|   |         |             |     |   |   |   |          |
|---|---------|-------------|-----|---|---|---|----------|
| 6 | No. 151 | suits, ant. | for | - | - | - | \$100.00 |
| 2 | " 159   | " " "       | "   | - | - | - | 60.00    |
| 4 | " 161   | " 1 ash     | for | - | - | - | 50.00    |
| 3 | " 162   | " " " "     | "   | - | - | - | 45.00    |

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\$255.00

This bill is sold to Mr. Crane on the same arrangements and terms as on Order No. 216 of April 13, '93. He thoroughly understands and has agreed that all goods I send him are on consignment, and are your goods until he pays for them. I have said to him that his former order was declined until I guaranteed payment. I will do the same now.

S. P. PORTER.

He agrees to pay in 30 days, or the goods are ours.  
P.

Saginaw, Mich., Aug. 31, 1893.

S. P. Porter, N. Y.,

To RING, MERRILL &amp; TILLOTSON, Dr.

|      |               |       |   |   |   |          |
|------|---------------|-------|---|---|---|----------|
| To 6 | No. 151       | Ant., | - | - | - | \$100.00 |
| 2    | " 159         | "     | - | - | - | 60.00    |
| 4    | " 161         | "     | - | - | - | 50.00    |
| 3    | " 162         | "     | - | - | - | 45.00    |
| 90   | yds. burlaps, |       | - | - | - | 4.50     |

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259.50Cr. by check, 100.00  

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\$159.50



Shipped to F. E. Crane, Paterson, N. J., May 10th,  
1893, on your guarantee.—R., M. & T.

S. P. PORTER, Esq.,  
N. Y.

We have charged these goods to your account as  
per terms of your order, and we hereby assign and  
transfer to you all our right, title and interest in same,  
authorizing you to take proceedings in your name, to  
recover possession of the goods or their value.

(Signed) RING, MERRILL & TILLOTSON.

Aug. 31st, 1893.

(See case p. 9.)

## II.

Order to E. G. FITCH & CO., Proprietors of ATHENS  
FURNITURE COMPANY.

(Case pp. 11-12-13.)

(1)

N. Y., Apl. 1st, 1893.

Order No. 83.

To ATHENS FURNITURE CO., Athens, Pa.

Ship to F. E. Crane,

Address, Paterson, N. J.

Via best route.

Terms: as below. Delvd.

| No.  | Quantity. | Description. | Pieces. | Finish. | Plates. | Price.  |
|------|-----------|--------------|---------|---------|---------|---------|
| 180½ | 1         | Suit         | 3       | ant.    | F. B.   | \$59.00 |

This man is mortgaged to H. B. Claflin & Co. I  
have arranged with him that all goods we send him  
shall come in on consignment for our mutual protec-  
tion. He will pay the above in 30 days; if not the



goods are still yours until paid for. I have had a good talk with him and he is satisfied with the arrangement. If he fails to pay, charge my personal account. I feel confident he will pay me on these conditions.

Yours truly,

(Signed) S. P. PORTER.

(2)

N. Y., Ap. 1st, 1893.

Order No. 128

To E. G. Fitch & Co., Furniture Co., Athens, Pa.

Ship to F. E. Crane,

Address, Paterson, N. J.

Via best route.

Terms: as below.

(delivered.)

| No. | Quantity. | Description. | Pieces. | Finish. | Plates. | Prices. |
|-----|-----------|--------------|---------|---------|---------|---------|
| 223 | 1         | suit         | 3       | ant.    | F. B.   | \$32.50 |

I have written the Athens Furniture Co. about this man Crane. I have sold him this suit on the same terms. This suit like the Athens is on commission. You need not bill it so, as it is understood between Crane and myself. I will see that you get your money. He will pay in 30 dy; if not, the suit is ours until paid for.

Yours truly,

(Signed) S. P. PORTER.

(3)

April 13, 1893.

Order No. 136.

To E. G. FITCH & Co., Athens, Pa.

Ship to F. E. Crane,

Address, Paterson, N. J.

Via best route.

Terms: same as on order No. 128.



| No.  | Quantity. | Description. | Pieces. | Finish. | Plates. | Prices. |
|------|-----------|--------------|---------|---------|---------|---------|
| 217. | 1         | suit         | 3       | ant.    | F. B.   | 21.75   |
| 136  | 1         | "            | 3       | "       | "       | 22.25   |

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 44.00

Guaranteed Freight. 2.00 per suit. I have charged him 75 per cent. extra for French Bevels.

Yours truly,

S. P. PORTER.

(4)

N. Y., Apl. 13, 1893.

Order No. 304.

To ATHENS FURNITURE CO., Athens, Pa.

Ship to F. E. Crane.

Address, Paterson, N. J.

Via best route.

Terms: same terms and arrangt. as No. 83.

| No. | Quantity. | Description. | Pieces. | Finish. | Plates. | Prices. |
|-----|-----------|--------------|---------|---------|---------|---------|
| 63  | 1         | suit         | 3       | ant.    | F. B.   | \$26.00 |

F. O. B. Athens.

Mr. Crane understands that everything I sell him is on consignment, and unless he pays in 30 days, the goods are ours. I will guarantee he will pay; if not, chge to my a. c.

(Signed) PORTER.

(5)

April 29, 1893.

Order No. 320.

To Athens Furniture Co., Athens, Pa.

Ship to F. E. Crane,

Address, Paterson, N. J.

Via best route.

Terms: same as before.



| No. | Quantity. | Description. | Pieces. | Finish. | Plates. | Prices |
|-----|-----------|--------------|---------|---------|---------|--------|
| 76. | 1         | suit         | 3       | ant.    | F. B.   | 25.50  |

Ship at once.

Yours truly,

S. P. PORTER.

(6)

May 26, 1893.

Order No. 345.

To Athens Furniture Co., Athens, Pa.,

Ship to F. E. Crane,

Address, Paterson, N. J.

Ship at once.

Via Erie or D. L. &amp; W. R. R.

Terms: as per former order of April 1st.

| No. | Quantity. | Description. | Pieces. | Finish. | Plates. | Prices |
|-----|-----------|--------------|---------|---------|---------|--------|
| 63  | 1         | Bed          |         | Ant.    |         | 9.50   |
| 76  | 1         | "            |         | "       |         | 8.50   |

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 18.00

Yours truly,

S. P. PORTER.

(7)

May 13th, 1893.

Order No. 161.

To E.G. FITCH &amp; CO., FURNITURE CO., Athens, Pa.

Ship to F. E. Crane,

Address, Paterson, N. J.

Via best route. At once.

| No.  | Quantity. | Description. | Pieces. | Finish. | Plates.     | Prices |
|------|-----------|--------------|---------|---------|-------------|--------|
| 217  | 1         | suit         | 3       | ant.    | F. B.       | 21.75  |
| 240½ | 1         | "            | 3       | "       | 30x34 F. B. | 38.00  |
| 235½ | 1         | "            | 3       | "       | 24x30 F. B. | 24.50  |
| 221  | 1         | "            | 3       | "       | 24x30 F. B. | 27.00  |

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 \$111.25



Mr. Crane and his buyer understands that these suits, like the former orders, are sold him on consignment. If he don't pay in 30 days, the goods are ours. I believe he is honest in his intentions and we won't lose any money by this arrangement. I will guarantee that you will get your pay.

S. P. PORTER.

(See case p. 13.)

Athens, Pa., Sept. 2, 1893.

Mr. S. P. Porter,

Bought of E. G. FITCH & Co.,  
Proprietors of  
ATHENS FURNITURE COMPANY,  
Manufacturers, etc.

|         |    |   |         |                  |       |       |       |
|---------|----|---|---------|------------------|-------|-------|-------|
| Apr. 25 | To | 1 | No. 217 | Ant. suit 3 pcs. | F. P. | 21.15 |       |
| "       | I  | " | 136     | " " 3            | " "   | 22.25 |       |
| "       | I  | " | 223     | " " 3            | " "   | 32.50 |       |
|         |    |   |         |                  |       |       | <hr/> |
|         |    |   |         |                  |       | 76.50 |       |
|         |    |   |         | Less ft.         |       | 1.60  |       |
|         |    |   |         |                  |       |       | <hr/> |
|         |    |   |         |                  |       |       | 74.90 |

|        |   |   |   |                   |                  |       |          |       |
|--------|---|---|---|-------------------|------------------|-------|----------|-------|
| May 19 | " | I | " | 219               | Ant. suit 3 pcs. | F. P. | 21.75    |       |
| "      | I | " | " | 240 $\frac{1}{2}$ | " " 3            | " "   | 38.00    |       |
| "      | I | " | " | 235 $\frac{1}{2}$ | " " 3            | " "   | 24.50    |       |
| "      | I | " | " | 221               | " " 3            | " "   | 27.00    |       |
|        |   |   |   |                   |                  |       |          | <hr/> |
|        |   |   |   |                   |                  |       | \$111.25 |       |
|        |   |   |   | Less ft.          |                  | 2 78  |          |       |
|        |   |   |   |                   |                  |       |          | <hr/> |
|        |   |   |   |                   |                  |       | 108.47   |       |
|        |   |   |   |                   |                  |       |          | <hr/> |
|        |   |   |   |                   |                  |       | \$183.37 |       |

Shipped to F. E. Crane, Paterson, N. J., on your guarantee.



Athens, Pa., Sept. 2, 1893.

To S. P. Porter,

185 Canal street, New York City,

We have charged these goods to your account as per terms of your order, and we hereby assign and transfer to you, all our right, title and interest in same, authorizing you to take proceedings in your name, to recover possession of the goods or their value.

E. G. FITCH &amp; Co.

## III.

Orders to HARRISBURG FURNITURE MANUFACTURING COMPANY. (p. 13.)

(1)

Date, Mch. 23, '93.

Order No. 302

Messrs. Harrisburg Fur. M'f'g Co.

Ship to F. E. Crane.

At Paterson N. J.

How ship—best route.

When—at once.

Terms: He will pay in 30 days.

See below.

Porter.

Deliv'd

|   |                           |      |         |
|---|---------------------------|------|---------|
| 6 | No. 2 Tables, ant. 6 ft.  | 3.60 | \$21.60 |
| 2 | " 9 " " "                 | 4.50 | 9.00    |
| 2 | " 7 1/2 Chiffoniers, ant. | 6.50 | 13.00   |
| 1 | " 8 1/2 " "               |      | 7.00    |
| 1 | " 5 1/2 " "               |      | 13.50   |

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 \$64.10

This man is mortgaged to H. B. Claflin. I have arranged with him that all goods he receives from us shall be on consignment, so that makes us safe. Personally he is a good business man, has a good store



and location in Paterson and will succeed—it is only a question of time. If he don't pay the above in 30 days, the goods are ours. I am not afraid to guarantee the a. c. under this arrangement.

(Signed) S. P. PORTER.

(2)

Date Apr. 4, 1893.

Order No. 329.

Messrs. Harrisburg Furn. M'fg. Co.

Ship to F. E. Crane,

At Paterson, N. J.

How ship—best route.

When—at once.

Terms: Same as on order No. 302 of March 23d.

|   |       |       |            |      |       |         |
|---|-------|-------|------------|------|-------|---------|
| 1 | No. 6 | 1/2   | Chiffonier | Ant. |       | \$ 7.00 |
| 1 | "     | 6     | "          | "    |       | 6.00    |
| 1 | "     | 7     | "          | "    |       | 5.50    |
| 1 | "     | 8     | "          | "    |       | 6.00    |
| 4 | "     | 7 1/2 | "          | "    | 6.50  | 26.00   |
| 3 | "     | 5 1/2 | "          | "    | 13.50 | 40.50   |
|   |       |       |            |      |       | <hr/>   |
|   |       |       |            |      |       | \$91.00 |

He will pay for the above in 30 days; if not, the goods are ours. He paid for bill bought Mch. 23d today. I handed it to your Mr. Spicer who knows all about the understanding I have with Mr. Crane.

S. P. PORTER.

(3)

Date May 13, 1893.

Order No. 418.

Messrs. Harrisburg Furn. Mfg. Co.

Ship to F. E. Crane.

At Paterson, N. J.

How ship—best route.

When—at once.

Terms: See below.



|                                           |        |           |       |                        |         |
|-------------------------------------------|--------|-----------|-------|------------------------|---------|
| I will guarantee payment when due—PORTER. |        |           |       |                        |         |
| 1                                         | 6      | Drawer    | 36    | Ant. Chiff. with glass | 8.00    |
| 1                                         | 6      | "         | "     | " " "                  |         |
|                                           |        |           |       | and hat box            | 8.50    |
| 1                                         | No. 13 | Book Case | Ant.  |                        | 13.00   |
| 2                                         | "      | 11        | Desks | Ant.                   | 4.00    |
| 2                                         | "      | 12        | "     | "                      | 6.00    |
| 2                                         | "      | 10        | "     | "                      | 8.50    |
|                                           |        |           |       |                        | <hr/>   |
|                                           |        |           |       |                        | \$66.50 |

Terms: same as on former orders. Mr. Crane understands that all these goods are on consignment. If he pays the above in 30 days, allow him 5 off, F. O. B. Harrisburg. If he don't pay in 30 days, the goods are ours until paid for.

S. P. PORTER.

(4)

Date June 3, '93.

Order No. 447.

Messrs. Harrisburg Furniture Mfg. Co.

Ship to F. E. Crane.

At Paterson, N. J.

How ship—as before.

When—at once.

Terms: same terms as before.

2 No. 8½ Chiffoniers, Ant. 14.00

If he pays in 30 days, allow 5 per cent. disct. F. O. B. Hbg. All goods we sell this man are understood between him and myself to be on consignment—our property until paid for.

Yours truly,

S. P. PORTER.

You need have no hesitancy in shipping the above.  
I will see that you get your money.

PORTER.



Harrisburg, Pa., Sep. 5, 1893.

M. S. P. PORTER,  
To HARRISBURG FURNITURE MANUFACT-  
URING CO., Dr.,  
Manufacturers, etc.

|               |          |         |
|---------------|----------|---------|
| May 15, 1893. | To Mdse. | 46.50   |
| June 5,       | " "      | 14.00   |
| " 14,         | " "      | 20.00   |
|               |          | <hr/>   |
|               |          | \$80.50 |

Shipped to F. E. Crane, Paterson, N. J., on your  
guarantee.

Harrisburg, Pa., Sept. 5, 1893.

To S. P. PORTER,  
185 Canal Street, New York City,

We have charged these goods to your account as per  
terms of your order, and we hereby assign and transfer  
to you, all our right, title and interest in same, autho-  
rizing you to take proceedings in your name, to re-  
cover possession of the goods or their value.

HARRISBURG FUR. M'F'G CO.

(See case, p. 15.)

#### IV.

Order to CONNERSVILLE CABINET COMPANY (p. 15.)

Date May 10, 1893.

Order No. 1

Messrs. Connorsville Cab't Co.,

Ship to F. E. Crane,

At Paterson, N. J.

How ship—see below.

Terms:—Net 30 days, F. O. B.

When—at once.

See below.



|   |         |            |       |         |
|---|---------|------------|-------|---------|
| 1 | No. 300 | Book Case, | Ant., | \$3.50  |
| 1 | " 301   | " "        | "     | 5.50    |
| 1 | " 302   | " "        | "     | 4.50    |
| 1 | " 304   | " "        | "     | 5.75    |
| 1 | " 308   | " "        | "     | 5.50    |
| 1 | " 305   | " "        | "     | 8.50    |
|   |         |            |       | <hr/>   |
|   |         |            |       | \$33.25 |

Ship via whatever line that comes over the Erie or D. L. & W. R. R. This man is covered by mortgage to H. B. Claflin & Co. It is distinctly understood between Mr. Crane and myself that these goods shall come in as consigned to remain your property until paid for, to protect us both. Under this arrangement, I will guarantee payment. I have given him 30 days time; if not paid then the goods are ours.

S. P. PORTER.

THE CONNERSVILLE CABINET COMPANY,

Connorsville, Ind., Aug. 31st, 1893.

No. 207 Sold to S. P. Porter,  
New York, N. Y.

Terms: net 30 days.

|   |         |            |         |
|---|---------|------------|---------|
| 1 | No. 300 | Book Case, | \$3.50  |
| 1 | " 301   | " "        | 5.50    |
| 1 | " 302   | " "        | 4.50    |
| 1 | " 304   | " "        | 5.75    |
| 1 | " 308   | " "        | 5.50    |
| 1 | " 305   | " "        | 8.50    |
|   |         |            | <hr/>   |
|   |         |            | \$33.25 |

Shipped to F. E. Crane, Paterson, N. J., on your guarantee.



Connersville, Ind., Aug. 31, '93.

To S. P. Porter,

185 Canal Street, New York City,

We have charged these goods to your account as per terms of your order, and we hereby assign and transfer to you, all our right, title and interest in same, authorizing you to take proceedings in your name, to recover possession of the goods or their value.

CONNERSVILLE CABINET CO.,

R. C. Wright, Sec'y.

(See case p. 16.)

### V.

Orders to INDIANA FURNITURE MANUFACTURING  
COMPANY.

(1)

S. P. Porter, No. 611,

185 and 187 Canal Street,

New York.

Mch. 23, 1893.

Indiana Furniture M'f'g Co.,

Connersville, Inda.

Ship to F. E. Crane,

Paterson, N. J.

Ship via best route, Apr. 1st,

1 No. 52 Side Board, Ant.

1 " 45 " " " - - \$12.75

- - 26.50

---

\$39.25

Delivered.

Gents:

This is the same man that you compromised with some time ago at 50c. of the dollar. Clafin & Co., of this city, has a chattel mortgage on him, consequently it would not be safe to sell him these goods as formerly. He has agreed with me that all the goods I ship him from the various factories I represent from now on



shall be on consignment, to protect us both. He says he will pay for the above in 30 days; if not the goods are yours until paid for. I think he means just what he says. I feel sorry for the man, as he is a bright fellow and is determined to succeed. If he don't pay you I will agree to guarantee the same, or you can charge the amount to my ac. if not paid by Crane, and I will collect it. My arrangement with him justifies this course.

S. P. PORTER.

(See p. 17.)

(2)

Date March 28, 1893.

Order No. 622.

Messrs. Indiana Furn. M'f'g Co.

Ship to F. E. Crane,

At Paterson, N. J.

How ship—best route.

When—as soon as possible.

Terms :—as before.

|   |        |      |     |      |        |         |
|---|--------|------|-----|------|--------|---------|
| I | No. 54 | Ant. | oak | side | board, | \$17.00 |
| I | No. 52 | "    | "   | "    | "      | 12.75   |
| I | No. 36 | "    | "   | "    | "      | 15.25   |
|   |        |      |     |      |        | <hr/>   |
|   |        |      |     |      |        | \$45.00 |

This order is on the same terms and conditions of No. 611 mailed you 23rd inst.

S. P. PORTER.

(3)

Date, May 13, 1893.

Order No, 698.

Messrs. Indiana Fur. M'f'g Co.

Ship to F. E. Crane,

At Paterson, N. J.

How ship—as before.

When—at once.



Terms:—same terms and conditions as on my order of March 23rd, No. 611.

|   |        |          |       |         |
|---|--------|----------|-------|---------|
| 1 | No. 59 | Side Bd. | Ant.  | 24.50   |
| 1 | "      | 41       | " " " | 23.00   |
| 1 | "      | 55       | " " " | 19.00   |
| 1 | "      | 47       | " " " | 30.50   |
|   |        |          |       | <hr/>   |
|   |        |          |       | \$97.00 |

Mr. Crane and his buyer both understand that these goods will be shipped on consignment, although you can bill them the usual way, namely, 30 days. I am assured that you will get your pay promptly, and Crane knows that if you don't, I will have to pay for them myself. I feel that we are perfectly safe.

S. P. PORTER.

Hurry along all orders. Customers are getting anxious.—P.

(See p. 17.)

THE INDIANA FURNITURE MANUFACTURING CO.

Connersville, Ind., Sept. 1, 1893.

Sold to S. P. Porter, New York, N. Y.

Terms: Net Cash.

1893.

|           |        |               |       |       |
|-----------|--------|---------------|-------|-------|
| May 18, 1 | No. 41 | Sideboard     | 23.00 |       |
|           | 1      | No. 55        | 19.00 | 42.00 |
|           |        |               | <hr/> |       |
|           |        | Less freight, | 3.48  | 38.52 |
|           |        |               | <hr/> |       |
| May 23, 1 | No. 59 | Sideboard     | 24.50 |       |
|           |        | Less freight, | 1.74  | 22.76 |
|           |        |               | <hr/> |       |
| June 9, 1 | No. 47 | Sideboard,    | 30.50 |       |
|           |        | Less freight, | 1.74  | 28.76 |
|           |        |               | <hr/> |       |
|           |        |               |       | 90.04 |



Shipped to F. E. Crane, Paterson, N. J., on your guarantee.

We have charged these goods to your account as per terms of your order, and we hereby assign and transfer to you, all our right, title and interest in same, authorizing you to take proceedings in your name to recover possession of the goods or their value.

INDIANA FURNITURE MFG. CO.

Geo. M. Sniks, Sec.

(Case p. 17.)

Order to ARMSTRONG FURNITURE COMPANY (p. 17.)

Date, March 23, '93.

Order No. 24.

Messrs. Armstrong Furniture Co.

Ship to F. E. Crane,

At Paterson, N. J.

How ship—best route. When—at once.

Terms:—30 days net. See particulars below.

| 6 No. 44   | Tables Ant. | 2.40  | 14.40       |
|------------|-------------|-------|-------------|
| 12 " 42    | " "         |       | 15.25       |
| 12 " 59    | " "         |       | 18.50       |
| 12 " 63    | " "         |       | 13.50       |
| 6 " 41     | " "         | 10.25 | 5.13        |
| 6 " 40     | " "         | 10.25 | 5.13        |
| 1 " 71     | " "         |       | 5.55        |
| 1 " 71 1/2 | " Im. Mahg. |       | 5.55        |
| 1 " 10     | " Ant.      |       | 7.15        |
|            |             |       | <hr/> 90.16 |

This concern is mortgaged to H. B. Claflin & Company. I have taken this order with the understanding that your goods shall be consigned. Mr. Crane is satisfied with this arrangement. If he don't pay for the



same in 30 days, the goods are your property until paid for. On this basis I will guarantee payment of the ac.

S. P. PORTER.

THE ARMSTRONG FURNITURE COMPANY (p. 17.)

Sold to S. P. Porter,

New York, N. Y.,

Evansville, Ind., Sept. 7, 1893.

|                |    |                |      |         |
|----------------|----|----------------|------|---------|
| March 29, '93. | 6  | No. 44 tables, | 2.40 | 14.40   |
|                | 12 | " 42 "         |      | 15.25   |
|                | 12 | " 53 "         |      | 13.50   |
|                | 6  | " 41 "         |      | 5.13    |
|                | 6  | " 40 "         |      | 5.13    |
|                | 1  | " 71 "         |      | 5.55    |
|                | 1  | " 71 1/2 "     |      | 5.55    |
|                | 1  | " 10 "         |      | 7.15    |
|                |    |                |      | <hr/>   |
|                |    |                |      | \$71.66 |

Shipped to F. E. Crane, Paterson, N. J., on your guarantee.

We have charged these goods to your account, as per terms of your order, and we hereby assign and transfer to you, all our right, title and interest in same, and authorizing you to take proceedings in your name to recover possession of the goods or their value.

THE ARMSTRONG FURNITURE COMPANY,

Per J. G. Komes, Sy.

(See case p. 19.)



the goods  
the basis of  
the property in  
the payment

S. P. PORTER

W. A. D. W.

E  
B  
J  
A  
J



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## N. J. Court of Errors & Appeals.

THE H. B. CLAFLIN COMPANY  
AND ORLANDO DEMAREST,

*Plaintiffs in Error,*

*v.*

SAMUEL P. PORTER,

*Defendant in Error.*

*In Error to  
Passaic Cir-  
cuit Court.*

10

STATE OF NEW JERSEY, ss :

The State of New Jersey to JONATHAN DIXON, Es-  
quire, Judge of our Circuit Court at  
Paterson, in and for the County of Pas-  
saic, or such Justice of the Supreme Court  
of the State of New Jersey as shall hold  
such Circuit Court, greeting : 20

For as much as in the record and proceedings and  
also in the giving of judgment in a certain plaint  
which was in our Circuit Court holden at Paterson  
in and for the County of Passaic, between Samuel  
P. Porter, plaintiff, and The H. B. Claflin Com-  
pany and Orlando Demarest, defendants, in an  
action in replevin, manifest error hath intervened  
to the great damage of the said defendants, The  
H. B. Claflin Company and Orlando Demarest, as 30  
it is said ; we being willing that the error, if any  
there be, should in due manner be corrected, and  
full and speedy justice done the parties aforesaid  
in this behalf, do command you, that if judgment  
be thereupon given and affirmed, then you dis-  
tinctly and openly send under your seal the record  
and proceedings aforesaid with all things touching  
the same, to our Judges of our Court of Errors and  
Appeals in the last resort in all causes, at Trenton,  
on the fourteenth day of May next, together with 40



this writ, that the record and proceedings aforesaid being inspected, we may cause to be further done thereupon, for correcting that error, what of right and according to law and custom of the State of New Jersey ought to be done.

Witness our Chancellor and President Judge of our said Court of Errors and Appeals at Trenton aforesaid, this twentieth-sixth day of April A.D. 1895.

HENRY C. KELSEY, *Clerk.*

10 FRANKLIN M. OLDS, *Att'y.*

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### RETURN.

20 I, JONATHAN DIXON, Judge of the Circuit Court of the County of Passaic, do herewith in the foregoing schedule send to the Judges of the Court of Errors and Appeals in the last resort in all causes, the record and proceedings mentioned in the within writ of error, wherein Samuel P. Porter was plaintiff, and The H. B. Claflin Company and Orlando Demarest were defendants, with all things touching the same, as I am within commanded.

Witness my hand and seal this tenth day of May, A.D. eighteen hundred and ninety-five.

30 JONATHAN DIXON, *Judge.* [SEAL.]



### SCHEDULE.

Passaic County Circuit Court, of the tenth day of October, in the year of our Lord one thousand eight hundred and ninety-three.

PASSAIC COUNTY, ss.

The H. B. Claffin Co. and Orlando Demarest, the defendants in this suit, were summoned to answer Samuel P. Porter, the plaintiff therein, wherefore they took the goods and chattels of the said plaintiff, and unjustly detained the same against sureties and pledges, until, &c., and thereupon the said plaintiff, by Michael Dunn, his attorney, complains: For that the said defendant, on the twenty fifth day of September, in the year eighteen hundred and ninety-three, in the city of Paterson, in the county of Passaic, took goods and chattels, to wit:

Two No. 151 chamber suits; two No. 159 chamber suits; four No. 161 chamber suits; three No. 162 chamber suits; (which were shipped from the factory of Ring, Merrill & Tillotson, Saginaw, Michigan.)

Also one No. 240½ chamber suit; one No. 235½ chamber suit; one No. 221 chamber suit; one No. 217 chamber suit; (which were shipped from the factory of E. G. Fitch & Co., Athens, Pennsylvania.)

Also one six-drawer chiffonier, with glass; one six-drawer chiffonier, hat box and glass; one No. 13 book case; two No. 10 ladies' desks; two No. 11 ladies' desks; two No. 12 ladies' desks; (which were shipped from the factory of Harrisburg Furniture Co., Harrisburg, Pa.)

Also one No. 300 book case; one No. 301 book case; one No. 302 book case; one No. 304 book case; one No. 305 book case; one No. 388 book case; (which were shipped from the factory of The Connersville Cabinet Company, Connersville, Indiana.)



Also one No. 41 side board ; one No. 55 side board ; one No. 59 side board ; one No. 47 side board ; (which were shipped from the factory of The Indiana Furniture Manufacturing Co., Connersville, Indiana.)

And also six No. No 44 parlor tables ; twelve No. 42 parlor tables ; twelve No. 63 parlor tables ; six No. 40 parlor tables ; six No. 41 parlor tables ; one No. 71 parlor table ; one No. 71½ parlor table ;  
 10 one No. 10 parlor table ; (which were shipped from the factory of The Armstrong Manufacturing Company, Evansville, Indiana,) of the said plaintiff, of great value, to wit, of the value of five hundred and seventy-five dollars, and unjustly detained the same against sureties and pledges, until, &c.

Wherefore the said plaintiff says that he is injured, and has sustained damage to the amount of one thousand dollars ; and therefore he brings his  
 20 suit, &c.

And the said defendants, The H. B. Claffin Company and Orlando Demarest, by FRANKLIN M. OLDS, their attorney, come and defend the wrong and injury, &c., and say that they did not take the said goods and chattels in the said declaration mentioned, or any or either of them or any part thereof, in manner and form as the said plaintiff hath above  
 thereof complained against them.

And of this they, the said defendants, put them-  
 30 selves upon the country, &c.

And for a further plea in this behalf the said defendants, by leave of the Court here for this purpose first had and obtained, according to the statute in such case made and provided, say that the plaintiff ought not to have or maintain his aforesaid action against them, because they say that the goods and chattels in said declaration mentioned at the said time, when, &c., were the property of the said The H. B. Claffin Company, one of the defend-  
 40 ants, and not of the said plaintiff, as by said dec-



laration is above supposed and alleged. And this they, the said defendants, are ready to verify. Wherefore they pray judgment if the plaintiff ought to have or maintain his aforesaid action thereof against them ; and they also pray return of the said goods and chattels, together with costs in this behalf, according to the form of the statute in such case made and provided, to be adjudged to them, &c.

Therefore let a jury thereupon come before the Court aforesaid, at Paterson aforesaid, on the fourth Tuesday of April next ensuing, by whom, &c., who neither, &c., to recognize, &c., because as well as, &c., and the same day is given to the parties aforesaid at the same place, at which day before the Court aforesaid, at Paterson aforesaid, come the said parties by their respective attorneys aforesaid, and the jurors of the jury whereof mentioned is within made are respited between them from day to day, until the fourth Tuesday of September then next ensuing.

At which last mentioned day, before the Court aforesaid, at Paterson aforesaid, come the said parties by their respective attorneys aforesaid, and the jurors of the jury whereof mention is within made also come, who to speak the truth of the matters and things within contained, being chosen, tried and sworn, upon their oaths say that they find the said defendants did take certain of the goods and chattels in the declaration of the said plaintiff mentioned and set forth, and did detain the same, and they assess the damages which the said plaintiff hath sustained by reason of the said unjust detention above mentioned, over and above his costs of suit and charges by him about his suit in this behalf expended, at the sum of twenty-one dollars and seventy-eight cents (\$21.78); and they assess the value of the goods and chattels so taken and detained and in said declaration specified, at the sum



of three hundred and sixty-three dollars and thirteen cents.

10 Judgment signed October 25, 1894.  
JONATHAN DIXON,  
*Judge.*

Therefore, it is considered that the said plaintiff do recover against the said defendants their said damages, and also the sum of fifty-eight dollars and twenty-eight cents, for their costs and charges by them about their suit in this behalf expended, now here taxed and by the Court here adjudged to them with their assent. Which said damages, costs and charges in the whole amount to the sum of four hundred and forty-three dollars and nineteen cents; and the defendants in mercy, &c.

|              |          |
|--------------|----------|
| Damages..... | \$384.91 |
| Costs.....   | 58.28    |
|              | <hr/>    |
|              | \$443.19 |



# Passaic County Circuit Court.

|                                                    |  |                       |    |
|----------------------------------------------------|--|-----------------------|----|
| <hr/> SAMUEL P. PORTER,<br><i>Plaintiff,</i>       |  | } <i>In Replevin.</i> | 10 |
| <i>v.</i>                                          |  |                       |    |
| <hr/> THE H. B. CLAFLIN COMPANY,<br><i>et al.,</i> |  |                       |    |
| <i>Defendants.</i>                                 |  |                       |    |

Before Hon. J. DIXON, *J. S. C.*, and a Jury.

PATERSON, N. J., October 3, 1894.

Appearances: For plaintiff, M. DUNN; for defendant, FRANKLIN M. OLDS.

**Samuel P. Porter**, being duly sworn, testifies as follows:

*Examined* by Mr. Dunn: 20

Q What is your business?

A I am a furniture manufacturer and broker.

Q As a furniture manufacturer and broker, had you any dealings with Mr. Frank E. Crane, of this city?

A As a broker, yes, sir.

Q You dealt with him in both capacities?

A Yes, sir, but in this case as a broker.

Q Did you sell him, as a broker, any goods from the house of Ring, Merrill & Tillotson? 30

A I did.

Q And have you the original orders by which those goods were sold?

A You have them.

*The Court:* Those are they?

*Witness:* Yes, sir; the original orders.

Q Written by you and sent by you to Ring, Merrill & Tillotson?

A Yes, sir.



Q Goods delivered in pursuance of them ?

A I did, yes.

Q And how did you get the orders back ?

A By writing for those orders before we brought suit.

Counsel reads to the Court and jury orders of April 13, 1892, May 6, '92.

Q Now, were those goods shipped in pursuance of those orders, to Mr Crane ?

10 A They were.

Q And were they paid for, or anything on account of them ?

A \$100 was paid on account.

Q Paid to you ?

A I collected it.

Q Were all these payments that you sold as broker, made to you and collections made by you ?

A They were.

20 *The Court* : When was that \$100 paid on account ?

*Witness* : I haven't got the exact date, nor does the bill give it, but it was paid some time in July, I think—either June or July following ; Clafin & Co. have got the data of all this.

Q Now, at the time that Mr. Crane failed, or about the time that Mr. Crane failed, before this action was begun, what did you do with reference to this account, or what did your house do ?

30 A Before we sold them these goods ?

Q No, before the suit was brought and about the time that Mr. Crane was failing—what was done by you or your house with reference to these goods ?

A I went to Mr. Crane's business office in Paterson and asked for the balance of this account ; it was two or three weeks before the foreclosure.

Q How much was then the balance of the account ?

40 A \$159.50.



*Q* And what was done after that request—did you get the money?

*A* I didn't; I wanted him to give me the goods so as I could place them elsewhere; the reason I went there was simply on account of rumors that Claflin & Co. were going to foreclose, and I told him this story, and he told me in the presence of Mr. Cairns, whom I met in the office at the time—

*Mr. Olds:* Was this the conversation at Crane's store? 10

*Witness:* With Mr. Crane, when I went for the money.

Objected to; answer allowed; exception.

*Witness:* I asked for the payment of these goods and he couldn't give it to me, and I asked for the goods, and his remark was, if I took the goods out then and there it would hurt him in the estimation of other people, and it would simply be the beginning of the whole collapse, and that he would pledge me his word that if anything should happen—that if Claflin foreclosed on him, that we could get in and get our goods there, and he showed them to me there on the floor. 20

*Q* Now, afterwards he failed, and what did your house do—I show you this paper and ask you what your house did with reference to the transference of the title to those goods?

*A* As soon as Ring, Merrill & Tillotson found out we didn't get the money that night they charged the account as per my agreement—they charged to my personal account, and afterwards transferred to me their right, title and interest in the same. 30

*Q* Is that the paper?

*A* Yes, sir.

*The Court:* When was that paper executed?

*Witness:* Aug. 31, 1893.

Paper offered in evidence.

*Q* After you received that, what did you do in reference to obtaining—after Crane failed, what did 40



you do in reference to obtaining those goods—you began this suit in replevin?

A Yes, sir; entered suit in replevin, of which this is the outcome of that.

Q When you went to the store—did you go to the store with the sheriff to identify these goods?

A I did.

Q Who did you find there?

A I found Mr Demarest, and I went also with  
10 Mr. Olds, and some others in the employ of the Claffin Company.

Q Now, can you tell us what goods were on there—that you found there at the time?

A I found these Ring, Merrill and Tillotson goods, two No. 151 chamber suits, at sixty-six and two-third cents per suit—that is the price by the hundred, amounts to thirty-two thirty.

*The Court:* Do you know which two of those  
20 were ordered—they were the two shipped under the order of May 6th, and one of them under the order of April 13?

*Witness:* Both of those were under the order of May 6, and shipped May 10, because he sold the first suit; I know that from his own word when he ordered the others; also three No 161 chamber suits, value \$37.50 for the three; three No. 162 chamber suits at about \$15; total, \$173.83.

Q They were replevied by the sheriff that day?

30 A Yes, sir.

Q And afterwards re-replevied by the defendants?

A Yes, sir.

Q In reference to the house of Ring, Merrill and Tillotson, what was your relation to that house—broker?

A I was acting as broker for them in New York city, and a general western agent around Pittsburg and Buffalo; also as a broker for the exportation of  
40 their goods to different countries.



*Q* Did you also represent the house of E. G. Fitch & Co. ?

*A* I did.

*Q* Did you deliver Mr. Crane any goods from the house of E. G. Fitch & Co. ?

*A* I did.

*Q* Now, at the time of Mr. Crane's failure, was he also owing you money for those goods—the goods of E. G. Fitch & Co. ?

*A* He was.

10

*Q* What were the conditions upon which you delivered him the goods, or caused goods to be delivered to him through this house ?

*A* On the same terms and conditions.

*Q* Have you the original orders ?

*A* I have.

*Q* Just refer to them—what was the first order that you have there in date ?

*A* I have some orders here that were paid for formerly and not applicable to this case.

20

*Q* If the goods mentioned in those original orders went in subsequent orders they were upon the same conditions ?

*A* They were.

*Q* Read us the first intimation that you sent to E. G. Fitch ?

*A* It is marked April 1st.

*The Court:* Which April ?

*Witness :* 1893.

30

*A* May I explain the relationship to the factory that I sold the same goods for, and the one factory merged into the other—in other words, one factory was drowned.

*Q* What was the name of that ?

*A* The Aekland of Penn. was drowned out, it merged then into the Athens Furniture Company of Athens, Penn. ; the proprietors of the factories consolidated and traded under the firm of E. C. Fitch & Co. ; it was then organized as the new 40



Athens Furniture Company, and I sold out the remnant of the old Athens Company, or E. G. Fitch & Co.—meaning the same thing, and afterwards went along with a new company as agent.

Q E. G. Fitch & Co. is what?

A The party interested here.

Q The first order you sent to those houses is dated when?

A This order is to E. G. Fitch & Co.—the date  
10 May 13—shipped on May 19, 1893.

Order read to the Court and jury.

Q Well, now, what do you mean by the orders there—I will ask you this question: when you made the replevin in this case did you find any of the goods ordered there in the store?

A I did, sir.

Q Tell us what goods you identified there in the store?

A This is the only order that is unpaid—this  
20 order of May 13, to E. G. Fitch & Co. is the only order on our books that is unpaid.

*The Court:* Mr. Dunn wants you tell us which of the goods embraced in that order you found in Mr. Crane's store at the time of the replevin?

*Witness:* One No. 240½ dresser; we didn't find the whole suit, but only the dresser.

*Mr. Olds:* I move for the dismissal of juror  
30 number one, as having been on the Porter case.

Motion overruled; exception.

*Witness:* The value of that dresser is \$19, the full suit being worth \$38—I, as a manufacturer, know; there is a law among all manufacturers—a commercial law—that the half price of a suit is the price of a dresser, and that the bed and the washstand forms the other, and in that way we form that price; one No. 235½ chamber suit, \$24.50; one No. 221 at \$27; total, \$70.50—to be found on this order.

40 Q Were you the owner of those goods, with title



to those goods, at the time that you took out your writ of replevin?

A I was the owner of those goods before that replevin.

*The Court :* How did you come to be the owner?

*Witness :* I have the letter of assignment, dated September 2, '93.

*The Court :* That is an assignment from whom?

*Witness :* From E. G. Fitch & Co., of Athens, 10 Penn.

Q And how much?

*Mr. Olds :* I wish to object to this assignment, if your Honor please, on the ground that it purports to be made by E. G. Fitch & Co.; are they a corporation or partnership?

*Witness :* A partnership.

*Mr. Olds :* Then I withdraw the objection.

Q You know the signature?

A Yes, sir; very well.

20

Assignment read to the Court and jury.

Q What is the balance due to E. G. Fitch & Co. upon that assignment?

A The balance that was due to me was \$108.47.

Q Now, did you also represent the Harrisburg Furniture Company?

A I did.

Q And in the capacity of broker?

A Yes, sir.

30

Q I show you these papers, and ask you if they are the original orders sent by you to the Harrisburg Furniture Manufacturing Company as your broker?

A They are.

Q Give us the date of the first order?

A There are only two orders in here that we find the goods in; one is May 15—that is the bill—and June 14; one is the order of May 13, and the date of the bill is May 15.

40



*The Court:* '93?

*Witness:* Yes, sir.

*The Court:* And what was the other order?

*Witness:* That was due the 14th.

*Q* Just read us upon what terms those goods were delivered to Mr. Crane's store?

*Witness* does so.

*Mr. Olds:* What are you reading from now?

10 *Witness:* I am reading now from the first order that I sent in, as the other is on the terms of the former order.

*Witness* reads order of May 13.

*Q* And the other order is dated when?

*A* March 23.

*Q* That is in your own handwriting?

*A* Yes, sir.

*Q* And goods sent in pursuance of it?

20 *A* Yes, sir.

*Q* And what is the next order dated?

*A* June 14th is the date of the bill.

*Q* Have you the order there?

*A* This of June 14th may be a continuation of this first order.

*The Court:* The order was filled by two shipments?

30 *Witness:* Yes, sir; I think this was a continuation of the same order—No. 11 and 12 desks.

*Q* What is that you are reading from?

*A* From May 13.

*Q* Now, just tell us if there was anything due and unpaid upon these orders at the time that the replevin took place, and Mr. Crane failed on that order?

*A* Yes, sir, there was.

*Q* Tell us how much?

*A* \$80.50.

40 *Q* And just tell us now what goods, if any, you



found there that had been delivered to the store in pursuance of that order?

A One six drawer chiffonier, with glass, \$8; one six drawer chiffonier, hat box and glass; one thirteen bookcase; one No. 10 ladies' desk, \$8.50.

Q Making a total of what?

A \$48.

Q Now, was the title of those goods reserved by the company transferred to you?

A Yes; they were transferred to me September 10<sup>th</sup>, 1893.

*Mr. Olds:* I wish to object to this assignment on the ground that the assignor appears to be a corporation, and no authority for the transfer is given.

*The Court:* There's whose signature?

*Witness:* This is signed by John K. Royal, who is the manager and secretary of the concern—they call him the business manager also.

Q And have those goods been charged to you 20 and paid for by you?

A They have.

Assignment admitted in evidence; exception.

Q Now, did you also represent the Connersville Cabinet Company?

A I did.

Q And were you representing them as broker?

A I was.

Q Just state whether any goods were delivered by you to Mr. Crane from the Connersville Com- 30 pany, and if so, when, and upon what conditions?

A I sent them an order on May 12, 1893.

*The Court:* Have you got it there?

*Witness:* Yes, sir; it is punched out here, either 10 or 12; it was on their file.

Q And returned to you by them?

A Yes.

Witness reads the same.

*Witness:* On September 13th, they returned 40 this to me.



*Q* Were the goods shipped in pursuance of that order?

*A* Yes, sir; and transferred to my account on August 31st,

*Mr. Olds* : Instead of September 13th?

*Witness* : Yes, sir; and signed by Mr. Right.

*Q* Do you know his signature?

*A* Yes, sir.

10 *Q* And is that his signature?

*A* Yes, sir.

Defendant's counsel makes the same objection as before, and excepts to the ruling of the Court.

*Q* What amount was due to you on account of the Connersville order at the time of the Crane failure?

*A* \$33.25—we have not the whole order there.

*Q* And the value of the order is what?

20 *A* \$33.25—I have got the items here, if you desire.

*Q* Did you also represent the Indiana Furniture Company?

*A* I did, sir.

*Q* In what capacity?

*A* As a broker.

*Q* And did you deliver goods to Mr. Crane as such, in reference to that company?

*A* I did, sir.

30 *Q* I show you this paper, and ask you if those are the original orders by which the goods were sent?

*A* Those are.

*Q* How many orders are there?

*A* There is only one order—only one bill.

*The Court* : May 18, 1893?

*Witness* : Of May 18th.

*Q* What was the condition upon which those  
40 goods were delivered?



A That was in my order of May 13th, and shipped May 18th, from Connersville; the condition of this order was, they were shipped on consignment; this is based on the original agreement of March 23d, the form order on which the latter is set out.

Objected to as a voluntary statement by witness, by which there is no warrant in that order itself, and I ask that be stricken out.

*The Court:* There is no reference in that writing 10  
to anything prior?

*Witness:* Oh, yes, the same terms and conditions as on my order of March 23d.

*The Court:* Now, you may read your order of March 23d.

Witness does so.

*Q* The goods were delivered in pursuance of those orders—now, tell us what goods were in Mr. Crane's store? 20

*A* I am sorry to say I found only one sideboard, at \$43.00.

*Q* And that was covered by the order of what?

*A* May 13th, and shipped on May 18th, as per invoice.

*Q* And what was the balance owing to you at the time?

*A* \$90.04.

*Q* Have you also an assignment of transfer of the title of those goods from the Indiana Company? 30

*A* I have, sir; under date September 1st, signed by the secretary, whose signature I know very well.

Same objection and same exception.

*The Court:* Now, you have been telling us all along that these various orders were sent by you to the company, and they referred to understandings which you had with Crane—what had transpired between you and Crane which would justify such understanding?



*Witness:* Prior to shipping him any goods, he came into my office and said that he wanted to have some of our goods ; that he needed them to fill up and tone up his stock ; he knew that I knew all about the mortgage to Claflin Company, and therefore he said in answer to my question to him : "Mr. Crane, how do you expect to pay for these goods ?" "I expect to pay for them in 30 and 60 days ;" and I said, "I cannot sell you any of those goods out-  
 10 right, knowing the condition financially that you are in, and knowing the hold that the Claflin Company has got on you ;" and he said, "Can't you not send me those goods on consignment and this will give you ample protection ?" "Well," I said, "if that can be arranged I am willing to sell you the goods, but they must be our property until the goods are paid for." Under those terms he entered into an arrangement with me—to secure me in case  
 20 of any trouble with Mr. Claflin. He asked me at the time if I would prefer having those goods come in not marked "consigned," and not marked on the goods, or on the bills, as it might hurt him, perhaps, in the estimation of his competitors here, or in getting other goods. He thought that if we had this arrangement between us it ought to make me perfectly safe. After giving it thought, I acted upon that belief that I was safe.

*Q* Did you also represent the Armstrong Furniture Company ?

30 *A* I did.

*Q* I show you this order, and ask you if you shipped the goods to Mr. Crane in pursuance of that ?

*A* I did.

*Q* Well, now, what was the date ?

*A* The date of this order was March 23, of which this is the original.

*Q* Written by you ?

40 *A* Yes, sir.



*Q* Just read it to us—1893?

*A* Yes, sir; March 23. Bill, March 29, I find five No. 44 tables at \$2.40, \$12.00; ten No. 42 parlor tables at \$15.25 a dozen, \$12.71; two No. 63 tables, \$2.25; two No. 40 tables, \$1.71; two No. 21 tables, making a total of \$30.38.

*Q* How much is due upon that bill?

*A* \$71.60—I beg pardon; they didn't ship the whole of the order.

*Q* No part had been paid?

10

*A* No.

*Q* Were those goods transferred to you—the title of the company afterwards?

*A* Those goods were transferred to me under date of September 27, 1893, signed by the Armstrong Furniture Company.

*The Court:* Whose signature?

*Witness:* J. J. Comes—this is the signature, but that I don't know; I know the gentleman, but I don't know his signature.

20

*Q* How is it signed?

*A* Generally in the way it comes to me.

*Q* So far as you know?

*A* To the best of my knowledge and ability that is his signature.

*Mr. Olds:* Of whom?

*Witness:* That is the signature of Mr. Comes, the secretary.

*Q* You have had other correspondence with him?

30

*A* Yes, sir.

*The Court:* Do you mean that you have corresponded with the company and had letters from him?

*Witness:* Yes, sir, from this same gentleman—the company is in the hands of a receiver now.

*The Court:* From your knowledge of handwriting from that correspondence from Mr. Comes, whose signature is that?

*Witness:* That is his signature.

40



*Mr. Olds :* Same exception and same objection.  
Witness reads order dated March 23, 1893.

*Cross-examined, by Mr. Olds :*

*Q* Look at papers shown you and say whether this is the original invoice, the bill of lading for which goods which you have just testified were shipped to Mr. Crane by the Armstrong Company?

*A* This is the original bill, of which this is a  
10 copy.

*Q* Which is the original bill—the one I hand you?

*A* This is the original bill.

*Q* What date?

*A* Dated March 29.

*Q* And the other paper is a bill of lading?

*A* Yes, sir.

*Q* The same date?

*A* March 29—yes, sir.

20 *Invoices of March 29, 1893, read to the Court and jury.*

*Q* Look at the ten papers shown you and say whether nine of them are the original invoices of the goods which you have just testified were shipped to Mr. Crane by the Indiana company?

*A* There is only one invoice in this case.

*Q* I only ask if they're the original invoices?

*A* So far as I know, they are.

30 *Q* And the tenth paper is a bill of lading which came in one of the shipments?

*A* Yes, sir; May 17 bill is, I presume, the same, because there are two boxes of glass which would indicate that

*Q* And is that the bill that the goods came in which have been since transferred to you?

*A* Yes, sir.

Bill read to the jury.

40 *Q* Three papers are now shown you—one an invoice from the Connersville Cabinet Company of



Connersville, Indiana, dated May 25, 1893; say whether that is the original invoice for the goods which you have just testified were shipped by that company to Mr. Crane under your order, together with the accompanying bill of lading and personal letter to Crane?

A This is the deduction for broken glass; it is not in their handwriting that is put on here.

Q Yes, with that exception?

A Yes, sir; that is the original of which this 10  
other is the copy—that is right.

Q The papers I have shown you are the originals?

A Yes, sir.

Counsel reads invoices to the jury.

Q Do you remember, Mr. Porter, in going over these goods, that the No. 1 sideboard, or 141 sideboard that you say you found—this is the company in which you found all of their goods? 20

A Yes, sir.

Q And do you not remember that in going over the goods, that there was a broken glass for which you agreed to allow—for which it was consented that \$1.50 would be allowed?

A I have no recollection; but if there was, and Mr. Demarest said so, I am willing to admit it.

*The Court:* That is \$33.25, less than \$1.50?

*Mr. Olds:* I believe so.

Q Look at the six papers shown you, appearing 30  
to be invoices, statements and letters from the Harrisburg Furniture Company, from Harrisburg, Pa., and state whether the invoice was the original invoice for the goods which you say were shipped by that company to Mr. Crane under the order sent by you?

A I find that two invoices here, one of May 15, and the other is dated June 15—

*The Court:* Those are the original invoices? 40



*Witness* : Yes, sir.

*Q* And is another of these papers an original statement, sent by the same company to Mr. Crane?

*A* Yes, sir ; that statement could have been left by the writer—carried in his pocket—a statement generally sent to me.

*Q* What do you mean by the writer ?

*A* Well, the office—and sent me the statement, and I would bring that statement up in my pocket  
10 when I visited Mr. Crane.

*Q* But it is an original statement, whether it came from Harrisburg or from you ?

*A* Yes, sir.

*Q* The invoice of May 15, '93, says, "F. E. Crane to the Harrisburg Furniture Company, terms five days and thirty days, on cars at Harrisburg" ?

*A* Five off—thirty days.

*Q* And the invoice of June 15, '93, is the same ?

*A* Yes, sir.  
20

*Q* Do I understand that you found a total of \$80.50 worth of goods by the replevin ?

*A* In the Harrisburg goods ?

*Q* Yes.

*A* No ; \$48.

*Q* You sent an order, you say, May 13, '93, to E. G. Fitch & Co.—see if that invoice handed you, dated May 18, '93, is for the goods ordered ?

*A* Yes, sir ; it is fulfilling my order of May 13 ;  
30 the order is filled in full, calling for the same numbers.

*Q* And are the goods that you found in replevin the goods that are taken in that order, and sent in that invoice ?

*A* Yes, they are.

*Q* This is the invoice of May 19, '93 ?

*A* In response to my order of May 13, '93.

Order read to the jury.

*Q* In the Ring, Merrill & Tillotson case, have  
40 you copies of the invoices ?



A Yes, sir.

Q Please produce them ?

A We have copies of every one ; we knew that you had the originals and so had to produce the copies.

Q Do you know that we have the originals in the the Ring, Merrill & Tillotson case ?

A Well, I won't say positively, but I knew that you had all the papers ; I supposed so ; you have the original order.

10

Q You assume it, then ?

A That's all.

Q Do you know whether the original invoices in the Ring, Merrill & Tillotson case read in the ordinary manner ?

A Yes, sir ; it reads just the same as the orders read, "Bought of;" the terms in that were sixty days.

Q Well, your order agrees to buying thirty ?

A Well, it would be that.

20

Q Who was present when the replevin took place ?

A The sheriff, yourself, and Mr. Demarest, I think.

Q When was it when Mr. Crane came to your place and had with you the important interview about which you have testified, about buying goods ?

A Shortly previous to the first sale that we made him ; I should say it was perhaps in the month of March or February.

30

Q 1893 ?

A Yes, sir ; he was in the office.

Q Whose was the first sale that you made him ?

A I think I made it myself.

Q The Lewis-Porter Cabinet Company ?

A No, sir ; I think the first goods he bought from us was those tables from the Armstrong bill.

Q What is the date of that first order from the Armstrong Company ?

40



A The first and only order—the first order that he bought from the Armstrong people, was bought from my own floor, and billed by myself—it was of March 23, '93.

Q And according to your best recollections before that that Crane came in?

A I don't think it was this date; I'm not clear on that.

Q Did he come to buy goods from you?

10 A He came in to have a talk with me in reference to making arrangements to buy the goods and perfect arrangements with me in the office, and then afterwards he would send his buyer or any of his clerks in to buy goods from me; it would be, however, with the understanding that everything would be bought on that basis.

Q The first day he made no purchases, but merely a personal interview?

A He may have bought, that I don't know—I'm  
20 not sure.

Q Do you know what time in the day—the afternoon or the forenoon?

A That I'm not positive about—it may have been in the afternoon.

Q Who was present?

A The whole force in the office.

Q Have you any one here to-day who was present and heard that interview?

A No, sir.

30 Q Did you not consider this an important matter to bring with you some one when you had here so much at stake?

A I don't think it was necessary, because Mr. Crane is here himself to testify to it.

Q Did you make any entry or memorandum of that interview?

A No, sir.

Q Not as soon as it was made?

A No, sir.

40 Q Or at any time?



A No, sir.

Q The only memoranda that you have relating to it are the orders that you afterwards sent to these firms?

A Yes, sir.

Q But your clear recollection is that Mr. Crane wanted to buy goods, and on talking over the Claflin mortgage and his general condition, you agreed that if any were sold, they should be sold on consignment?

10

A Yes, sir.

Q And billed in that way?

A No, sir.

Q Why not billed in that way?

A I stated to-day that the reason that he didn't want them billed that way was, it might interfere with the arrangements that he may have had with other people—I suppose it meant the Claflin Company and others.

Q And you undertake to say—knowing Mr. Crane's condition, knowing the chattel mortgage which Claflin & Co. had upon him—that you consented to the suggestion he made and entered into that scheme with them to sell him goods and retain a secret lien, so that other creditors might be deceived?

A I didn't consider it such.

Q I understand that you were about to transfer goods to him in such a way that would make him resemble the owner, and other creditors might think he was the owner, and all the time retain a secret lien upon them?

30

A No, sir; it never entered my thoughts—it is a transaction that is *bona fide*.

Q He said that it might interfere with his getting goods in other lines?

A He didn't put it in that way—the way he put it was, that it might cause him considerable trouble in getting other goods.

40



Q Why was that ?

A Having the goods consigned here to Wm. M. Lyons & Co., whose home was in New York, he and Mr. Crane was doing business in Paterson and would have to come up here and get the goods transferred from the railway company to him.

Q Didn't you say it might injure him in other lines of credit ?

A If I testified in that way, why I made an error—his inference was, that it would cause him considerable annoyance.

Q Do you remember having had an interview with Claffin's attorney a year ago, when this matter was under investigation, and parties were trying to find out where the title was, and how these matters could be settled ?

A Yes, sir.

Q And do you remember that he came to your office by appointment with a stenographer to take  
20 your statement ?

A That question—I told you yesterday, I am not clear that it was with a stenographer; I understood that it was with you ; I didn't know that you were coming so as to take down all the conversation between us, and bring it into Court to use it.

Q You remember that we made an appointment ?

A Yes, sir.

Q And do you remember, as a matter of fact, that the attorney came there with a stenographer ?

30 A Yes, sir.

Q And you had one ?

A Yes, sir.

Q And you and that attorney had a conversation about these different things, and your stenographer and the attorney's stenographer took it down ?

A Yes, sir.

Q And did you not at that interview, September 8, 1893—you then said that Mr. Crane gave as the reason why he didn't want these goods marked or  
40 shipped, "consigned," that it would injure him



in getting credit in other lines, and would injure him with Claflin & Co. ?

A I said it might injure him in the estimation of Claflin & Co.

Q That is what he said ?

A That is what I said.

Q Didn't you say so ?

Witness doesn't answer.

*The Court :* Your recollection whether you recollect that you told Mr. Olds that Crane had told you that if the goods were marked as consigned, or bills made out, as consigned, it would injure him in getting credit from people ? 10

*Witness :* I told Mr. Olds that.

*The Court :* That Crane had told you that ?

*Witness :* Yes, sir ; but I'm not clear now that Mr. Crane put it that way.

Q On September 8, '93, you were actually nearer one year to that conversation than now, and tell the jury that when Mr. Crane told you such that it never entered your head that it would be injury to other creditors ? 20

A I do, most emphatically ; that is an insinuation, and I think my character stands as good as Claflin's, or any one in the United States

Q Do you, as a business man, know that every day creditors go into a store they look around with a view of giving credit—

Objected to.

30

*The Court :* Do you know that every day business men walk into merchants' stores to see what goods they have, with a view of determining whether they give him credit or not ?

*Witness :* I suppose that's true.

Q Knowing the situation of the Claflin Company and Mr. Crane, did you not believe that in view of Mr. Crane's statement with you as to his view in not having the goods marked properly, that Claflin 40



& Co. were liable to be put in jeopardy by passing a lot of goods to his creditors or manufacturers by the making of untrue statements on the purchase?

A I don't.

Q So far as the chattel mortgage is concerned, you knew that at the date of Mr. Crane's first failure Claflin Company were about the largest creditors?

A I knew that Claflin & Co. had a mortgage  
10 upon this man for goods that he hadn't in his store.

*The Court:* The question is, whether you knew that at his first failure Claflin & Co. were his largest creditors?

*Witness:* I knew that.

Q Didn't you also know that in taking the mortgage from him they took it under the agreement and advanced him \$4,000 to settle up with other creditors?

A Yes, sir; and did it for double that amount.  
20

Q And further, at the same time they agreed themselves to give him other advances of three or four thousand dollars in goods?

A Yes, sir; I knew that; he said that at the meeting of his creditors.

Q You mean, then, that Claflin & Co. had done a great favor to Mr. Crane?

A I don't think so; I considered that was a shrewd business trick to get even—they give no  
30 favor.

Q Do you mean to say that you would have been glad of the opportunity to have taken a mortgage—do you claim that to give \$100 in cash and three or four thousand dollars more—interrupted—

A Hear me—if I was the Standard Oil Company I would want the earth, I suppose, or Claflin & Company either.

Q Do you know the date of Mr. Crane calling his creditors together at 150 Canal street?

A I don't remember the date.  
40



Q Give us your best recollection ?

A I can't now.

Q Do you remember the date of the first failure ?

A I remember the date of the meeting of his creditors.

Q What was the date of the meeting of his creditors ?

A I say I don't ; I don't know the dates of each ; but I remember the time when I met there, representing the Indiana Company as a creditor. 10

Q Do you know that the date of the first failure was about the date of the chattel mortgage ?

A I think he told us that the chattel mortgage—I think that refreshes my memory now—he told us that the chattel mortgage was effected at that meeting of the creditors.

Q How long was it after when Mr. Crane came into that store to purchase goods ?

A I said I had that interview—perhaps it was two or three weeks—I have forgotten how long it was after, but it was not very long. 20

Q Was this interview with you after Mr. Crane had attempted to form a stock company, and had failed ?

A The reason for his calling a meeting of his creditors was on account of his not being able to form his stock company, and you people coming to his assistance ; it was after that time that I had a conversation with Mr. Crane. 30

Q Do you remember how long ?

A No, sir ; not the exact date.

Q Did you, in any of the cases which you have testified about in this suit, receive replies from the several furniture manufacturers in reply to your orders ?

A No, sir ; that is one thing that I don't receive as a broker—I don't have communications—to put it in black and white, if it's received. 40



*The Court :* He asks you if you didn't receive any communications from any of these people in reply to your orders ?

*Witness :* No, sir.

*Q* In all these cases that are included in this suit, in sending the orders you guarantee the payment ?

*A* Every one.

*Q* And since the original shipments to Crane, the accounts have been charged up to you and you  
10 have paid them ?

*A* I have.

*Q* And it was on making payment that these transfers of title were made to you ?

*A* On making a payment.

*Q* Yes.

*A* When I made payments.

*Q* Did you make payment before the transfer or after the transfer ?

*A* I have accounts with all these people, and  
20 immediately at this time the goods were charged to my personal account, and I was notified of it.

*The Court :* Each one of these assignments, I think, contains such a notification ?

*Witness :* Yes, sir.

*Q* Notified when these orders were charged to your personal account ?

*A* Yes, you have got the date.

*Q* At the date of the assignment ?

30 *A* Each of the assignments say so.

**Frank E. Crane**, a witness on behalf of the plaintiff, being duly sworn, testifies as follows :

*Examined by Mr. Dunn :*

*Q* What was your business during the years 1893-92 ?

40 *A* Furniture dealer.



Q Where was your store located?

A Corner of Broadway and Washington street.

Q Did you at any time during the year 1893, or the latter part of 1892, have any dealings with Samuel P. Porter, either as a manager representing companies or as broker representing other companies?

A I did.

Q What was the nature of the dealings that you had with him—what was it about? 10

A Principally to get credit and buy goods.

Q Now, before you received any goods from him—from the house of Ring, Merrill & Tillotson, E. G. Fitch & Co., Harrisburg Company, and Connorsville & Armstrong Co., or the others—did you know that he was the broker of those different houses?

A I did.

Q Did you give him orders for any goods to come to you from those different houses? 20

A I didn't the first time I went to see him.

Q What occurred the first time you went to see him in reference to procuring goods?

A I went to make arrangements about getting a line of credit; my standing at that time warranted me in going to see the different manufacturers and their agents.

Q Were you not able to obtain credit?

A I was not, unless I made special arrangement. 30

Q What was the arrangement which you made with the plaintiff with reference to obtaining goods from these houses?

A He said, in the first place, that he wouldn't ship under the circumstances, as the Claffin Company had a rope around me, and they would not take the chances. I asked him if there couldn't be some arrangement made whereby they would be secured, and I suggested myself that they should 40



send the goods in on consignment. I haven't money enough to swim myself ; it was necessary for me to make an arrangement with difference to get stock, and Mr. Porter consented under those arrangements, and he limited the amount at that time, and said as long as it didn't run up to a large amount he would help me out.

Q And whose property were these goods to be, under the circumstances ?

10 A The manufacturer's.

Objected to.

*Witness:* The plaintiff said that—that—I said, “You can send them in on consignment,” and he said with the understanding, “They are our goods until such time as they are paid for,” and I said “Yes.”

Q And all these goods that you have received from these different houses which I have enumerated, were procured on that understanding ?

A Yes, sir.

Q And some of them were unpaid for at the time of your failure ?

A They were.

Q So far as you know, did you hear Mr. Porter's testimony on that ?

A I did.

Q So far as you know, is his testimony correct ?

30 A It is.

Q Correct, also, as to the balance due on these different accounts ?

A Yes, sir.

*Cross-examined,* by Mr. Olds :

Q Mr. Crane, you remember each of these shippers, whose names were mentioned here to-day in your presence—E. G. Fitch & Co., Ring, Merrill & Tillotson, Harrisburg Company, Connersville Company, 40 pany, Armstrong Company—had you not settled by



notes some of these companies' claims in full prior to the time of your failure ?

A Not to my knowledge.

Q Have you had any notes tendered back to you since the time of the failure ?

A Yes, sir ; but that was notes given for the first settlement, the first time that I failed.

Q In whose case was it ?

A I don't remember—I cannot tell you. I know that within the last four months I received from 10 two different parties, but I cannot call them to my mind now. I have a memoranda.

Q Isn't it a fact that the Elliott Furniture Company have conveyed you notes ?

Interrupted; objected to ; objection sustained.

Q Do you not remember distinctly whether a tender has been made by any one of the companies whose goods are in question in this suit ?

A Not a single one ; the only two goods that 20 have been sent—

*The Court :* That's enough.

Q When you went in to see Mr. Porter, you say that he first said that he wouldn't ship you, as he knew that Claflin Company "had a rope around him;" you so testified ; Mr. Porter didn't testify to that language ; do you mean now to say that was his precise language ?

A I don't know whether it was, but the meaning was about the same. 30

Q We don't want your version of the meaning ; we would like the precise language ?

A I don't know but what Mr. Porter may have made that same expression ; I have heard that so often from different parties refering to that company.

Q You also said that he couldn't swim—

*The Court :* He said that he hadn't money enough to swim. 40



Q Do you mean that was an expression you used that day to Mr. Porter?

A I don't know; I might have used it; I don't doubt but what it is so; I presume it is.

Q In other words, I wish to find out whether you are carefully and cautiously testifying to what was expressed or said that day, or giving the gist of it from your recollection?

A I was trying to tell you the meaning; I  
10 couldn't tell you word for word what Mr. Porter said, but I tried to give you the meaning and expression.

Q You further said as follows, "I said you can send your name on consignment," and he said, "Goods to belong to the seller until paid for,"—did you so testify a moment ago?

A I think so; I think I did.

Q You heard Mr. Porter's testimony, just previous to your going on the stand?  
20

A I was in the room here.

Q Mr. Porter didn't incorporate that remark in his testimony—are you absolutely positive now that Mr. Porter made such a reply as that?

A As what?

Q As that the goods should belong to the shippers until paid for?

A I think he did.

Q You think so?

A Yes, sir.  
30

Q Isn't it a fact, now, that you made use of that expression, "Consignment,"—both him and yourself?

A I don't hardly think so; in some cases I don't doubt that it was expressed "consigned;" in other cases it might have been expressed it would be our goods until such time as paid for; have heard both of those expressions made by Mr. Porter; we talked it over different times.

Q You say that you don't doubt that in some  
40



cases one expression was used, and in other cases the other expression—to what are you referring in “some cases”?

A When we were talking in the building there, probably an hour and a half and two hours.

Q In some period of the conversation?

A Yes, sir; we were looking his stock over.

Q And do you mean to say that in going around through the store, and in going over the stock, you kept up this conversation? 10

A Yes, sir; at different times we probably might look at some goods—we didn’t finish the conversation, if I remember right, in the first place, but after looking the goods over; they finished the conversation before I left.

Q Do you remember what time of the day this was?

A I think it was in the afternoon.

Q Where did you find him that day? 20

A In his place of business, 170 Canal street.

Q In the office, or out in the store-room?

A Well, it is all together—only a little railing between.

Q Well, was it within the railing, or out in the stock department?

A I think he came out of the office when I came in.

Q Where did you stand when this conversation was held? 30

A A little back from the office, probably four yards; we were standing.

Q Who was present that day?

A No one but Mr. Porter.

Q Any one within reach of your office?

A They might have heard in the office, if they had been listening, to hear.

Q You stood within twelve feet?

A Four yards; I should say about that. 40







Q Do you remember when this interview in Porter's took place—the date?

A I don't know.

Q Can't you fix it within a month, or a period of several months?

A It was quite likely—well, I should say it was; I think it was about three or four weeks after the meeting in New York.

Q What meeting?

A The meeting that I had with my creditors. 10

Q And when was that?

A The date I haven't got.

Q Can't you fix it within a month?

A No, I don't know that I could.

Q These various shippers forwarded you goods in the ordinary course of business?

Question withdrawn.

Q Were the goods in any case, marked "consigned"?

A They might have been. 20

Q Do you now have a recollection of such a case?

A No; not of any amount.

Q Do you think that Mr. Porter was mistaken, then, when he says that all the invoices and shipments came alike?

Objected to; objection sustained.

Q Have you any recollection—even a slight recollection—that any of the goods were marked "consigned," or shipped "consigned"? 30

A I don't remember.

Q You told Mr. Porter, on occasion of the interview, that should the goods come consigned that it might injure you with Claflin & Company?

A I don't remember making that expression—that it would injure my standing with Claflin.

Q Don't you know, as a business man and furniture dealer, accustomed to buy goods from different creditors or any particular house, knowing that 40



you were buying on "consignment," that it would naturally interfere with your credit?

A I don't think that there could be anything worse than having a mortgage upon my property.

Q Did you not consider that it was unfair to other creditors to whom you might in the future apply for goods, to be receiving goods on consignment in this way and not marked shipped or "consigned"?

10 A Not in the least.

Q You don't consider that it would make any difference with other creditors?

A I did want to secure those people who were kind enough to help me.

Q Don't you know that Claflin & Company themselves would not like such a course of dealing on their part?

A Not in the least, for the reason that they were more than secured.

20 Q How?

A I owed thirteen thousand, and they had assessed the book account, for about \$35,000.

Q Do you mean to say that Claflin & Co. ever had possession or got \$35,000 worth of property for their claim?

A Well, their book accounts for over ten thousand.

Q Do you know how much they realized out of them?

30 A I know pretty near what the Claflin Company have realized; but I know they are good honest men in this town that would pay me where they would not the Claflin Company.

Q Then you mean, had you been able to handle these book accounts and collect them yourself, you would have got this large amount?

A Yes, certainly—would have got 90 per cent.

Q When Claflin & Co. took the chattel mortgage from you in question, did you consider it a shark  
40 business on their part, or do you a favor?



A Well, it was the only thing I had to do.

Q Did you not consider and express yourself in many ways at the time that the head credit man of the Claflin Company of New Jersey, Mr. Jordan, had been the greatest friend which you had in business when you entered in this transaction?

A For the reason I had no other way of doing.

Q Didn't you tell Jordan and others that he had befriended you as no other business man had?

A I said that he had helped me out, and I ran 10 the chances of getting clear of it.

Q He gave you the chance of trying to get clear of it?

Objected to.

Q When you went to Mr. Porter you say your circumstances were such then that it called for a visit from you—two parties from whom you wished to buy goods, and that you had one or two arrangements already—to what parties do you refer?

A I think Mr. Lyons was one and Mr. Schloss 20 the other.

Q Can you not fix the date of your interview with Porter by that?

A No; I don't think I can.

Plaintiff rests.

Defendants' counsel moves for a nonsuit.

Motion denied.

Exception.



## TESTIMONY FOR THE DEFENDANTS.

*Mr. Olds :* I desire to offer in evidence the chattel mortgage of Crane to the Claflin Company, dated August 5, '92, and recorded in Book 2 of Chattel Mortgages of Passaic county, page 178. I also offer in evidence bills of sale of Frank E. Crane, dated August 29, '93.

**Orlando Demarest**, being duly sworn, testifies as follows :

*Examined* by Mr. Olds :

*Q* Were you present when the writ of replevin in this case was executed ?

*A* Yes, sir.

*Q* Have you before you the memoranda made at the time ?

*A* Yes, sir.

*Q* In whose handwriting is it ?

*A* This one here is in your handwriting.

20 *Q* Have you that memorandum made by yourself at that time ?

*A* No ; I reduced mine, as I said before—this is the one I made with Mr. Porter at that time ; the three of us went around together.

*Q* And when did you make your statement, or what was done in reference to identifying his goods ?

*A* What method do you mean we pursued ?

*Q* Yes.

30 *A* We walked around the store, and when Mr. Porter would find an article he would make a note of it, and so would I.

*Q* Do you remember what has become of your original memorandum ?

*A* I think it is on the back of the sheriff's paper ; my impression is I agreed to make out a list for the sheriff ; there is a very slight difference.

*Mr. Dunn :* Tell us what it is ?

40 *Witness :* I can't say without seeing your report.



*Mr. Dunn:* Mr. Porter, go up there and see where the difference is?

*Witness:* There is a difference of \$6.25 in our favor on account of the dresser, on Ring, Merrill and Tillotson's account.

*Q* Are you in the employ of Claflin & Co. in New York city?

*A* Yes, sir.

*Q* In the law department?

*A* Yes, sir.

10

*Q* And have frequent charge of outside matters where it is necessary to send a practical man to the firm's customers?

*A* Yes, sir.

*Q* Are you the gentleman of the place that is placed in charge of the Crane store in Passaic and Paterson, on the Claflin foreclosure of their mortgage September, 1893?

*A* Yes, sir.

*Q* And so, being in charge, was present when 20 this replevin suit was begun?

*A* Yes, sir.

*Q* Did you have charge of the collection of the book accounts assigned to Claflin & Co.?

*A* I did.

*Q* What was the total amount realized?

Objected to.

*Mr. Dunn:* We will admit that the mortgage has not been fully satisfied.

*Q* Were you in Mr. Crane's store several times 30 previous to the foreclosure—shortly previous to the foreclosure?

*A* Twenty-one times.

*Q* And did you have any conversation with Mr. Crane during any of those interviews as to whether he had any goods there on consignment, and if so, what?

*A* I did, the first, the third and fourth days; the times intervening I never saw him because he wasn't there.

40



*Q* State what the first conversations were?

*A* I asked him about his liabilities and his assets, and after I came down to the question which I usually ask about consigned goods, and he said that he didn't have any consigned goods in his store, except the bamboo goods, and he said the amount was about \$18.

*Q* Were you present at the time that this bill of sale was negotiated and paid?

10 *A* Yes, sir.

*Q* This 21 times that you speak of, and the date of these interviews, was prior to that assignment of book accounts?

*A* Yes, sir.

*Q* Did you report that conversation to your employers in New York?

*A* Every day.

*Q* What further conversation was there?

*A* With the exception of Sunday, of course.

20 *Q* What further conversation was there with reference to consigned goods, if any?

*A* I asked him if he was sure that that was all the consigned goods, and he told me that he ought to know what he had in the store, and I told him I thought so.

*Q* During your visits you went over the books and vouchers and correspondence?

Objected to.

Objection sustained.

30 *Q* State what your duties were and what you did during those visits to Crane's place?

*A* I went there for the purpose—

*The Court* : Counsel asks what you did.

*Witness* : Well, I examined these books as far as I could find them, and different matters relative to his business.

*Q* Different matters, you say?

*A* Memoranda and vouchers relative to his business.  
40 iness.



*Q* Invoices, among other things?

*A* Yes, sir.

*Q* Did you find invoices there marked "consigned"?

Witness does not answer.

*The Court:* Whether you found any invoices marked "consigned"?

*Witness:* Well, really, the invoices that I found I turned over to Mr. Olds.

*Q* At that time?

10

*A* Oh, no, because I would have been very stupid to turn around and admit that I had found it.

*Q* You were present, you say, when that assignment of the book account was negotiated; do you remember whether the statements of Claflin Company's account with Crane were there present?

*A* Yes.

Objected to; objection sustained; exception.

*Q* You offered for the purpose the sales of goods of Claflin & Co.—showing the indebtedness?

Objected to; objection sustained; exception.

Bunch of statements offered by Claflin & Co. to Mr. Crane.

Objected to.

*The Court:* I overrule it as evidence of indebtedness, and as evidence of sale.

*Q* You say that you reported every day; to whom would you make your reports?

*A* To Mr. Jordan.

30

*Q* And who is he?

*A* Credit man for New York and State of New Jersey.

*Q* Of Claflin & Co.?

*A* Yes, sir.

*Q* Is he the man that had immediate charge of this Crane account?

*A* Yes, sir.

*Q* Did you also frequently see Crane in Claflin's

40



store during the year that this mortgage was pending?

A Yes, sir.

Q And with whom was he having his dealing, outside of selling stock?

A With Mr. Jordan.

Q Who had the papers in the Crane case in his possession?

10 A What papers?

Q I mean the mortgage and the papers that the firm had?

A Well, in a box; we kept them in Mr. Jordan's room, and at night it was put into the safe.

Q State whether Claflin & Co. sold goods to Mr. Crane at the late date that they did—do you know when was the last goods that Claflin & Co. sold?

*The Court:* Do you know of any sales to him?

20 *Witness:* In the credit department the only way we know is by the check that comes up; we don't see the actual sale.

*The Court:* Do you know of any actual sales, aside from memoranda?

*Witness:* To the best of my recollection, I had a ticket in my hand—

*The Court:* Aside from tickets, do you know?

*Witness:* Only the man that sold the goods can tell that; but that ticket is evidence of the sale.

30 *The Court:* Your statement about the ticket is not evidence of same.

Q Did you ever see Mr. Crane going around through the department buying goods?

A Seen him in the department.

Q What was the last date that you can remember of Mr. Crane going around the department buying goods?

40 A I had seen him in the department probably four or five months prior to the failure.



Q From your connection with the law department, and daily reports to a creditor and instructions received from him, do you know whether the Claflin Company would have continued to deal with Crane as they did if they had known that goods were consigned to him?

Objected to; objection sustained; exception.

Q Have you any competent knowledge whether Claflin & Co. would have continued dealing with Crane, allowing him to continue on in business as they did, had they known of these goods being consigned in the way testified by plaintiff in the suit? 10

Objected to; objection sustained.

Cross-examination declined.

---

Frank E. Crane, recalled:

20

*Examined* by Mr. Olds:

Q How late did you continue the first goods from Claflin & Co.?

A I presume—for cash do you mean?

Q How late did you purchase goods?

A My men might have had goods there within a day or two previous to the failure.

Q Oh, you don't know?

A I don't know, for I was sick in bed for a week before. 30

Q How long prior to your failure were you put on a basis of cash?

A Months before; sometimes I paid them over a thousand dollars cash; if they refer to their books, they will find where I bought goods and paid them a thousand dollars, and I didn't get a penny only as I paid for them; I paid for them several months before my failure.

40



Q For several months you didn't buy anything on credit from them?

A For several months.

Q Three or four months?

A I presume so; you have the data there—it is very easy to find.

Q How would you pay cash for those goods?

A It was up to the limit—I got \$3,000.

Q How would you pay cash?

10 A Send the cash.

Q Before you got the goods?

A Very often they would send the goods out C. O. D.

Q When they didn't send them that way, what then?

A I had to pay the money for them.

Q In other words, you paid cash in advance?

A I went there and picked the goods out and gave a check for them.

20 Q The goods would come to Paterson before you sent your check?

A No, sir.

Q You would select the goods, ascertain your account, and give your check?

A Yes, sir; go down and give my check at the office.

Q You remember executing the assignment of your book accounts to the Claflin Company?

30 A It is admitted.

Q Do you remember it?

A It is admitted.

Q Do you remember that transaction?

A I believe so

Q Did you see the statement that we had presented that day on which your transaction was based, showing the amount of the account?

A You asked me if there were any goods on consignment, and I said there were.

40 Q Do you remember the statement of the firm



of Claflin & Company, presented that day, which I show you, on which that bill of sale was made?

A I was a man more fit to be in bed—I wasn't fit to remember.

Q Do you remember?

A I don't remember very much about it.

Q Look at the paper shown you, and say whether they're statements of your account with the Claflin Company?

Objected to; objection sustained; exception. 10

Q Would you recognize here the statements of account which Claflin & Company used to forward you in the usual course of business?

A Naturally would, by the heading.

Q Look at this statement now shown you, and say whether they're not statements remitted to you on that date?

Objected to as irrelevant and immaterial; objection sustained; exception.

Q You remember the amount of your indebtedness to Claflin Company, at the time of your final closing out? 20

A Do I?

Objected to as immaterial.

Q Yes; I only ask the witness if he remembers?

A No; but I think it was about \$13,000; I know that I was figuring that my book account was \$3,000 of being the whole thing.

Q Isn't it a fact that you went to Claflin Company's place to purchase goods on sixty days and four months' time, as late as August 19, 26 and 27, 1893? 30

A I don't remember.

Q Do you remember testifying a moment ago that you hadn't bought any goods on credit for several months?

A Yes, sir.

Q How do you reconcile that statement with your present statement?



A Mr. Jordan told me—I wasn't figuring up how many months you had reference to.

*The Court:* He is speaking of transactions in August, '93?

*Witness:* No, sir; if there were any goods bought then, I have no knowledge of it, whatever.

*The Court:* Any goods bought on credit?

*Witness:* No, sir; I don't know anything of  
10 the kind, for I went away.

Q Isn't it a fact, that you bought goods on credit during the month of August?

Question withdrawn.

*Cross-examined*, by Mr. Dunn:

Q Prior to the signing of this bill of sale which Mr. Olds has spoken of, before you received the \$2,000 as consideration from Claflin & Company, you informed him that there were goods on consign-  
20 ment?

A Mr. Olds asked me—I remember that distinctly, and to the best of my recollection, I told him there were some that were consigned.

Q And do you recollect at the very hour that Mr. Olds was writing it up, that Mr. Porter and Mr. Lyons came into your room and had a little talk with reference to you about it?

A Yes, sir.

30 *Re-direct*, by Mr. Olds:

Q This time that you told Mr. Olds there were some goods on consignment, was the very day that you made the assignment of the book accounts?

A I remember speaking of it just a little time before.

Q What time are you speaking of it now?

A I am speaking of the day that you came down to make out the transfer of the book accounts.

Q August 29, 1893?

40 A Yes, sir.



*Re-cross*, by Mr. Dunn :

*Q* Mr. Demarest has spoken of his having had a conversation with you, in which he said that he asked you if you had any consigned goods in the store, and you told them that you had not, except some bamboo goods ?

*A* I remember telling him—it was just prior to my going to Asbury Park.

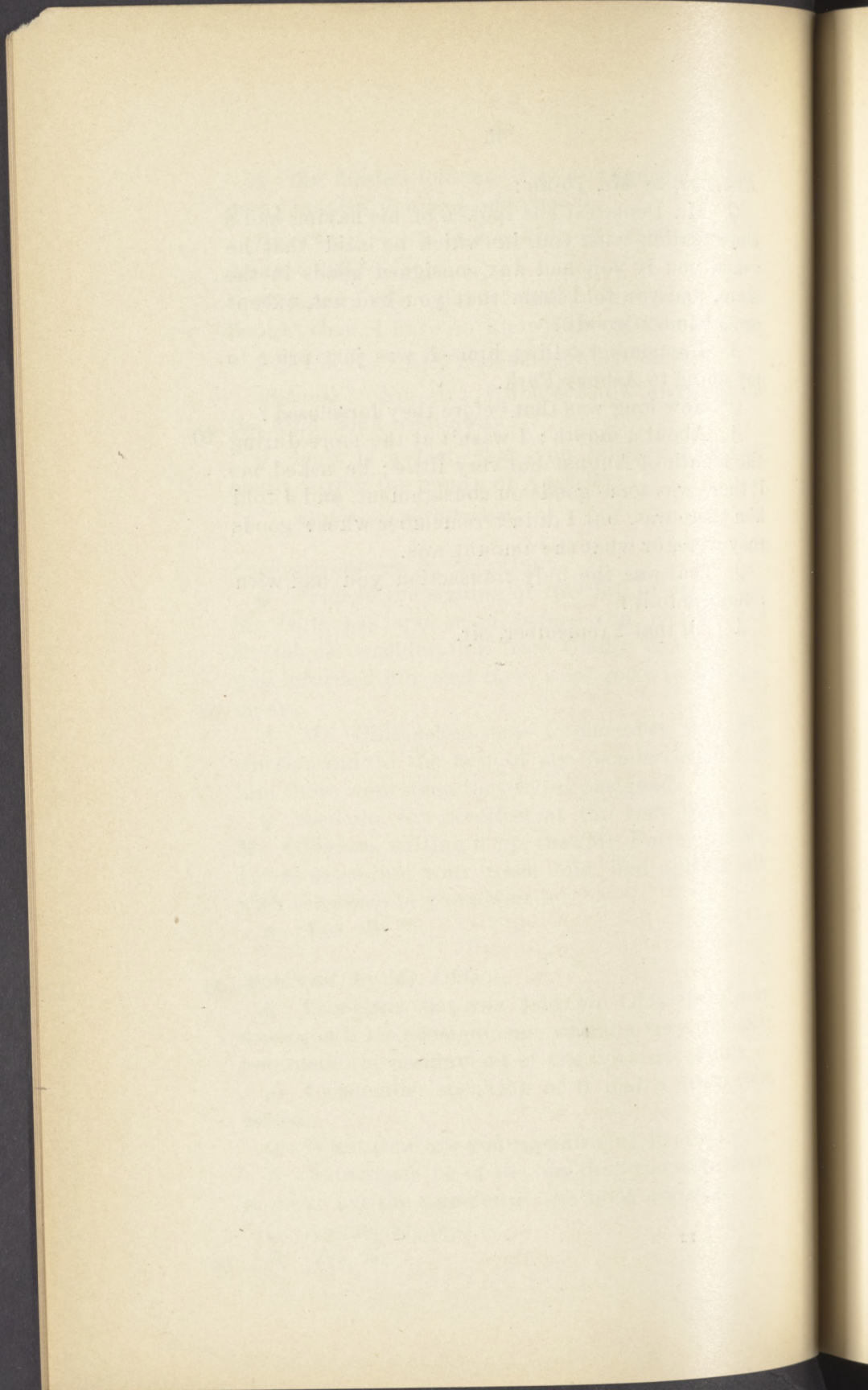
*Q* How long was that before they foreclosed ?

*A* About a month ; I wasn't at the store during 10 the month of August but very little ; he asked me if there was some goods on consignment, and I told him there was, but I didn't remember whose goods they were, or what the amount was.

*Q* That was the only transaction you had with reference to it ?

*A* All that I remember, sir.







## EXHIBIT.

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### *CHATTEL MORTGAGE AND AGREEMENT.*

Made at Paterson, N. J., August 5th, 1892, by 10  
and between Frank E. Crane, of Paterson, N. J.,  
of the one part, and The H. B. Claflin Company, a  
corporation organized under the laws of New Jer-  
sey and doing business in New York City, of the  
other part.

Whereas, Said Crane, a retail furniture dealer at  
No. 211 Main avenue, Passaic, Passaic county, N.  
J., and at Nos. 79 and 81 Broadway, Paterson, Pas-  
saic county, N. J., is indebted to said The H. B. 20  
Claflin Company, wholesale dry goods dealers, for  
merchandise heretofore delivered in the sum of two  
thousand and seventy dollars and eighty-two cents  
(\$2,070.82);

And whereas, Said Crane is largely indebted to  
others also and has requested said company for an  
extension on their claim and for advances of cash  
and merchandise, to enable him to continue in busi-  
ness, and as inducement thereto, (1) has made a state-  
ment of his financial condition to said company, the 30  
truthfulness of which he hereby warrants; (2) has  
made an assignment to said company of all his book  
accounts, amounting in face value to \$ , 90  
per cent. of which at least are warranted good and  
collectible; and (3) is willing to mortgage both his  
said stores and all his property now or hereafter  
therein.

Now, therefore, in consideration of the premises  
and the mutual covenants herein, said parties have  
agreed and do agree as follows:



## FIRST.

The H. B. Claflin Company grant Mr. Crane an extension of three months on his said indebtedness of \$2,070.82—*i. e.*, until November 5th, 1892, the same to bear interest from the date hereof.

## SECOND.

10 The H. B. Claflin Company this day advance Mr. Crane thirty-five hundred dollars (\$3,500) in cash to enable him to pay certain items of indebtedness to others, said (\$3,500) to bear interest from the date thereof.

## THIRD.

The H. B. Claflin Company agree and bind themselves to advance Mr. Crane hereafter cash to the amount of four thousand dollars (\$4,000) and merchandise to the amount of thirty-five hundred dollars (\$3,500)—*i. e.*, they agree hereafter to advance Mr. Crane \$7,500 altogether.

20 All future merchandise advances hereunder to be strictly for Mr. Crane's own business, and all to be and remain the property of said company until actually in Mr. Crane's stores, upon arrival wherein the same shall at once be subject to the lien of this mortgage.

30 All future cash advances shall be used for the benefit of Mr. Crane's furniture business and be paid on his call, but in such directions and to such persons or firms and for such specific purposes as may from time to time be agreed upon by Mr. Crane and William B. M. Jordan, Esq., credit clerk of said The H. B. Claflin Company. The primary intent of the agreed \$4,000 cash advance is to enable Mr. Crane to make satisfactory settlements with his other creditors. All cash advances to bear interest from the date of advance.

## FOURTH.

Said Crane grants, bargains and sells unto said The H. B. Claflin Company, its successors and as-  
40 signs forever—



All the goods, chattels and personal property, described as follows, to wit :

(1.) One white horse, "Frank ;" one roan horse, "Billy," and one roan mare, "Nellie ; five wagons (viz, two top business wagons, two open business wagons and one top buggy) ; seven sets of harness, lot of stable implements, hay, feed and provisions, one hair picker --said property being now at his factory, or stable property, at No. 93 River street, Paterson, N. J --together with all horses, wagons, harness and personal property now or hereafter at said premises. 10

(2.) All present and future leases of his said stores—one at No. 211 Main avenue in Passaic, Passaic county N. J.; the other at Nos. 79 and 81 Broadway, Paterson, Passaic county, N. J.—and the benefits of all the terms and covenants thereof.

(3.) The good will of his business at Passaic and Paterson. 20

(4.) All the stock of furniture, carpets and bedding, and all the machinery and office and store fixtures and furniture, and all the goods and chattels and personal property of every kind now or hereafter in, upon or about said store buildings, and each of them, and the premises adjacent thereto, or to either.

#### FIFTH.

Said Crane shall and will forever warrant and defend said goods and chattels and the property hereby granted and sold against all parties whomsoever. 30

#### SIXTH.

Said grant and sale and this mortgage are upon condition, nevertheless, that if said Crane shall—

(1.) Well and truly pay unto said The H. B. Clafin Company, its successors and assigns, all his indebtedness to them, future as well as present, to wit :



|                                                   |                   |
|---------------------------------------------------|-------------------|
| (a) The old merchandise account,                  | \$2,070.82        |
| (b) " cash advance of this date,                  | 3,500.00          |
| (c) " " agreed to be hereafter<br>advanced,       | 4,000.00          |
| (d) Merchandise agreed to be here-<br>after sold, | 3,500.00          |
| Total,                                            | <hr/> \$13,070.82 |

Together with interest as agreed.

10 And also all other indebtedness hereafter arising in their favor, whether for cash loans or for merchandise to be sold and delivered, even if in excess of the amounts above agreed upon.

(2.) Shall keep the mortgaged property insured against fire for the benefit of the holder hereof and assign the policies.

(3.) Shall allow an inspection of the mortgaged property at all times.

All of which he, said Crane, promises to do—  
Then this mortgage to be void.

20

#### SEVENTH.

In case of default at any time in making payment of said indebtedness, or any part thereof; or in case the mortgaged property shall at any time be sold or removed from the said stores, or either of them, in bulk, or in unusual quantities, or with intention, or so as in effect to impair or jeopardize the security of the holder thereof; or in case Mr. Crane shall allow  
30 any attachment, judgment, distress warrant or other lien to be entered up of record or put upon his property, or any part thereof; or in case his business, or his ability to do business, shall be stopped for any cause and the security of the holder hereof thereby jeopardized or impaired—then, and in every such case, the entire amount for which this mortgage is or may be a lien, if not already due, shall at once be and become due and payable, and the holder hereof may enter said or any stores, buildings, stables or premises whatsoever where the said  
40 mortgaged goods or any part thereof are or may be



placed and impound the same, or take and carry them away and sell the same in bulk or otherwise, retaining out of the proceeds in the first place all costs and charges of the sale, including watchmen's fees and one hundred dollars (\$100) as an attorney's fee; and in the second place all the indebtedness of Mr. Crane for which this mortgage is or may be security, cancelling the several portions thereof in any order they may see fit, and rendering the over-plus, if any, to Mr. Crane, his legal representatives or assigns. If the proceeds of sale are insufficient to pay all claims of The H. B. Claflin Company, its successors or assigns, Mr. Crane shall pay the deficiency. 10

## EIGHTH.

It is, of course, understood that Mr. Crane may carry on his business as usual heretofore, notwithstanding the making of this mortgage.

In witness whereof, said parties have hereunto set their hands and seal in triplicate the day and year 20 first above written.

F. E. CRANE, [SEAL.]

D. N. FORCE, [SEAL.]

*Treasurer of the H. B. C. Co.*

Subscribing witnesses :

FRANKLIN M. OLDS,

SAMUEL H. WALKER.

STATE OF NEW JERSEY, } ss:  
COUNTY OF PASSAIC. }

30

Be it remembered, That on this fifth day of August, A.D. 1892, before me, a Master in Chancery of New Jersey, personally appeared Frank E. Crane, who I am satisfied is the grantor or mortgagor in the foregoing mortgage named, and I having first made known to him the contents thereof, he did acknowledge that he signed, sealed and delivered the same as his voluntary act and deed.

FRANKLIN M. OLDS,

*Master in Chancery of New Jersey.* 40



STATE OF NEW YORK, }  
COUNTY AND CITY OF NEW YORK. } ss :

Be it remembered, That on this fifth day of August, A.D. 1892, before me, a Master in Chancery, appeared Samuel H. Walker, who, being by me duly sworn, doth depose and make proof to my satisfaction, that he well knows the corporate seal of The H. B. Claflin Company, one of the parties named in the foregoing mortgage; that the seal  
10 thereto affixed is the proper corporate seal of the said company; that the same was so affixed thereto, and the said mortgage signed and delivered by Dexter N. Force, who was, at the date and execution thereof, treasurer of said company, in the presence of the said deponent, as the voluntary act and deed of the said company, and that the said deponent thereupon signed the same as subscribing witness.

SAMUEL H. WALKER.

20 Sworn to and subscribed before me, a }  
Master in Chy. of N. J., at New }  
York, N. Y., August 5, 1892; all of }  
which I certify.

FRANKLIN M. OLDS,

*Master in Chancery of New Jersey.*

STATE OF NEW YORK, }  
COUNTY OF NEW YORK. } ss :

Dexter N. Force, being duly sworn, upon his oath  
30 says as follows :

I am the treasurer of The H. B. Claflin Company, the mortgagee in the foregoing mortgage named, and the owner and holder thereof. The true consideration of said mortgage is as follows : On the date of the same, to wit, on this date, August 5th, 1892, Frank E. Crane, of Paterson, N. J., the mortgagor in said mortgage named, owes said The H. B. Claflin Company, for merchandise heretofore sold and delivered by said company to said Crane at his request  
40 the sum of two thousand and seventy dollars and



eighty-two cents (\$2,070.82.) He also owes said company, for cash this day loaned and advanced to him by said company at his request, the sum of thirty-five hundred dollars (\$3,500); and said company has agreed, as in said mortgage set forth, hereafter to advance to Mr. Crane the further sum of \$4,000 in cash, and also merchandise to be used in his business to the amount of \$3,500; and said mortgage has been given as security for the payment of said indebtedness, to wit:

|                                            |                   |
|--------------------------------------------|-------------------|
| (1) The old merchandise account aforesaid, | \$2,070.82        |
| (2) The cash advance of this date,         | 3,500.00          |
| (4) " advance of cash as agreed upon,      | 4,000.00          |
| (4) " " " merchandise as agreed upon,      | 3,500.00          |
| Total,                                     | <hr/> \$13,070.82 |

And deponent further says that the amount due and to grow due upon said mortgage, as near as he can state, is the sum of \$13,070.82, with interest on \$5,570.82 thereof from this date, and interest on future cash advances from the dates from the same, respectively.

D. N. FORCE.

Sworn to and subscribed at New York }  
City, N. Y., August 5, 1892, before }  
me, a Master in Chancery of N. J. }

FRANKLIN M. OLDS,

*Master in Chancery of New Jersey.*

[Endorsed.]

Frank E. Crane

to

The H. B. Claffin Co.

Chattel Mortgage, dated August 5, 1892.

Received in the clerk's office of the County of Passaic on the 5th day of August, A.D. 1892, at 4.05 o'clock in the afternoon, and recorded in Book Q of Chattel Mortgages for said county, on pages 178, &c.

A. D. WINFIELD, *Clerk.*



# Passaic County Circuit Court.

|    |                                                    |                       |
|----|----------------------------------------------------|-----------------------|
|    | SAMUEL P. PORTER,                                  | } <i>In Replevin.</i> |
|    | v.                                                 |                       |
| 10 | THE H. B. CLAFLIN COMPANY<br>AND ORLANDO DEMAREST. |                       |

MICHAEL DUNN, Attorney for the Plaintiff.  
FRANKLIN M. OLDS, Attorney for the Defendants.

## BILL OF EXCEPTIONS.

Be it remembered, that on the third day of October, 1894, at a Circuit Court holden at Paterson, in and for the county of Passaic, before his Honor, JONATHAN DIXON, Esq., one of the Justices of the Supreme Court of Judicature of the State of New Jersey and Judge of said Circuit Court, the issue joined in the above stated cause between said parties came on to be tried by a jury for that purpose duly empaneled; the testimony in the cause having been concluded and both parties having rested the cause, and said Judge being about to charge the jury, the counsel for the defendants requested his Honor, the Judge, to charge and instruct the jury as follows, viz.:

30 If your Honor please, I should like to call attention to the proposition that I ask to charge upon, that the transaction testified to between Mr. Porter and Mr. Crane being one against public policy—against the policy of the law—that the transaction is, that these shippers did not act upon it, and that the jury must so take the fact, unless there is positive proof that they did depend upon it.

40 The stenographer is directed to enter the same request for the defendant as in the last case, viz.,



the Elliott Furniture Company against H. B. Claflin and another, the same rulings of the Court and the same exceptions.

Also, an additional request that jury be directed that the assignment to Porter of title by the several corporations was insufficient in law to transfer title.

His Honor, the Judge, declined to so charge the jury in said cause as above requested, except as charged in the charge hereunto annexed. Whereupon counsel for the defendants made exceptions 10 to said ruling of said Judge, and prayed the said Judge to set his hand and seal to this bill of exceptions.

And it is sealed accordingly.

JONATHAN DIXON, *Judge*. [L.S.]

Whereupon said Judge proceeded and charged the jury as follows :

Gentlemen of the Jury : This case is like the oth- 20  
ers that we have been trying—it involves differences between merchants in the transaction of their every day business, and we ought to try and settle these differences, as our duty is, in a reasonable, sensible and business-like way.

Mr. Porter says and insists before you, that the goods which he claims in this suit, and which were taken possession of by H. B. Claflin Company in August, 1893, were his goods, and he brought this 30  
suit to recover them. Claflin & Company say they were Mr. Crane's goods, and because they were Mr. Crane's goods they passed under the mortgage which they held against Mr. Crane with Mr. Crane's consent. Now, that is a question for you to settle—when this suit was brought did these goods belong to Mr. Crane, or did they belong to Mr. Porter, the plaintiff? The burden rests upon Mr. Porter, the plaintiff, to satisfy you that they belong to him. Now, it is conceded that these goods formerly had 40  
several owners ; Ring, Merrill and Tillotson owned



some; E. G. Fitch & Co. owned some; the Harrisburg Furniture Company owned some; the Connersville Cabinet Company some, and the Indiana Company some; and the Armstrong Company some; and both Mr. Porter and Mr. Crane claim under those former owners, and the question is which got title. I may say that it is substantially conceded that if Mr. Crane did not get the title then Mr. Porter did, for Mr. Porter produces here some writings from these several former owners, which put the title to these goods in him, unless at the time those writings were made the title to the goods was in Mr. Crane. So now we turn to see whether title was in Mr. Crane at the time. Claflin Company say it was, and they say it was in Mr. Crane by purchase from these people. It appears in the case that Mr. Porter was the agent of these several owners. He had an office in New York, and these owners were manufacturers of furniture out in the west, and it appears that in the early part of 1893 Mr. Crane went to Mr. Porter with a view of getting some goods with which to stock his store in Paterson, to carry on the business of a retail furniture dealer, and Mr. Crane and Mr. Porter unite in telling us that the negotiations between them were to this effect: That Mr. Porter would not, on behalf of his principals, these former owners, sell Mr. Crane goods in the ordinary way, but that he would make a bargain to consign the goods to Mr. Crane, the title remaining in the former owner until they were actually paid for—Mr. Crane agreeing to pay for them in thirty or sixty days. Now they substantially agree that that was the arrangement which those two gentlemen made, viz., the goods should be shipped by the former owners to Crane, but that the title should remain in the former owners until the goods were fully paid for, and that Crane would pay for them in thirty or sixty days after delivery. That arrangement having been made, if you believe the testimony of these wit-



nesses, Mr. Porter wrote to these various owners, these various manufacturers, his principals, informing them that he had made such an arrangement with Crane, and requesting them to ship to Crane the goods for which he had bargained in this way. We next find that these manufacturers shipped the goods to Crane, but that when they shipped them they sent to Crane bills which on their face indicated simply a sale of goods, some of the bills running in this form : "The Armstrong Furniture 10 Company sold to F. E. Crane so many goods ; terms net, thirty days ;" some of the bills run this way : "F. E. Crane, bought of E. G. Fitch & Co., such goods, terms net, thirty days ;" and one of the bills runs : "F. E. Crane, to Harrisburg Furniture Co., Dr.," then a list of their goods and prices, terms net, thirty days.

Now, the Claflin Company say that those bills indicate that although these manufacturers were informed that their agent had made this kind of a 20 bargain with Mr. Crane, yet they chose to ship the goods, not on the terms of the arrangement, but on terms more favorable to Mr. Crane—to sell him the goods out and out, and deliver them to him as his own, and giving him credit for the prices. Well, they had a right to do that, those manufacturing companies were the principal, Mr. Porter was only the agent, and they had a right to sell the goods to Crane out and out. Whether they did or not that is another question and that is the question for you. 30 When they shipped the goods to Crane and sent him these bills, did they mean to ship him the goods on the terms of the arrangement that he made with their agent, Mr. Porter, and which had been communicated to them, or did they mean to ship goods on terms more favorable to Crane, and trust him for the payment—that is a question for you—you draw such inference as you think is in accordance with the probability. Now, there is another circumstance in the case, and that is that 40



Mr. Porter had said in these communications to the manufacturing companies, "If you ship the goods to him on these terms, I will guarantee the debt;" and afterwards, when they found that Mr. Crane was in trouble, they charged Mr. Porter for those goods, relying upon his guarantee. Now, that is a circumstance bearing upon the inquiry that is before you; were they availing themselves of Mr. Porter's guarantee, although they had parted with

10 a possible security that Mr. Porter had said they ought to reserve for themselves, for the benefit of both of them and him, as guarantor. You see, if they had kept the title in themselves, then they had a title they could turn over to Mr. Porter in consideration of his performance of his guarantee, but if they had sold the goods to Crane out and out, then their transfer of the goods to Mr. Porter was so much idle paper, and they were availing themselves of the guarantee that Mr. Porter had given

20 them, although they had not made the bargain which he proposed. That is one of the circumstances in the case for you to consider, in trying to get at the truth as to whether they were shipping these goods to Crane on the arrangement made with Porter, or volunteering on terms more favorable to Crane. Now, when you have settled the question as to whether the goods were Crane's or not, then if you determine they were Crane's, that ends the suit, and you find your verdict in favor of the

30 defendant; but if you conclude that the goods were not Crane's but Porter's, then you come to another question, and that is this, whether those manufacturing companies and Mr. Porter as their assignee, are estopped from relying on the truth. Now, ordinarily, you know, gentlemen, we try to settle cases in accordance with truth, but sometimes a man may put himself in such a position, he may so conduct himself that the law will not let him show what the truth is, or if he does show it, won't let

40 him avail himself of it, and the defendants say that



these former owners so acted that even if they did reserve the title when they shipped to Crane, yet they are estopped from setting up that title against the Claflin Company, and that question you must meet and decide.

Now, what is necessary in order that a person may be estopped from standing on the truth? This is necessary, that he must have represented as the truth what is false, and somebody having the right to rely on the representation must have changed his position, so that if the truth be acted upon, he will be injured. Now, that is what Claflin & Company say is the condition of this case. They say, that inasmuch as these western houses sent these bills to Mr. Crane, indicating a mere sale, not a reservation of title—not a consignment, but a mere sale—they thereby were deceived into changing their position to their own disadvantage, that they acted upon what seems on those bills to be the truth, so that if now those bills be not regarded as the truth, they will be the losers—the question is, whether you have in the case evidence of that. Does it appear in this case that the Claflin Company ever did anything—ever in any way changed their position, because of any knowledge that they had of the bills which had been sent by these western manufacturers to Mr. Crane; the mere fact that the goods were in Crane's store cannot be held to be any representation at all. If Claflin & Company did give increased credit to Crane because the goods were in the store, without anything more than that, why that would not avail them, that wouldn't work estoppel against the western companies. If Claflin & Company had seen these bills which the western companies had sent, or if Mr. Crane had told them on the strength of those bills that he had bought the goods that were in the store out and out, and thereupon Claflin & Company had given him more credit than they otherwise would

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40



have done, then those western houses would be estopped from setting up the truth. Those western houses would be bound to stand by the representation made in the bills of sale, and Mr. Porter, as their assignee, would simply be in their shoes, and in that case, even though the facts indicated that the title should remain in the western houses, as to Claflin & Company, it would be as if the title were in Crane. Now, you get at the basis of what this  
 10 estoppel is—it is, if a man held out a falsehood on which another has properly relied and changed his position because of it, so that if now the truth is set up, he will suffer loss.

If you find that, why then on that ground you will find a verdict in favor of the defendant, but if you find no estoppel, and the title in Porter, then you find a verdict in favor of the plaintiff, and it is conceded that the plaintiff's interest in this case  
 20 amounts to \$363.13; that amount with a year's interest upon it he will be entitled to recover if he recovers the principal.

Whereupon counsel for the defendant made the following exceptions to said charge of his Honor, the said Justice, and praying that his Honor, said Justice, would set his hand and seal to this bill of exceptions :

30 I wish to except to that part of the charge which directs the jury that plaintiff produced writings which put the title in him, unless it previously passed to Crane. The idea is to reserve the points about these corporation transfers. I don't mean every one of the assignments, but that plaintiff produced writing that put the title in him, and I except to it generally in that way.

Also, to that part of the charge which directs the jury that it is a question for them to determine  
 40 whether these several original vendors meant to sell



to Crane out and out, or meant to sell, reserving title.

Also, on the question of estoppel, if Claflin and Company gave credit accordingly, because they found the goods in the store, and that gave them no right to invoke estoppel.

And it is sealed accordingly, subject to the language of the charge above set forth at length.

JONATHAN DIXON, *Judge*. [L. s.] 10



# N. J. Court of Errors & Appeals.

|    |                                                                                                                                                   |   |                                                               |
|----|---------------------------------------------------------------------------------------------------------------------------------------------------|---|---------------------------------------------------------------|
| 10 | THE H. B. CLAFLIN COMPANY<br>AND ORLANDO DEMAREST,<br><i>Plaintiffs in Error,</i><br><i>v.</i><br>SAMUEL P. PORTER,<br><i>Defendant in Error.</i> | } | <i>In Error to<br/>         Passaic<br/>         Circuit.</i> |
|----|---------------------------------------------------------------------------------------------------------------------------------------------------|---|---------------------------------------------------------------|

## ASSIGNMENT OF ERRORS.

And now at this day the plaintiffs in error assign the following causes of error :

*First.* That the Judge of said Court erred in refusing to charge the jury—

(1.) That the transaction testified to between Mr. Porter and Mr. Crane, being one against public  
 20 policy, against the policy of the law, is such that these shippers did not act upon it, and that the jury must so take the fact, unless there is positive proof that they did depend upon it ;

(2.) That the whole question is one for the Court, one of law, as to the construction of the contract, and jury must take instruction from the Court ;

(3.) That the preliminary transactions, conversations and correspondence cannot be considered as  
 30 varying, altering or contradicting the contract as subsequently made in the invoice ;

(4.) That the sending of these invoices and transfer of bill of lading, conclusively indicate intention of parties, and passed title when followed by possession in Crane, the vendee ;

(5.) No demand made prior to suit, and therefore verdict must be verdict for defendant ;

(6.) That if the sale was a conditional one, it is  
 40 therefore void as being an evasion of the New Jersey statute as to such sales and as against public policy ;



(7.) That the assignment to Porter of title by the several corporations was insufficient in law to transfer title.

*Second.* Because the Judge of said Circuit Court erred in charging the jury—

(1.) That the plaintiff produced writing that put the title in him ;

(2.) That it was a question for the jury to determine whether these several vendors meant to sell to Crane out and out, or meant to sell reserving title; 10

(3.) That if the Claffin Company found the goods in Crane's store and gave him credit accordingly, it gave it no right to invoke estoppel.

*Third.* Because the charge of the Judge of said Circuit Court was, as a whole, unfair to the defendants, misleading to the jury as to questions of fact, and erroneous in its statements of law.

*Fourth.* Said Circuit Court erred in admitting 20 as evidence—

(1.) The alleged assignment made to Porter by the Harrisburg Furniture Company, assignor being corporation, and no evidence of its authorization for such transfer being shown ;

(2.) The alleged assignment to Porter of The Connersville Cabinet Company, assignor being corporation, and no evidence of its authorization for such transfer being shown ;

(3.) The alleged assignment made to Porter by 30 The Indiana Furniture Company, assignor being corporation, and no evidence of its authorization for such transfer being shown ;

(4.) The alleged assignment made to Porter by The Armstrong Furniture Company, assignor being corporation, and no evidence of its authorization for such transfer being shown.

FRANKLIN M OLDS,

*Att'y for and of Counsel with Plaintiffs in Error.* 40



# N. J. Court of Errors & Appeals.

|    |                                                                           |   |                                                                      |
|----|---------------------------------------------------------------------------|---|----------------------------------------------------------------------|
| 10 | <p>SAMUEL P. PORTER,<br/> <i>Defendant in Error,</i><br/> <i>ads.</i></p> | } | <p><i>In Error to</i><br/> <i>Passaic Cir-</i><br/> <i>cuit.</i></p> |
| 20 | <p>THE H. B. CLAFLIN COMPANY,<br/> <i>Plaintiffs in Error.</i></p>        | } | <p><i>Joinder in</i><br/> <i>Error.</i></p>                          |

And hereupon, afterwards, the said Samuel P. Porter, by Michael Dunn, his attorney, comes into Court and says that there is no error either in the record and proceedings aforesaid, or in giving the judgment aforesaid ; and he prays here that the Court here may proceed to examine as well the record and proceedings aforesaid as the matters aforesaid assigned for error ; and that the judgment aforesaid, in manner aforesaid given, may in all things be affirmed.

MICHAEL DUNN,  
*Att'y for and of Counsel with Defendant in Error.*



# New Jersey Court of Errors and Appeals.

The H. B. CLAFLIN COMPANY

and

ORLANDO DEMAREST,

*Plaintiffs in Error,*

*vs.*

LEWIS-PORTER CABINET

COMPANY,

*Defendant in Error,*

**In Error to Passaic  
Circuit.**

## BRIEF

OF MICHAEL DUNN, ATTORNEY OF DEFENDANT IN  
ERROR.

## STATEMENT OF FACTS.

In this case the matter in dispute was the title to three buffets, Nos. 524, 525 and 527, the value of which, as agreed upon between the parties, was the sum of thirty-five dollars.

Mr. Frank E. Crane, in the year 1893 and prior thereto was engaged in the furniture business, in the City of Paterson, and was in embarrassed circumstances, having failed in the same business in 1892 and made a compromise with his creditors. On August 5, 1892, he made and executed to H. B. Claflin Company, a chattel mortgage upon all his stock of furniture, etc., contained in his store, and upon all goods and chattels and personal property of every kind which thereafter might be in said store and buildings adjacent thereto used by him (p. 37).



The mortgage was given to secure past indebtedness and future advances and future credit, to amount in the whole to the sum of \$13,070.82. After this mortgage was given and placed on record, the said Crane continued in business. In May, 1893, Mr. Crane desired for his trade a class of goods manufactured by the Lewis-Porter Cabinet Company, of Indianapolis, Indiana, and called upon Samuel P. Porter, the president of the said company, at its office, No. 187 Canal street, New York City, to see what arrangements he could make about being supplied with these goods, and the goods of other houses which Mr. Porter represented as broker and agent. While the Claflin mortgage was standing against him, he knew that he could not get credit unless he made some special arrangement by which parties furnishing goods could be protected against loss.

It was arranged and understood between Mr. Porter and Mr. Crane that he would, on behalf of the Lewis-Porter Cabinet Company, ship the goods on consignment, the title to the property to be retained by the Lewis-Porter Cabinet Company until the goods were paid for, and the same were to be paid for in thirty days. The plaintiff was informed by Mr. Porter, its President, of the arrangement and the goods were shipped with this understanding. The three buffets in question were not paid for and the thirty days had elapsed. It is to recover possession of these buffets that this suit was brought, and the defendants rebonded and retained the goods and then the recovery was for the value of the same.

The question in the case is whether or not the Lewis Porter Cabinet Company was the owner of the goods at the time this suit was begun.

The jury found in favor of the plaintiff, and assessed the plaintiff's damages for the value of the goods at the sum of thirty-five dollars, and the damages for the detention of the same, at the sum of two dollars and ten cents, making the total sum of thirty-seven dollars and



ten cents, besides costs, for which sum judgment was entered October 20, 1894.

A writ of error was taken to the Passaic County Circuit Court on April 26, 1895.

## POINTS.

### I.

*The Court properly denied the motion to non-suit.*

*First.*—This motion was based upon the grounds (1) That there was no proof offered of the incorporation of the Lewis-Porter Cabinet Company.

The rule of law is that a corporation, being plaintiff in the suit, need not prove its corporate existence under a plea of the general issue or other plea to the merits, *Star Brick Co. vs. Ridsdale, 7 Vroom, 229*. There was, however, evidence of the existence of the corporation, as will be seen by reference to the testimony of Samuel P. Porter (p. 10), where he testifies that it is a corporation of the state of Indiana, and that he is its president.

(2) The second ground stated for non-suit is that there was no demand made before the beginning of the suit. The evidence of Richard Rossiter, Sheriff (pp. 6-10), shows that a demand, was made. See also the testimony of Franklin M. Olds (p. 33), as to card written by him September 8, 1893, to Mr. Dunn. It is not necessary to prove a demand and where a plea is interposed and defendant retains the property.

(3) As to the third ground stated, that it was a contract of sale, and not of consignment. The evidence showed at the time the plaintiff rested, that it was a contract of consignment, and not of sale (see pp. 13 and 27); and the Court could not, at that stage of the case, non-suit the plaintiff. There was no other ground assigned for non-suit, as will appear on page 32 of the case.

(4) The ground stated under this head in the as-



signment of errors was not, as will appear from the record, stated to the Court in the motion for non-suit. It cannot now be considered. There was nothing in the sale, as proved when the plaintiff rested, that violated any statute.

*Second.*—The three points stated under this head are practically answered by what has been said heretofore, except as to the request to charge the jury, that the sale was absolute, and not conditional. There was no error in this. It was a proper question to be submitted to the jury.

*Third.* The first, second, and third grounds stated under this assignment of error, have already been disposed of.

The fourth ground stated is, that the Court erred in refusing to charge the jury, that if it was a conditional sale, the contract was void :

(a) As against the statute as to such sales;  
(b) as against public policy. I presume the statute here referred to is the Act of 1889 (P. L. 1889, p. 421), the first section of which provides, that all conditions and reservations that the ownership of goods and chattels is to remain in the person contracting to sell the same, or other person than the one contracting to buy them, until the said goods and chattels are paid for, etc., shall be absolutely void as against *subsequent purchasers and mortgagees in good faith*, and as to them the sale shall be deemed absolute, unless such contract for sale with such conditions and reservations therein, be recorded as directed in the succeeding section of said act.

The order for the buffets in question in this case was not received by Mr. Porter for his company, until May 16, 1893, (p. 12), and were delivered later; and this was about a year after the chattel mortgage was given to the Claflin Company. This was not a subsequent mortgage. If Crane had no title to the goods the



Clafin Company could not acquire title under their prior mortgage. I, therefore, contend that the Court committed no error, in refusing to charge that the contract under which these goods were sold, was void so far as this statute was concerned.

There is no evidence in the case, showing that the H. B. Clafin Company was in any way prejudiced by this arrangement to sell to Mr. Crane on consignment; no moneys were advanced by them on their mortgage after these goods in question were ordered and delivered.

*(b) The contract was not void as against public policy.*

Mr. Crane was engaged in business, and, as the testimony shows, had a trade for the line of goods which the Lewis-Porter Cabinet Company were manufacturing. His circumstances were such that he could not pay in cash, and as no manufacturer could sell to him absolutely on credit, without taking the risk of having the Clafin Company foreclose its mortgage and take possession of the goods, it was necessary and proper to make some arrangement to protect the parties from loss. Such an arrangement was made, and was beneficial to Mr. Crane, because it gave to him a variety of stock for the store, from which purchasers could make selections, and aided him in increasing his trade. It was also beneficial to the H. B. Clafin Company, because Mr. Crane, being their debtor, the more money he made, the sooner he would be able to liquidate their debt.

Contracts of conditional sales are common among merchants who are doing business on small capital. Unless it can be shown that some innocent party will be injured by, according to the plaintiff, its rights, such contracts cannot be declared to be void and against public policy.

(5) The plaintiff in error contends that the judge committed error in failing to charge that the plaintiff below was estopped from claiming title to the goods in



question, "*if* the plaintiff below entered into an arrangement not to expose the reservation of title, and the Claflin Company acted on that in letting Crane go on." The Court committed no error in refusing this request, because there was no evidence in the case showing any such arrangement. There was no evidence that the Claflin Company had ever made inquiry in any way, as to whether or not the goods were received on consignment or purchased outright; and it did not appear after the goods in question were received by Crane, that the Claflin Company had in any way made any advance to Crane, or given to him any additional credit. It did not appear that they ever saw the goods, or knew that they were in the store. There is no claim that they ever examined them or the bills that accompanied the goods, or did act upon the belief that the goods were owned absolutely by Mr. Crane. It further appears, on page 33, from a card from Mr. Olds, representing the defendant, addressed to Mr. Dunn, who was acting as attorney for the Cabinet Company and others, that before the foreclosure sale under the chattel mortgage, the claim for the goods in question was made by the plaintiff below; and it was understood that if a sale took place it would be made expressly subject to those claims. Mr. Olds testifies (p. 34), that at the sale it was announced that the goods were sold subject to equities, and that the Claflin Company would protect any purchaser against all loss, in case any one purchased; that they would take care of any litigation that might arise in consequence of the goods being consigned. The goods were bought in by the Claflin Company at the chattel mortgage sale, September, 1893 (p. 33), and immediately thereafter the goods were replevined by the plaintiff below, and the Claflin Company rebonded and retained possession of the goods. There was no evidence, therefore, by which the Court could have charged this request.

(6) The Court properly refused to charge what is



stated as an error under this head in the assignment of errors, to wit, that it was for the Court to determine the effect of parol evidence on the written invoice, as to the title of the property in question. The Court very properly charged, that the question was, what was the intention of the parties and what was their agreement at the time the purchase was made by Mr. Crane. On page 46, line 38, the Court says, after reviewing the facts, "So the question comes right back to the intentions of the parties, and if you think that these goods were delivered to Mr. Crane with the intention that on delivery he should be the owner, you find for the defendant. If you think they were delivered with the intention on his part and on the part of the Cabinet Company that the goods should remain the property of the Cabinet Company until paid for, then you find for the plaintiff." It was a question of fact for the jury.

(7) The Court could not direct a verdict for the defendant as requested, and there was no error in refusing to do so. The Court defines the law; the jury determine the facts.

## II.

*There is no error in the charge in the three particulars mentioned under this assignment of error.*

The plaintiff below contended that the goods in question were sold upon consignment; that they were to remain the property of the vendor until paid for, and were to be paid for in thirty days. The goods were not paid for, and more than thirty days had elapsed after their delivery, when the goods were replevined. The evidence also shows on page 13, that about two weeks before the Claflin Company mortgage was foreclosed Mr. Porter went to the store of Mr. Crane to take back his goods, having heard that Claflin was going to foreclose, but he did not take them back



that day. The testimony on page 34, shows that at the time of the foreclosure sale, the property was sold, subject to the claims of the plaintiff, and was bought in by Claflin & Company, and there was no error in the charge of the Court to the jury on these points.

In the *Campbell Manufacturing Company vs. the Rockaway Publishing Coompany* (27 Vroom, p. 676), the Court of Errors reviews the questions involved in this case. The Court there holds, that, "when goods are sold on terms, that the vendee shall gives his notes for the purchase price, and that the title shall remain in the vendor until a mortgage is given to secure the notes or the price is paid, and no right of innocent third parties intervenes, the title continues in the seller of them, although he recovers judgment on the notes. After such judgment he may reclaim the goods by replevin."

In the case before the Court no notes were given, but the goods were sold on terms and were to remain the property of the seller until paid for, and were to be paid for in thirty days. No right of innocent third parties intervenes, so that it was proper for the Court to leave to the jury the question of title and intention of the parties at the time of the purchase.

In *Brothers vs. Davis*, 47 (Iowa, 363), a delivery was held to be a consignment to sell and not a sale, although the consignee gave his note for the price, such being the intent of the parties.

In *Erricon vs. Brand*, (16 New York Supreme Court, 654), it was held that "an unsigned memorandum given by the vendor to the vendee at the time of delivering the goods, from which it appears that they were sold upon a credit of sixty days, does not estop the plaintiff from showing the true nature of the transaction, even though it differed from the written memorandum." I cite this to show that there is nothing in the contention of the defendant in this case, that would prevent the plaintiff from showing the true nature of the trans-



action between the parties. The mere fact that unsigned invoices were sent from the plaintiff's factory in Indiana to Mr. Crane, without having the word "consigned" marked across the face of the invoice, does not prevent the plaintiff from showing the terms and conditions upon which the goods were sold. This is especially so, when no innocent party has interests which have in any way been affected by the neglect to mark the invoices "consigned."

It is unreasonable to believe that the Company, after being informed by its president, Mr. Porter, as to the existence of the Claflin mortgage and the necessity of selling these goods on consignment, that it would ignore those instructions and sell them absolutely. A reference to the orders sent to the company by Mr. Porter shows that it was the understanding that the goods were not to be marked "consigned." The invoices accompanying the shipment were merely unsigned memoranda showing what goods were shipped. The terms and conditions of sale were those made between Mr. Porter and Mr. Crane in New York.

These invoices were never seen by the defendant, but they knew before the mortgage was foreclosed that the goods were claimed by the plaintiff, and the sale under the mortgage was made subject to this claim.

### III.

*If justice has been done by the verdict in this case this Court should not reverse the judgment.*

This is a well settled rule of law and is supported by a long line of decisions.

In *Edmonson vs. Machell*, (2 Ter. Rep., 4), it is held that, "where a new trial is moved for on the ground of misdirection in point of law, if the Court sees that justice has been done between the parties, they will not set aside the verdict, nor enter into a discussion of the question of law."



To the same effect is *Eastwick vs. Cailland* (5 Term Report, 425). The same rule has been observed in our State in a large number of cases.

In *Reading vs. Reading*, (4 Zab., 365), the Court refused to reverse the judgment although there was error, because the Court was satisfied that a correct judgment had been rendered in the case.

See also *Sterlman vs. Sterlman*, (1 How, 68); *Snyder vs. Frindley Coxe*, 78; *State vs. Wells, Coxe*, 431; *Ayres vs. Van Lien*, 2 South, 771; *Campfield vs. Ely*, 1 Gv., 152; *Joslin vs. N.J. Car Spring Co.*, (7 Vr., 147).

I submit that there was no error in this case, and that the judgment should be affirmed.

Respectfully submitted,

MICHAEL DUNN,

*Of Counsel with Defendant in Error.*



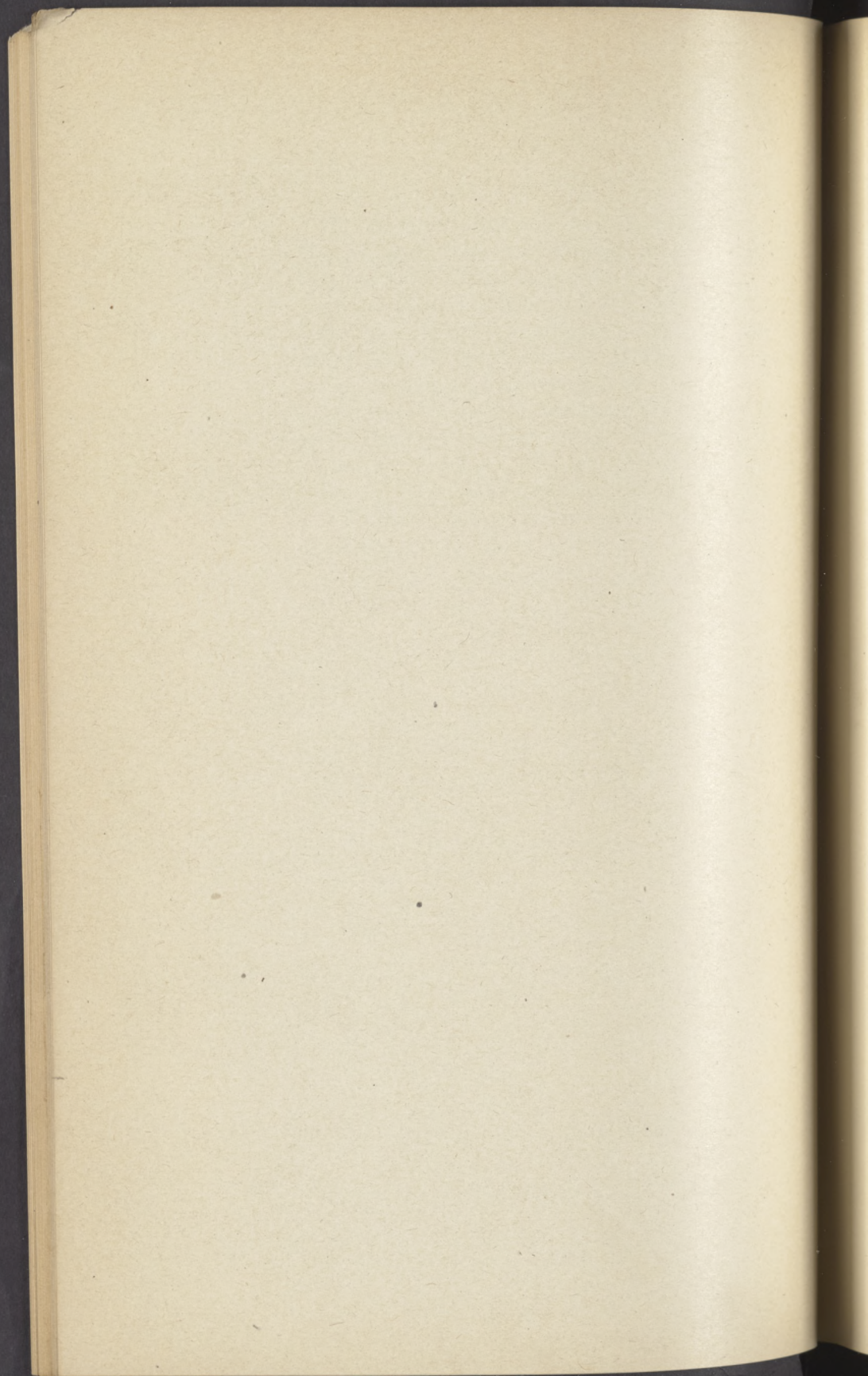
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## N. J. Court of Errors & Appeals.

|                                                                                                |                                                         |    |
|------------------------------------------------------------------------------------------------|---------------------------------------------------------|----|
| THE H. B. CLAFLIN COMPANY<br>AND ORLANDO DEMAREST,<br><i>Plaintiffs in Error,</i><br><i>v.</i> | } <i>In Error<br/>to Passaic<br/>Circuit<br/>Court.</i> | 10 |
| THE LEWIS-PORTER CABINET<br>COMPANY,<br><i>Defendants in Error.</i>                            |                                                         |    |

STATE OF NEW JERSEY, ss :

The State of New Jersey to JONATHAN DIXON, Esq.,  
Judge of our Circuit Court, at Paterson, in  
and for the county of Passaic, or such  
[L. s.] Justice of the Supreme Court of the State of 20  
New Jersey as shall hold such Circuit Court,  
greeting:

Forasmuch as in the record and proceedings, and  
also in the giving of judgment in a certain plaint  
which was in our Circuit Court, holden at Paterson,  
in and for the county of Passaic, between the Lewis-  
Porter Cabinet Company, plaintiffs, and the H. B.  
Clafin Company and Orlando Demarest, defend-  
ants, in an action in replevin, manifest error hath 30  
intervened to the great damage of the said defend-  
ants, the H. B. Clafin Company and Orlando Dem-  
arest, as it is said ; we being willing that the error,  
if any there be, should in due manner be corrected-  
and full and speedy justice done to the parties  
aforesaid in this behalf, do command you, that if  
judgment be thereupon given and affirmed, then you  
distinctly and openly send, under your seal, the  
record and proceedings aforesaid, with all things  
touching the same, to our Judges of our Court of 40



Errors and Appeals in the last resort in all causes, at Trenton, on the fourteenth day of May next, together with this writ, that the record and proceedings aforesaid being inspected, we may cause to be done thereupon, for correcting that error, what of right and according to law and custom of the State of New Jersey, ought to be done.

Witness, our Chancellor and President Judge of our said Court of Errors and Appeals at Trenton, aforesaid, this twenty-sixth day of April, A.D. 1895.

HENRY C. KELSEY, *Clerk.*

FRANKLIN M. OLDS, *Attorney.*

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### RETURN.

20 I, JONATHAN DIXON, Judge of the Circuit Court of the county of Passaic, do herewith in the foregoing schedule, send to the Judges of the Court of Errors and Appeals in the last resort in all causes, the record and proceedings mentioned in the within writ of error, wherein the Lewis-Porter Cabinet Company was plaintiff, and the H. B. Clafin Company and Orlando Demarest were defendants, with all things touching the same, as I am within commanded.

30 Witness, my hand and seal, this tenth day of May, A.D. eighteen hundred and ninety-five.

JONATHAN DIXON, *Judge.* [SEAL.]



# SCHEDULE.

Passaic County Circuit Court, of the fifth day of October, in the year of our Lord one thousand eight hundred and ninety-three.

PASSAIC COUNTY, ss:

The H. B. Claflin Company and Orlando Demarest, the defendants in this suit, were summoned to answer unto the Lewis-Porter Cabinet Company, (a body corporate,) the plaintiff therein, wherefore he took the goods and chattels of the said plaintiff, and unjustly detained the same against sureties and pledges, until, &c. ; and thereupon the said plaintiff, by Michael Dunn, its attorney, complains: For that the said defendant, on the twenty-second day of September, in the year eighteen hundred and ninety-three, in the city of Paterson, in the county of Passaic, took the goods and chattels, to wit: One No. 11 ant. book case ; one No. 418 china closet ; one No. 409 china closet ; one No. 1069 imitation mahogany desk ; one No. 524 buffet ; one No. 525 buffet ; one No. 24 ant. book case ; one No. 285 side board ; one No. 1063 imitation mahogany desk ; one No. 527 buffet ; one No. 417 china closet ; one No. 295 side board ; of the said plaintiff, of great value, to wit, of the value of two hundred dollars, and unjustly detained the same against sureties and pledges, until, &c.

Wherefore, the said plaintiff says that it is injured, and has sustained damage to the amount of four hundred dollars, and therefore it brings its suit, &c.

And the said defendants, the H. B. Claflin Company and Orlando Demarest, by FRANKLIN M. OLDS, their attorney. come and defend the wrong and injury when, &c., and say that they did not take the said goods and chattels in the said declaration mentioned, or any or either of them, or any part thereof, in manner and form as the said plaintiff



hath above thereof complained against them. And of this they, the said defendants, put themselves upon the country, &c.

And for a further plea in this behalf the said defendants, the H. B. Claflin Company and Orlando Demarest, by leave of the Court here for this purpose first had and obtained, according to the statute in such case made and provided, say that the plaintiff  
 10       ought not to have or maintain its aforesaid action thereof against them, because they say that the goods and chattels in said declaration mentioned at the said time when, &c., were the property of the said the H. B. Claflin Company, one of the defendants, and not of the said plaintiff, as by said declaration is above supposed and alleged. And this they, the said defendants, are ready to verify. Wherefore, they pray judgment if the plaintiff  
 20       ought to have or maintain its aforesaid action thereof against them; and they also pray return of the said goods and chattels, together with costs in this behalf, according to the form of the statute in such case made and provided, to be adjudged to them, &c.

Therefore, let a jury thereupon come before the Court aforesaid, at Paterson aforesaid, on the fourth Tuesday of April next ensuing, by whom, &c., who neither, &c., to recognize, &c., because as well as, &c., and the same day is given to the parties  
 30       aforesaid at the same place. At which day before the Court aforesaid, at Paterson aforesaid, come the said parties by their respective attorneys aforesaid, and the jurors of the jury whereof mention is within made are respite between them from day to day until the fourth Tuesday of September then next ensuing; at which last-mentioned day before the Court aforesaid, at Paterson aforesaid, come the said parties by their respective attorneys aforesaid, and the jurors of the jury whereof mention is within  
 40       made, also come, who to speak the truth of the



matters and things within contained, being chosen, tried and sworn, upon their oaths say they find that the said defendants did take certain of the goods and chattels in the declaration of the said plaintiff mentioned and set forth, and did detain the same, and they assess the damages which the said plaintiff hath sustained by reason of the said unjust detention above-mentioned over and above its costs and charges by it about its suit in this behalf expended at the sum of two dollars and ten cents ; 10 and they also assess the value of the goods and chattels so taken and detained, and in said declaration specified at the sum of thirty-five dollars.

Judgment signed October 20, 1894.  
JONATHAN DIXON,  
Judge.

Therefore, it is considered that the said plaintiffs do recover against the said defendants their said damages, and also the sum of fifty-four dollars and twenty-six cents, for their costs and charges by them about their suit in this behalf expended, now here taxed, and by the Court here adjudged to them with their assent ; which said damages, costs and charges in the whole amount to the sum of ninety-one dollars and thirty-six cents. And the defendants in mercy, &c. 20

|              |         |
|--------------|---------|
| Damages..... | \$37 10 |
| Costs.....   | 54 26   |
|              | <hr/>   |
|              | \$91 36 |

30



# Passaic County Circuit Court.

|    |                                                    |                                            |
|----|----------------------------------------------------|--------------------------------------------|
|    | THE LEWIS-PORTER CABINET<br>COMPANY,               | } <i>Plaintiff,</i><br><i>In Replevin.</i> |
|    | <i>v.</i>                                          |                                            |
| 10 | THE H. B. CLAFLIN COMPANY<br>AND ORLANDO DEMAREST, |                                            |
|    |                                                    | <i>Defendants.</i>                         |

Before Hon. J. DIXON, *J. S. C.*, and a Jury.

PATERSON, N. J., October 2, 1894.

Appearances: For plaintiff, M. DUNN; for defendant, FRANKLIN M. OLDS.

20 **Richard Rossiter**, a witness on behalf of plaintiff, being duly sworn, testifies as follows:

*Examined by Mr. Dunn:*

*Q* Were you sheriff of the county of Passaic in the year 1893?

*A* Yes, I was.

*Q* As such officer, did you serve any demand for goods on H. B. Claflin Company, in favor of the Lewis-Porter Cabinet Company?

*A* I did.

30 *Q* Have you that demand here?

*A* I have.

*Q* On whom did you serve that?

*A* On Mr. Demarest.

*Q* Who was he?

*A* He was the representative of Mr. Claflin & Company.

*Q* And where was he at the time that you served him?

*A* In the store, at the corner of Broadway; in  
40 charge of the goods in question.



Q And will you tell us what was done after you served the demand—as to his surrendering or delivering up the goods?

A He refused to deliver the goods.

Q And tell us what followed?

A Then I served the replevin, and replevied the goods.

Q Did you find all the goods that were mentioned in your demand there?

A I checked those that I found in the store. 10

Q State what goods you found in the store?

A (Witness reading)—One antique book case, one No. 285 sideboard. one No. 409 China closet, one 1,003 imitation mahogany desk, one 1,006 imitation mahogany desk, one 29 sideboard, 527 buffet, 524 buffet and 525 buffet.

*The Court*: The bookcases, have they numbers on them?

*Witness*: No, sir; one case is, I believe, No. 20  
24.

*The Court*: You don't know whether the other was 11, or not?

*Witness*: Yes, it is, I find it here.

Q Then what was done with these goods—you took them?

A I allowed them to remain in the store for thirty-four hours—then they rebonded them.

Q They rebonded?

A Yes, sir.

Q And what did you do with the goods? 30

A They remained in the possession of the plaintiff.

Q A Mr. Demarest?

A Yes, sir; he was there in charge.

*Cross-examined*, by Mr. Olds:

*The Court*: What day was that, Sheriff?

*Witness*: September 23, 1893.

*The Court*—(to Mr. Dunn)—Does your writ embrace any other articles than the Sheriff spoke of? 40



*Mr. Dunn :* Yes, sir ; it does.

*Q* I noticed that your return to the original writ is on the ordinary printed blanks, stating that you took the goods and chattels mentioned in the said writ ; the truth is that you only took a part ?

*A* Yes, sir ; that is all.

*Q* Is this notice you here produce, the demand ?

*A* It is a copy of the demand.

*Q* Is this the original paper in your hands at the  
10 time of taking the goods in question ?

*A* Yes, sir.

*Q* Where has this demand been since ?

*A* In my office.

*Q* This has not been filed as a paper in this case ?

*A* No, sir.

*Mr. Dunn :* I asked that the demand be marked as an Exhibit for the plaintiff.

*Q* You have a little check mark opposite a num-  
20 ber of the articles mentioned in this list—was that check mark put there when you found the article, or when you couldn't find it ?

*A* Yes, sir ; when I found the article.

*Q* Will you please, once more, go through the list, stating what you found ?

*A* One No. 1 antique bookcase ; one 24 antique  
bookcase ; one 285 sideboard ; one 409 China closet ;  
an imitation mahognany desk, 1006 ; one 527  
buffet—that is the article that has the mark here  
30 upon it ; I am not quite sure whether it is the side-  
board or buffet—one we didn't find—the mark in-  
dicates it's a buffet.

*Q* What is the mark that you have ?

*A* A circle and and a check on top ; I think there was some difference about either of these arti-  
cles, as I marked it two ways, and have almost for-  
gotten which way it was.

*Q* What next ?

*A* One No. 524 buffet, and one No. 525 buffet.

40 *Q* Is that all ?



A In regard to the sideboard or that buffet, I think you were present and agreed at the time which was which.

Q What day did you serve those papers?

A The twenty-fifth—I find it was not the twenty-third.

Q The demand bears date the twenty-third, does it?

A Well, that figure is a little indistinct; it is a 23 here, but the return is the correct date. 10

Q Your return is what?

A The twenty-fifth—that would be the correct date.

Q Do you remember the time of day you took those goods?

A In the afternoon.

Q You went with the plaintiff's attorney and somebody, and identified the goods?

A Yes, sir; and Mr. Demarest was there at the 20 time and admitted them.

Q And you handed him the demand?

A Yes, sir.

Q And on his refusal to surrender the goods, you served the writ?

A Yes, sir.

Q Did you execute other writs of replevin about that time?

A Well, about that time, I think there was one 30 other.

Q Was there any difficulty, in many instances, in the plaintiffs identifying the goods that they had mentioned in their papers?

A Yes; there was difficulty in finding the goods, because there was many goods in the building, and they had to be examined.

*The Court* : Are you speaking of this or the other suit?

*Witness* : In all cases, we had difficulty.



*Q* Was any copy of a demand filed, so far as you know?

*A* I think not.

*Re-direct*, by Mr. Dunn:

*Q* The twenty fifth is here; is that not the date when you made your return on the writ after holding the goods for a period?

*A* I think that was the date that the writ was served—the twenty-fifth.

10 *The Court*: The twenty-third, Saturday—the twenty-fifth, Monday?

*Witness*: Yes, sir.

*Q* Was Mr. Porter the gentleman who identified the goods?

*A* Yes, sir.

**Samuel P. Porter**, a witness on behalf of the plaintiff, being duly sworn, testifies as follows:

*By Mr. Dunn*:

*Q* What relation have you to the Lewis-Porter Cabinet Company?

*A* I am president of that company.

*Q* It is a corporation of what State?

30 *A* Under the laws of the State of Indiana.

*Q* And where is your place of business?

*A* 187 Canal street, New York City.

*Q* And were you engaged in business there in the year 1893 and 1892?

*A* I was.

*Q* Will you please state to us whether or not the articles, which have been mentioned here by the sheriff, as having been found in the store of F. E. Crane, were identified there by you as goods

40 belonging to the Lewis-Porter Cabinet Company?



A They were; I identified those goods as our goods; all that I could find of them.

Q Will you state now, to the Court and jury, how those goods come to be there in Mr. Crane's store?

A Shall I begin at the beginning of this story?

Q Yes; tell us just how the goods came to be there in that store?

A Mr. Crane, some time during the fall of 1892, called a meeting of his creditors, at the rooms of 10 the National Furniture Association, New York, 150 Canal street, which I attended, being interested to a small amount at that time; I attended that meeting, where Mr. Crane made a proposition to his creditors of a compromise of fifty cents on a dollar; we voted at that meeting to accept his proposition, and asking him for security to carry out this proposition of his—(interrupted.)

Objected to.

Q Were these goods delivered to Mr. Crane 20 through you?

A They were consigned to Mr. Crane through me.

*Mr. Olds:* I object to the word "consigned."

*Witness:* They were sent to him through me.

*The Court:* From Indiana?

*Witness:* Yes, sir.

Q I show you these papers, and ask you what 30 they are?

A These are the original orders that went from my office to our own office in Indianapolis.

Q And since returned to you, at your request?

A Yes, sir.

Q For the purposes of this trial?

A Yes, sir.

Q Will you just read the orders which you have there—first, were they written by you?

A They are in my handwriting—(witness does as requested by counsel.) 40



Q Was that order filled of May 13th?

A Yes, sir; that was the order of May 13th, and the next is an order of May 16th; I find two of those orders filled.

Q Proceed with the next order?

A The next is dated May 16th.

Q Read it?

A (Witness does as requested.)

Q That order was filled by your house?

10 A Part of this order was; there may have been some of these goods that we hadn't at the time, but the greater portion of this order has been filled; it is difficult for the manufacturer to fill the full order in the busy season.

Q Proceed with the next order?

A The next order is June 24th.

Q Now did you find the goods that were there—were the goods consigned by your house in keeping with those orders?

20 A Yes, I did.

Q Now, where was this arrangement made with Mr. Crane to ship these goods to him on consignment?

A It was made originally in my office—some time after his first settlement; knowing that parties held a mortgage against him, I told him that we couldn't sell him any goods direct; the only way we could sell him would be by consignment, so that the property would be ours; so he was perfectly  
30 satisfied; he said he had no time, and asked sixty days' time on the goods, but the goods were to be ours until paid for, and he agreed to that in every case.

Q When was this store closed by anybody taking possession of it or the defendants?

A Some time, I think, in August.

Q And prior to that, had you been up to see Mr. Crane in reference to taking the goods back?

40 A I did.



Q How long before the closing of the store ?

A I think about two or three weeks.

Q State what occurred at that time ?

A There was a rumor in New York city that Claflin & Co. were going to foreclose, and I went up to Mr. Crane's store and saw him.

Q Who was with you ?

A I met there for the first time the book-keeper of a competing house in New York, Mr. Schloss or rather Schloss & Co., and they were there on the same mission of the rumor ; I told this to Mr. Crane in the presence of his lawyer that—

Objected to.

Objection sustained.

Q How much was owing to the Lewis-Porter Cabinet Company at that time on account of the goods that had been consigned to Mr. Crane ?

A \$128.91.

*The Court :* What time are you speaking of—the time of the replevin of September of last year ? 20

*Witness :* Yes, sir.

Q Will you please tell us—look at that paper—did you put those values of those different articles there ?

A I did.

Q And will you tell us whether the papers now spoken of by the witness is the one marked for identification as containing the list of the goods found by the sheriff—are those the correct values of the goods ? 30

Objected to.

Objection overruled.

Exception.

A Yes, they are, less the freight.

*The Court :* You may say whether those prices which are made, are the prices indicated in your order ?

*Witness :* Yes, sir.



*The Court:* You sold these goods to this man Crane?

*Witness:* Yes, sir.

*The Court:* And in your orders to your concern in Indiana, you indicated their prices?

*Witness:* Yes, sir,

*The Court:* So that they are prices at which you made the bargain to sell them to him?

10 *Witness:* Yes, sir.

*The Court:* The total of those prices are how much?

*Witness:* \$137.70, less the freight, which I haven't deducted.

*The Court:* Who was to pay freight?

*Witness:* We were to pay the freight.

Q Is that a copy of the original invoice?

A Yes, sir.

20 *The Court:* What did you say he owed you at the time of replevin?

*Witness:* \$128.91, net; that is, the freight taken off.

Q At the time that you went to the store, who had possession of it?

A H. B. Claffin was there through their representative, Mr. Demarest.

30 *Cross-examined, by Mr. Olds:*

Q Take your list of prices, Mr. Porter, and indicate the prices one after the other?

A One No. 11 antique book-case—may I ask whether it is the prices replevined by the sheriff?

Q The prices which you put down?

A Yes, sir.

Witness reading from list—Antique book-case, \$10.25; one No. 25 antique book-case, \$17.20; one No. 285 sideboard, \$37; and so on down  
40 the list; one No. 409 china closet, \$12.75; imi-



tation mahogany desk, \$12.50 ; another, \$10 ; one No. 5, \$27 ; buffet, \$15 ; one No. 524 buffet, \$8 ; one No. 525 buffet, \$13.

Q Is that all—is that the same price set opposite in the original order that you sent to Indiana ?

A Yes, with the exception that the freight was not deducted, as they are not billed *pro rata*, but I have here—

Q Never mind—are the prices which you have given us the precise prices that you valued the goods 10 sold to Mr. Crane ?

A Yes, sir.

Q Who was to pay freight ?

A We were.

Q That is, Mr. Crane was to have the goods at those prices delivered here ?

A That's right.

Q Who paid the freight ?

A For the goods that he paid for, we allowed 20 him freight.

Q Who paid the freight in Paterson ?

A Mr. Crane.

Q Then Mr. Crane, in the first instance, paid the freight ?

A We shipped the goods from the factory and allowed Mr. Crane to deduct it from the bill.

Q The point is that Mr. Crane paid the freight in Paterson as the goods got here ?

A Yes, sir.

Q And that was allowed ? 30

A Yes, sir.

Q Do you know whether all the goods mentioned in the orders that you have mentioned to us were shipped in the Indiana factory ?

A I do.

Q Do you know when they got shipped ?

A I have the bills here.

Q When were the goods shipped that are in question here—that were recovered ? 40



A They were shipped on the 25th, part on the 26th, the 31st of May, the 1st of June and the 3d of June, and the 5th and 8th of June, and the 27th of June, 1893 ; June 27th, however, we find none of that bill.

Q The goods shipped on June 27th—you find none of them ?

A Yes, sir.

Q What are you reading from ?

10 A Copy of the invoice sent to Mr. Crane.

Q Where did you get those copies ?

A From Indianapolis.

Q They had them sent on to you when this litigation commenced ?

A Yes, sir.

Q Look at the papers I now show you—nine in number—and state what they are ; state whether they are the original bills of invoice sent to Mr. Crane from the Indiana factory ?

20 A May 25 is the first on the bill here ; \$40.20 corresponds with the copy ; the May 26, \$49.75, corresponds to the copy ; the May 26—

Q Are there two shipments of the 26th ?

A No, sir ; this is a duplicate copy.

Q And sent by the Indiana factory to Mr. Crane ?

A Yes, sir ; the duplicate of the invoice, but not the goods ; May 31st—that is right ; this is a duplicate of May 31st.

30 Q Is it the original of May 31, or is it the duplicate ?

A It is the original—June the 1st ; that is the original bill, also ; June 3, this is the original bill ; also June 5, that is the original bill ; also June 8, that is the original bill ; also June 27, original bill.

Q These papers now shown you, therefore, with the exception of one, May 26, 1893, and marked “ copy,” are the original bills of invoices sent from the Indiana factory to Mr. Crane, for the pur-  
40 chases made by him ?



A Yes; that's right; there are two bills that are copies of the other.

Q Did you send these bills from your New York office, or direct from Indiana?

A Direct from Indiana.

Q And the next mentioned here was shipped direct from Indiana to Mr. Crane?

A Yes, sir.

Q Consigned to him in his name?

A They were shipped in his name, on the original understanding.

Q Will you please take the original invoices, which you have just identified, and mention the freights which have been allowed on the several shipments?

A May 25—on this bill, but of course it is not contained in the goods—

Q Never mind.

A This bill has \$5.25 deducted from the original bill; May 26, \$3.90; May 31, \$4.80; on June 1, \$0.77; on June 3, \$2.20; on June 5, \$2.09; on June 8, \$0.87; on June 27, \$1.07.

Q That is the average on those several shipments?

A Yes, sir.

Q How many of these bills are shipments of goods, and which ones have been settled for by Mr. Crane in full?

A The bill of May 25, which he paid me for on July 13; I have given him credit for the amount.

Q Answer the question—which has been paid for?

A This is receipted May 25, \$24.96, and the bill of May 31 is receipted also, and that is all.

Q How much are the total of those bills which have been receipted?

A \$159.75.

Q Who receipted those bills?

A I did.



Q How much did Mr. Crane pay you, and when?

A July 13, \$146.44.

Q The bills here receipted are receipted July 7, 1893—do I understand that that is in addition to those?

A No, sir; there must have been a little time elapsed of about two days; it is for the mail to go out there.

Q When was the payment actually made?

10 A July 11, I suppose.

Q In whose writing is that?

A Mine.

Q Then you forwarded returns to Indiana, and they put the credit on the books there the day they received it?

A Yes, sir; the 13th.

Q Where did you get this date from?

A From our books at Indianapolis.

Q Then Mr. Crane paid you more money than  
20 here indicated?

A I gave him credit on my books, on account.

Q What do you mean by that?

A I gave him credit on the Indiana books for all the money he paid me, and that was paid by check.

Q Was the money applied to any particular bills?

A No, sir; I do not think so.

Q Will you state on what days were shipped the particular goods that you replevied—take them with  
30 the invoice and identify the several articles that you replevied, so as to give the date of shipment?

Objected to; objection sustained.

Q Look at the letter now shown you, dated July 3, 1893, from Mr. F. E. Crane, Paterson, N. J., and signed S. P. Porter, and state what it is?

*The Court:* Read it.

Witness does as directed.

Q Is that a letter from you to Crane?

18 A Yes, sir.



*Q* And is the receipt on that filled out in your handwriting?

*A* Yes, sir.

*Q* Then you did give him a receipt for specific bills. I ask you, according to that letter, whether you receipted specific bills for Mr. Crane?

Objected to; question overruled.

*Q* I wish you would take these bills of May 25 and May 26, and 31, and see if any of the goods replevied are of those bills? 10

*A* There was six pieces included in these bills.

*The Court:* Which pieces are they?

*Witness:* There they're annexed—both book-cases, sideboard, china closet, both mahogany desks.

*The Court:* These with the cross are the matters included in this bill?

*Witness:* Yes, sir.

*The Court:* Are not those the same thing?

*Witness:* There are three there not in any of those bills. 20

*The Court:* I thought you marked them with the checks—then the only things not included in those bills are buffet 524, buffet 525?

*Witness:* Of course.

*The Court:* Those are the only things for which you asked a check and got a check?

*Witness:* Yes, sir.

*Q* Then the three items not actually are as follows: 525, 527 and 524 buffet, making a total of \$36.00? 30

*A* These invoices read alike in every case—"Mr. F. E. Crane, Paterson, N. J., bought of Lewis-Porter Cabinet Company, Indianapolis; goods as specified," and then have on them "price, net?"

Objected to.

Letter and invoices offered in evidence by defendant. 40



Q You are a furniture broker in Canal street, in New York, as well as being president of this Indiana Furniture Company?

A Yes, sir.

Q As such broker you represent a large number of large furniture companies throughout the country?

A Yes, sir.

Q And as such the suits have been brought  
10 through your name?

Objected to.

Question withdrawn.

Q Look on your original order of May 16th, and see whether you have a marginal note?

A On the original order?

Q Yes, the letter which you read.

A I did arrange with Mr. Crane that everything I sold him should be shipped on consignment, and if he couldn't pay in thirty days, the goods are  
20 ours, &c.

Q Is that a marginal entry?

A That is an additional sentence.

Q In your handwriting?

A Yes, sir.

Q Then the situation is this, that H. B. Claffin of New York had a chattel mortgage on F. E. Crane, furniture dealer in Paterson?

A Yes, sir.

Q Mr. Crane came to you for goods, and you  
30 said that you could not sell him except on consignment?

A That's right.

Q Did Mr. Crane ask that they be not marked "consigned?"

A He did.

Q Why?

A He stated a case in which he had difficulty in getting his goods at Paterson; and, moreover, he didn't care to have the railway company know they  
40 were consigned; it might hurt him in his business.



Q And did he not say also that it might hamper him in getting other lines of credit?

A Yes, sir.

Q And then you made this arrangement with him, and the goods were invoiced in this way?

A I made an arrangement that all goods purchased from me should be consigned.

Q And invoiced in the regular way, and not marked "consigned?"

A That's right.

10

Q When you sent these original orders did you get replies from the Indiana Company with regard to them?

A I couldn't tell that.

Q You had been notified to produce all letters and documents with reference to this matter?

A Yes, at five o'clock last night.

Q Did you have any letters in your office with reference to this matter?

A I don't think so.

20

Q Didn't you have time since five o'clock last night to look up letters that had been sent from your company to you?

A No, sir.

Q When did you get those letters?

A The date is there—September, 1893.

Q A year ago?

A Yes, sir.

Q Then you had ample opportunity to get the orders from the Porter Cabinet Company; why did you not take trouble to get the replies to you in your office?

30

A Those orders need no replies; I got no replies to them—not that I know of.

Q Is there not an understanding between you and your company in Indiana, that whatever goods you ordered, you should personally be the guarantor for their due payment?

A Sometimes there is; when the customer, per-

40



haps, is not rated well, the order might be returned, and, making inquiries about it, if I knew the party well, I would simply say, "I take this risk personally."

Q No, but isn't there an understanding between you and this Indiana company, that you guarantee whatever bills are sent?

A No, sir.

Q As a matter of fact in this Crane case, did  
10 you not personally agree to pay to the Lewis-Porter Cabinet Company its money?

A No.

Q Then it is only when you act as broker only?

A There is no understanding that I know of in this case.

Q Isn't it a fact that as soon as this trouble occurred a year ago that the Lewis Cabinet Company immediately sent a bill or statement to you personally for the goods which had been sent to Crane,  
20 and not paid for by him?

A They might have sent the bill for me to go and collect it.

Q Have you the original bill which they sent to you?

A No, sir.

Q You remember when this trouble took place a year ago I came to your office with a stenographer to investigate the case, and you submitted the bills and papers, and copies were taken of the same?

30 A Yes.

Q And you allowed copies to be taken of them?

A Yes, sir.

Q Did you not also, at that time, make a statement as to the circumstances under which these goods have been sold and your personal connection with the matter?

A I made a statement to you, simply, but I do not know what your stenographer has taken down; and I didn't know at the time that you were going  
40 to use that as a part of that trial; you said at the



time that you wanted to settle it without a law suit, and I said yes; had you come and said to me, here's a receipt for some of these goods, that would have settled it in ten minutes.

*Q* Isn't it a fact that I had a personal interview with you and arranged to come down on a subsequent day with a stenographer, so that we could see where the trouble was?

*A* I do not remember making such an appointment—I know that you came to me and wanted to get the facts in the case, but you did not say anything about your stenographer. 10

*Q* Didn't I make an appointment?

*A* Yes, sir.

*Q* And didn't I get there with my stenographer?

*A* Yes, sir.

*Q* And didn't you have your stenographer there taking down notes?

*A* Yes, when I saw that the young lady was taking down notes I told the other stenographer to take it down, too. 20

*Q* Well, we both got our stenographers so that we could know what was done on that day?

No answer from witness.

*Q* When you made this original arrangement with Crane, did you make it of his request to the Indiana Company alone to sell you goods in order that you might send goods to him from various other companies as well? 30

*A* For all concerned.

*Q* Did you say to him then, that you knew all about the Claffin mortgage?

*A* I did.

*Q* Did you not then—did he not then say his arrangement was in effect so perfectly agreeable to him he didn't want his other line or arrangement to interfere with it?

Objected to.

Objection overruled. 40



A I think this is, in substance, what Mr. Crane said, although I couldn't give you Mr. Crane's exact words; I am not clear about it.

Q Did you suppose at the time that he meant it might injure him with Claflin & Co.?

Objected to.

A Mr. Crane didn't say that—I said that to you in my conversation that I supposed that might have something to do with it.

10 Q Did you say, in the interview spoken of now where a stenographer was present and took everything down September 8, 1893, in your office, that Mr. Crane understood full well that every hundred dollar's worth of goods sold through you, that you were responsible personally for?

A Yes, sir; I did.

Q And that every dollar's worth of goods that you sold were charged to your personal account?

20 A That applies entirely to the outside goods actually got out of my pocket; if I sold the Lewis-Porter Cabinet Company I would be the loser.

Q Then this doesn't apply to the goods sold by the Lewis-Porter Cabinet Company?

A Well, I was speaking in a comprehensive manner to make you understand that he couldn't get any goods through my instrumentality.

Q How large a stockholder are you in the Lewis-Porter Cabinet Company?

30 A I only own a third interest—the capital stock is \$100,000.

Q Did you say last fall in this interview in question, that Mr. Crane said that Claflin & Company were not going to disturb him, but to do such a thing then; that is, mark the goods consigned, would perhaps create a bad impression upon the Claflin Company, and they would close in upon that mortgage?

40 A That is the part that my stenographer has not got down, and I may have said that to you very



likely, that—Crane said to me—it was simply the deduction that I had made for Mr. Crane's side.

*Q* Is it not a fact that your stenographer could hardly keep up with us in the rate of our conversation, and at the end, finding that she left out some portions, she made some arrangement with my stenographer, who helped in some things, and that you wanted in that way to perfect the matter?

*A* That's my recollection.

*Q* In the interview in question, did you not say 10 as follows—he said, (Mr. Crane himself,) “That Claflin & Company were not going to disturb him, and that to do such a thing then would create a bad impression on Claflin & Company, and they would close in upon him if he did such a thing”?

*A* Yes, with reference to a meeting we had two or three weeks prior to your foreclosure?

*Q* Then Mr. Crane did say that?

*A* I went out to get my goods, and then he said at that time, “If you do this it will disturb 20 my relations with Mr. Claflin, and that thing will be closed up if I would take my goods away from his store; that was two or three weeks previous to your foreclosing him; if Claflin heard it the consequence was that the whole thing would be closed up.”

*Q* Did Mr. Crane at any time make any reports to you or statement of the amounts of goods he had sold—of your goods, that he had sold from time to time?

30

*A* I may say I would visit Mr. Crane every ten or fifteen days at his store and saw how things were going; about four or five weeks before your foreclosure, perhaps longer than that, up to a certain time before the foreclosure he had been paying up especially the Lewis-Porter Cabinet Company, and paying our account, but the balance of the goods he had been paying according to our understanding.

*The Court:* The question put to you is, whether when Mr. Crane sold goods that you had consigned 40



to him, he reported to your company the fact that he had sold them?

*Witness:* No, sir; he didn't.

*Q* Was there any rate of commission or percentage proposed between the plaintiff and Crane which he was to have on the sale of these goods?

*A* No, sir; he didn't.

*The Court:* He sold them for what he wished, paying you the price designated in your arrangement?

*Witness:* Yes, sir.

*Counsel:* That's all.

20 **Frank E. Crane**, a witness on behalf of the plaintiff, being duly sworn, testifies as follows:

*Examined* by Mr. Dunn:

*Q* Were you engaged in business in this city last year—1893?

*A* Yes, sir.

*Q* And prior thereto?

*A* Yes, sir.

*Q* What business?

30 *A* Furniture and bedding business.

*Q* Did you purchase some goods, or make arrangements for the delivery of some goods to you from the plaintiff, through Mr. Porter, your last witness?

*A* I did.

*Q* Will you please state to the Court and jury whether any of those goods were in your store at the time that Clafin & Company took possession of?

40

Objected to.



*Q* Please state to the Court the arrangement under which those goods were delivered to you by the Lewis-Porter Cabinet Company ?

*A* It was hard for me, after my first trouble, to buy goods, and in most cases when I wanted to purchase goods—

*The Court :* Tell us this case between yourself and Mr. Samuel Porter, under which you received goods from the Porter Cabinet Company ?

*Witness :* I wanted to get some of the goods, and I knew that I couldn't get them unless I made some proposition, on account of there being a mortgage on my business. 10

*The Court :* That is the Claflin mortgage ?

*Witness :* Yes, sir.

*The Court :* Tell us the arrangement ?

*Witness :* I went to Mr. Porter, and told him I would like to have his goods, if he could ship to me, and send them in on consignment. 20

Objected to ; objection overruled ; exception.

*The Court :* The arrangement between you and Mr. Porter—give as nearly as you can the language that was used ?

*Witness :* Mr. Porter, when I asked him to ship goods, refused to do it ; he said, on account of there being a mortgage on the business, he had no claim, and it would not be business-like ; I told him that I would be willing to have him send the goods in on consignment ; the goods, it was understood, should be his until such time as I paid for them, and as I sold the goods I was to pay him for the goods ; I told him I would a great deal rather that he would not mark them sent in on consignment—that is, to the depot, on account of the other dealers seeing them marked so ; and, after we had made that arrangement, the goods came on, and, as I suppose, consigned to me, and whenever Mr. Porter came out there—came out to ask me how the 30 40



business was getting along, I reported truthfully to him until such times as the hard times came along; I remember distinctly when Mr. Porter came out.

Q Afterwards, did you, before receiving the goods, have any other understanding with Mr. Porter that these goods would be shipped to you on consignment?

A They were to be their goods until such time as I could pay for them.

10 Q By that, what do you mean—that they were to have the title of them?

A Yes, sir.

Q Now, after you received the goods, do you recollect two or three weeks prior to the time of your store being closed, Mr. Porter and Mr. Curry being in your office one night?

Objected to.

A Yes, sir.

Q Just state what took place there; did Mr. Porter come there that night to see you about coming to take his goods away?

A Yes, sir.

*Cross-examined*, by Mr. Olds:

Q You told Mr. Porter you didn't want the goods marked "consigned?"

A Yes, sir; because other dealers would see that mark—the other manufacturers, as they came into the store.

30 Q What difference would it make if other dealers would see it marked?

A I didn't want them to think that I was having everything sent to me by consignment.

Q In other words, you wanted to get the benefit of the credit that your circumstances didn't entitle you to?

A No, sir.

Q Did you not say to him that it might injure you in getting credit with other dealers?

40 A I don't remember making that remark.



Q Wasn't that one of your reasons?

A I can't say it was.

Q Do you mean to say that other dealers here in Paterson would come into your store and go looking around on the boxes, &c., of your goods—generally come in and look around at the goods, to see how they were packed and marked?

A I don't think that I would allow that.

Q What do you mean by saying that you didn't want other dealers to see you getting goods on consignment? 10

A I have to get my goods on the railroad.

Q You mean, then, that you were afraid that they might see it at the railroad?

A I didn't care to see them see the goods marked "consigned."

Q You don't refer to the invoice at all.

A No, sir.

Q Is it not a fact that you stated to Mr. Porter that Claflin & Co. might hear of this, and might 20 foreclose?

A No, sir; I never did.

Q You say that you were to pay for these goods as you sold them—did they send them to you under such an arrangement?

A You heard what I said in regard to the understanding.

Q Did they send them to you under the arrangements that you were to pay for them as you sold 30 them?

Witness doesn't answer.

Q I asked them whether they sent them to you right along, to be paid for when sold?

A I don't remember; that was really the understanding.

Q Didn't they send them to you payable in thirty days?

A No; when we were speaking about the consignment, I told Mr. Porter I would have to have 40



sufficient time to handle the goods, and he said they would make it thirty or sixty days.

Q They made it thirty days?

A Yes, sir; in some cases thirty and some cases sixty, and some longer than that.

Q Did you get the letter which Mr. Porter wrote you on July 3, saying that he wished you would send check for bills which he mentioned?

A I have no recollection.

10 Q Did you read that letter?

A Yes, sir.

Q You did, as a matter of fact, pay in advance of goods of your selling goods yourself, did you not?

Witness does not answer.

Q You did, as a matter of fact, pay for goods before you sold them?

A Sometimes.

20 Q Some of these goods of the Lewis-Porter Cabinet Company?

A They requested me several times to send them a check, and I didn't sit down to look the bills over to find whether I was bound or not, but I paid as I got the money.

Q You heard the sheriff's testimony here to-day?

A A portion of it.

30 Q In which he enumerated a long list of articles that had been sent you by the Lewis-Porter Cabinet Company?

A Yes, sir.

Q Which were there the day he made the replevin?

A Yes, sir, I did.

Q And you heard Mr. Porter's testimony, that only three of those articles were not paid for?

A Yes, sir.

Q Did that agree with your recollection?

40 A I don't remember about that.



*Q* Now, where were you when H. B. Claflin began the foreclosure?

*A* Sick in bed.

*Q* Where?

*A* 122 Broadway.

*Q* Do you remember a representative of the firm coming across to Orange, or West Orange, and finding you there?

*A* Yes, sir.

*Q* Were you sick in bed then?

10

*A* I had been sick.

*Q* When Claflin & Co. began the foreclosure, did you telegraph to several different parties that had sold you goods, asking them to come immediately to Paterson and claim their goods, as on consignment?

Objected to ; objection overruled.

*The Court :* Did you send letters and telegrams?

*Witness :* I did, for the reason that--

20

*Q* Never mind. Isn't it a fact that one or two of the parties who had received such telegrams went with you to—

Objected to ; objection sustained.

Question withdrawn.

*Q* Did you, Mr. Crane, ever render any statements or reports to the Lewis-Porter Cabinet Company showing the sales which you made from time to time?

30

*A* No, sir ; Mr. Porter always came there about every two weeks, and sometimes every week.

*Q* Was there ever any understanding that you should render statements or reports of sales of their goods?

*A* There was no understanding—Mr. Porter said he would be out there, and would sell me anything that I wanted and look after the business.

Plaintiff rests.

40



Defendant moves for a nonsuit on the following grounds, viz: That this contract was a contract of sale, and not of consignment, and that there is no evidence of the existence of the corporation, and that the demand was not made.

Motion denied ; exception.

Defendant declares that he has no evidence to offer, and therefore rests.

10 *Mr. Olds* : I shall request the Court, on the same grounds set forth, to direct a verdict for the defendant.

*The Court* : I refuse to do so.

Exception.

The Court orders a recess of one hour.

2 P.M., examination resumed.

20 *Mr. Olds* : On a reconsideration, I think I will introduce some testimony.

Allowed by the Court.

It is agreed that the amount chargeable against goods replevied and not paid for shall be the sum of one dollar.

30 *Mr. Olds* : I offer in evidence the chattel mortgage made by Frank E. Crane to The Claffin Company, dated August 5, 1892, and recorded August 5, 1892, in book Q of Chattel Mortgages of Passaic County, page 178. Also bill of sale made by Frank E. Crane to The H. B. Claffin Company, August 29, 1893.

Objected to ; objection overruled.



**Franklin M. Olds**, a witness on behalf of defendant, being duly sworn, testifies as follows :

The amount due under this chattel mortgage at the date of foreclosure, or two or three days before August 25, 1893, was \$13,858.95, the bill of sales spoken of ; the Claffin Company understood that Crane originally promised at the time he gave them the chattel mortgage, that he must keep making monthly assignments of his book accounts. We wanted Mr. Crane, at the time of foreclosure, to give us the bill of sale of his book accounts, he being bound to do so by virtue of his agreement of the year before. We paid him \$2,000 spot cash for his book accounts, leases and everything he had outside of his stock, and we were to collect all we could to pay ourselves the \$2,000 back, and any balance due after we were paid was to go back to Mr. Crane. The stock of goods sold for \$10,000, leaving plus nearly \$4,000. That was due at the date of foreclosure and replevin. During a year or more that this mortgage was in force, while Mr. Crane was going on—I originally drew the chattel mortgage, and had to do with that transaction and knew about it, and was called in consultation several times with reference to it, and the company only allowed Crane to go on as if he was going on in the ordinary way.

*Cross-examination*, by Mr. Dunn :

Q What date did the sale take place with reference to the mortgage ?

A Early in September.

Q I just show you this card and ask you who wrote that ?

A (Witness reading) "September 8, 1893; M. Dunn, Esq., attorney for Crane's creditors: I send by bearer to explain stata of matters. I have directed advertisement of chattel mortgage to him to-day. If your claims are not in before day of sale, sale will be made expressly subject as thereto,



and ample opportunity for replevy afterwards if not done before sales."

*Q* And at the same time that it was announced that certain goods were there, and they were subject to equities, and Claflin & Co. would protect any purchaser against his loss by the purchase?

*A* Yes, sir.

*Q* In other words, to take care of any litigation that might arise in consequence of the assigned  
10 goods?

*A* Yes, sir ; Claflin & Co. bought in the goods themselves.

Defendant rests.

Testimony closed.



## EXHIBIT.

---

### *CHATTEL MORTGAGE AND AGREEMENT.*

Made at Paterson, N. J., August 5th, 1892, by 10  
and between Frank E. Crane, of Paterson, N. J.,  
of the one part, and The H. B. Claffin Company, a  
corporation organized under the laws of New Jer-  
sey and doing business in New York City, of the  
other part.

Whereas, Said Crane, a retail furniture dealer at  
No. 211 Main avenue, Passaic, Passaic county, N.  
J., and at Nos. 79 and 81 Broadway, Paterson, Pas-  
saic county, N. J., is indebted to said The H. B.  
Claffin Company, wholesale dry goods dealers, for 20  
merchandise heretofore delivered in the sum of two  
thousand and seventy dollars and eighty-two cents  
(\$2,070.82);

And whereas, Said Crane is largely indebted to  
others also and has requested said company for an  
extension on their claim and for advances of cash  
and merchandise, to enable him to continue in busi-  
ness, and as inducement thereto, (1) has made a state-  
ment of his financial condition to said company, the 30  
truthfulness of which he hereby warrants; (2) has  
made an assignment to said company of all his book  
accounts, amounting in face value to \$ , 90  
per cent. of which at least are warranted good and  
collectible; and (3) is willing to mortgage both his  
said stores and all his property now or hereafter  
therein.

Now, therefore, in consideration of the premises  
and the mutual covenants herein, said parties have  
agreed and do agree as follows:



## FIRST.

The H. B. Claflin Company grant Mr. Crane an extension of three months on his said indebtedness of \$2,070.82—*i. e.*, until November 5th, 1892, the same to bear interest from the date hereof.

## SECOND.

10 The H. B. Claflin Company this day advance Mr. Crane thirty-five hundred dollars (\$3,500) in cash to enable him to pay certain items of indebtedness to others, said (\$3,500) to bear interest from the date thereof.

## THIRD.

The H. B. Claflin Company agree and bind themselves to advance Mr. Crane hereafter cash to the amount of four thousand dollars (\$4,000) and merchandise to the amount of thirty-five hundred dollars (\$3,500)—*i. e.*, they agree hereafter to advance Mr. Crane \$7,500 altogether.

20 All future merchandise advances hereunder to be strictly for Mr. Crane's own business. and all to be and remain the property of said company until actually in Mr. Crane's stores, upon arrival wherein the same shall at once be subject to the lien of this mortgage.

30 All future cash advances shall be used for the benefit of Mr. Crane's furniture business and be paid on his call, but in such directions and to such persons or firms and for such specific purposes as may from time to time be agreed upon by Mr. Crane and William B. M. Jordan, Esq., credit clerk of said The H. B. Claflin Company. The primary intent of the agreed \$4,000 cash advance is to enable Mr. Crane to make satisfactory settlements with his other creditors. All cash advances to bear interest from the date of advance.

## FOURTH.

Said Crane grants, bargains and sells unto said The H. B. Claflin Company, its successors and as-  
40 signs forever—



All the goods, chattels and personal property, described as follows, to wit :

(1.) One white horse, "Frank ;" one roan horse, "Billy," and one roan mare, "Nellie ; five wagons (viz., two top business wagons, two open business wagons and one top buggy) ; seven sets of harness, lot of stable implements, hay, feed and provisions, one hair picker—said property being now at his factory, or stable property, at No. 93 River street, Paterson, N. J.—together with all horses, wagons, harness and personal property now or hereafter at said premises. 10

(2.) All present and future leases of his said stores—one at No. 211 Main avenue in Passaic, Passaic county N. J.; the other at Nos. 79 and 81 Broadway, Paterson, Passaic county, N. J.—and the benefits of all the terms and covenants thereof.

(3.) The good will of his business at Passaic and Paterson. 20

(4.) All the stock of furniture, carpets and bedding, and all the machinery and office and store fixtures and furniture, and all the goods and chattels and personal property of every kind now or hereafter in, upon or about said store buildings, and each of them, and the premises adjacent thereto, or to either.

#### FIFTH.

Said Crane shall and will forever warrant and defend said goods and chattels and the property hereby granted and sold against all parties whomsoever. 30

#### SIXTH.

Said grant and sale and this mortgage are upon condition, nevertheless, that if said Crane shall—

(1.) Well and truly pay unto said The H. B. Clafin Company, its successors and assigns, all his indebtedness to them, future as well as present, to wit :



|     |                                               |                   |
|-----|-----------------------------------------------|-------------------|
| (a) | The old merchandise account,                  | \$2,070.82        |
| (b) | “ cash advance of this date,                  | 3,500.00          |
| (c) | “ “ agreed to be hereafter<br>advanced,       | 4,000.00          |
| (d) | Merchandise agreed to be here-<br>after sold, | 3,500.00          |
|     | Total,                                        | <hr/> \$13,070.82 |

Together with interest as agreed.

And also all other indebtedness hereafter arising  
10 in their favor, whether for cash loans or for mer-  
chandise to be sold and delivered, even if in excess  
of the amounts above agreed upon.

(2.) Shall keep the mortgaged property insured  
against fire for the benefit of the holder hereof and  
assign the policies.

(3.) Shall allow an inspection of the mortgaged  
property at all times.

All of which he, said Crane, promises to do—  
Then this mortgage to be void.

20

#### SEVENTH.

In case of default at any time in making payment  
of said indebtedness, or any part thereof; or in case  
the mortgaged property shall at any time be sold or  
removed from the said stores, or either of them, in  
bulk, or in unusual quantities, or with intention, or  
so as in effect to impair or jeopardize the security of  
the holder thereof; or in case Mr. Crane shall allow  
any attachment, judgment, distress warrant or other  
30 lien to be entered up of record or put upon his prop-  
erty, or any part thereof; or in case his business,  
or his ability to do business, shall be stopped for  
any cause and the security of the holder hereof  
thereby jeopardized or impaired—then, and in every  
such case, the entire amount for which this mort-  
gage is or may be a lien, if not already due, shall  
at once be and become due and payable, and the  
holder hereof may enter said or any stores, build-  
ings, stables or premises whatsoever where the said  
40 mortgaged goods or any part thereof are or may be



placed and impound the same, or take and carry them away and sell the same in bulk or otherwise, retaining out of the proceeds in the first place all costs and charges of the sale, including watchmen's fees and one hundred dollars (\$100) as an attorney's fee; and in the second place all the indebtedness of Mr. Crane for which this mortgage is or may be security, cancelling the several portions thereof in any order they may see fit, and rendering the over- plus, if any, to Mr. Crane, his legal representatives 10 or assigns. If the proceeds of sale are insufficient to pay all claims of The H. B. Claffin Company, its successors or assigns, Mr. Crane shall pay the deficiency.

## EIGHTH.

It is, of course, understood that Mr. Crane may carry on his business as usual heretofore, notwithstanding the making of this mortgage.

In witness whereof, said parties have hereunto set their hands and seal in triplicate the day and year 20 first above written.

F. E. CRANE, [SEAL.]

D. N. FORCE, [SEAL.]

*Treasurer of the H. B. C. Co.*

Subscribing witnesses :

FRANKLIN M. OLDS,

SAMUEL H. WALKER.

STATE OF NEW JERSEY, } ss:  
COUNTY OF PASSAIC.

Be it remembered, That on this fifth day of August, A.D. 1892, before me, a Master in Chancery of New Jersey, personally appeared Frank E. Crane, who I am satisfied is the grantor or mortgagor in the foregoing mortgage named, and I having first made known to him the contents thereof, he did acknowledge that he signed, sealed and delivered the same as his voluntary act and deed.

FRANKLIN M. OLDS,

*Master in Chancery of New Jersey.* 40



STATE OF NEW YORK, }  
COUNTY AND CITY OF NEW YORK. } ss :

Be it remembered, That on this fifth day of August, A.D. 1892, before me, a Master in Chancery, appeared Samuel H. Walker, who, being by me duly sworn, doth depose and make proof to my satisfaction, that he well knows the corporate seal of The H. B. Claflin Company, one of the parties named in the foregoing mortgage; that the seal  
10 thereto affixed is the proper corporate seal of the said company; that the same was so affixed thereto, and the said mortgage signed and delivered by Dexter N. Force, who was, at the date and execution thereof, treasurer of said company, in the presence of the said deponent, as the voluntary act and deed of the said company, and that the said deponent thereupon signed the same as subscribing witness.

SAMUEL H. WALKER.

20 Sworn to and subscribed before me, a }  
Master in Chy. of N. J., at New }  
York, N. Y., August 5, 1892; all of }  
which I certify.

FRANKLIN M. OLDS,

*Master in Chancery of New Jersey.*

STATE OF NEW YORK, }  
COUNTY OF NEW YORK. } ss :

Dexter N. Force, being duly sworn, upon his oath  
30 says as follows :

I am the treasurer of The H. B. Claflin Company, the mortgagee in the foregoing mortgage named, and the owner and holder thereof. The true consideration of said mortgage is as follows : On the date of the same, to wit, on this date, August 5th, 1892, Frank E. Crane, of Paterson, N. J., the mortgagor in said mortgage named, owes said The H. B. Claflin Company, for merchandise heretofore sold and delivered by said company to said Crane at his request  
40 the sum of two thousand and seventy dollars and



eighty-two cents (\$2,070.82.) He also owes said company, for cash this day loaned and advanced to him by said company at his request, the sum of thirty-five hundred dollars (\$3,500); and said company has agreed, as in said mortgage set forth, hereafter to advance to Mr. Crane the further sum of \$4,000 in cash, and also merchandise to be used in his business to the amount of \$3,500; and said mortgage has been given as security for the payment of said indebtedness, to wit:

10

|                                        |                   |
|----------------------------------------|-------------------|
| (1) The old merchandise account afore- |                   |
| said,                                  | \$2,070.82        |
| (2) The cash advance of this date,     | 3,500.00          |
| (4) " advance of cash as agreed upon,  | 4,000.00          |
| (4) " " " merchandise as               |                   |
| agreed upon,                           | 3,500.00          |
| Total,                                 | <hr/> \$13,070.82 |

And deponent further says that the amount due and to grow due upon said mortgage, as near as he can state, is the sum of \$13,070.82, with interest on \$5,570.82 thereof from this date, and interest on future cash advances from the dates from the same, respectively.

D. N. FORCE.

Sworn to and subscribed at New York }  
 City, N. Y., August 5, 1892, before }  
 me, a Master in Chancery of N. J. }

FRANKLIN M. OLDS,

*Master in Chancery of New Jersey.*

[Endorsed.]

30

Frank E. Crane

to

The H. B. Claffin Co.

Chattel Mortgage, dated August 5, 1892.

Received in the clerk's office of the County of Passaic on the 5th day of August, A.D. 1892, at 4.05 o'clock in the afternoon, and recorded in Book Q of Chattel Mortgages for said county, on pages 178, &c.

A. D. WINFIELD, *Clerk.*

40



## Passaic County Circuit Court.

THE LEWIS-PORTER CABINET  
COMPANY,

v.

10 THE H. B. CLAFLIN COMPANY  
AND ORLANDO DEMAREST.

*In Replevin.*

MICHAEL DUNN, Attorney for the Plaintiff.

FRANKLIN M. OLDS, Attorney for the Defendants.

### BILL OF EXCEPTIONS.

Be it remembered, that on the second day of October, 1894, at a Circuit Court holden at Paterson, in and for the county of Passaic, before his Honor,  
20 JONATHAN DIXON, Esq., one of the Justices of the Supreme Court of Judicature of the State of New Jersey and Judge of said Circuit Court, the issue joined in the above stated cause between said parties came on to be tried by a jury for that purpose duly empaneled; the testimony in the cause having been concluded and both parties having rested the cause, and said Judge being about to charge the jury, the counsel for the defendants requested his Honor, the Judge, to charge and instruct the jury  
30 as follows, viz.:

*First.* Because no proof of the incorporation of plaintiff company, or its capacity to sue.

*Second.* No demand prior to suit.

*Third.* Contract was an absolute sale, and title passed.

*Fourth.* Even if a conditional sale, the contract void:

- 40 (a.) As against statute as to such sales;  
(b.) As against public policy.



*Fifth.* If plaintiffs entered into this arrangement not to expose the reservation of title, and Claflin acted on that in letting Crane go on, plaintiff now estopped to claim title.

*Sixth.* The whole question as to effect of parol evidence on the written invoice on question of title, is a question for the Court, not for the jury.

*Seventh.* On whole case, defendant entitled to a verdict.

His Honor, the Judge, declined to so charge the jury in said cause as above requested, except as charged in the charge hereto annexed. Whereupon counsel for the defendants made exceptions to said opinion of said Judge, and prayed the said Judge to set his hand and seal to this bill of exceptions. And it is sealed accordingly.

JONATHAN DIXON, *Judge.* [L. S.]

Whereupon said Judge proceeded and charged the jury as follows :

Gentlemen of the Jury—The controversy in this case is settled down to the question of title to three buffets, which were shipped by the Lewis Porter Cabinet Company, who was then the owner, to a Mr. Frank E. Crane, in the month May or June, 1893, the value of which it is agreed between the parties shall be taken as \$35. The question in this suit, therefore, is whether the plaintiff is entitled to recover from the defendant \$35 for the taking of those pieces of furniture, and that will depend upon whether the plaintiff proves to your satisfaction that at the time this replevin suit was brought, September, 1893, those three pieces of furniture were still the plaintiff's property, although they had been shipped to Mr. Crane. If they had been sold out and out to Mr. Crane at the time, of course they were not then the plaintiff's property, and the plaintiff cannot recover. The plaintiff cannot recover unless they were still the property of the Porter



- Cabinet Company in Indiana, and your conclusion on that question will depend on what you think was the bargain between Mr. Crane and the Indiana Company. We have two classes of evidence to indicate what that bargain was—one of which is the testimony of Mr. Samuel Porter and Mr. Crane with regard to the arrangement that they made in New York; and the other consists of bills which the Lewis-Porter Cabinet Company sent to Mr.
- 10 Crane at the time they shipped him these goods. According to the evidence of Mr. Porter and Mr. Crane, Mr. Porter, as the president and representative of the Cabinet Company, was unwilling to sell to Mr. Crane under such circumstances as to part with the Cabinet Company's title until payment was made, because Mr. Crane was in embarrassed circumstances financially, and Mr. Porter and Mr. Crane say that it was arranged between them that the Cabinet Company should ship Mr.
- 20 Crane these goods, and that he should be bound to pay for them in thirty days after his receipt of them at the specified price, and that the goods should remain the goods of the Cabinet Company until they were paid for. As soon as they were paid for under that arrangement, of course, they would become Mr. Crane's goods, and these witnesses say that the arrangement was that until paid for they should remain the property of the Cabinet Company. These three buffets have never been paid for to the
- 30 Cabinet Company.

That arrangement having been made between Porter and Crane, Porter wrote to the Cabinet Company in Indiana, that he had made this arrangement with Crane, and that they should ship him goods under that arrangement forthwith. The Cabinet Company shipped the goods to Mr. Crane at Paterson, and with them they sent bills reading substantially in this way: The Cabinet Company sold to Mr. Crane, or Mr. Crane bought of the Cabinet Company, certain goods, designating the prices—terms cash—on

40



thirty days delivery. Now those bills looked at alone would indicate an absolute sale of the goods from the Cabinet Company to Mr. Crane—an absolute sale passing the title at once as soon as the goods were delivered. On their face they indicated that as soon as the goods reached Paterson and were received by Mr. Crane they became his, and that he was to have thirty days after that time to pay for them. Now the defendant says that the corporation in Indiana, on receiving this report from its agent and president in New York, concluded to ship the goods; not to ship on the arrangement which had been made with its agent in New York, but to ship them on terms more favorable to Mr. Crane—that they were not willing under all the circumstances as disclosed by Mr. Porter's report to ship the goods retaining the title, but they chose to ship the goods transferring the title to Mr. Crane, and making the goods his, and trusting him for payment of the price, while the plaintiff contends they shipped the goods under the arrangement which Crane and Porter had made in New York, and that this bill that they made out was a mere convenient way of indicating that the goods were shipped, the contract, however, being such as Mr. Porter and Mr. Crane had made in New York.

If you believe those goods were sent by the corporation to Mr. Crane, with the intention that as soon as they reached here they became his, then you find your verdict for the defendant, for the Cabinet Company has no more right in the goods. If on the other hand you conclude that their intention was to ship under the arrangement that Porter and Crane had made in New York, keeping the title in the Cabinet Company until the goods were paid for, why then you find your verdict in favor of the plaintiff for \$35, together with a year's interest.

Now something has been said in the case with regard to one of the terms of the arrangement between Mr. Crane and Mr. Porter, which was that



when the goods were sent on they should not be marked as being consigned, but they should be marked as though there was an ordinary sale—a shipment under an ordinary sale, and it is claimed that that wasn't honest, and therefore, it should be an absolute one without regard to the intention of the parties. Now it is true in this case, that by the shipment and by these bills accompanying the shipment, the Cabinet Company had invested Mr. Crane

10 with evidence of good title, and if he had gone to the Claflin Company with that evidence of title, and had said: "I have bought these goods from the Lewis-Porter Cabinet Company and here is their bill to me for these goods, will you lend me money on them, or will you buy them from me," and on the strength of that evidence the Claflin Company had loaned him money, or had bought them, undoubtedly the Cabinet Company would not be able to set up their title against the Claflin Company.

20 But it does not appear in this case that H. B. Claflin and Company ever saw the marks that were on the goods when they were shipped and at the depot in Paterson, or ever saw these bills or ever in any way acted on the strength of such evidence of title as the Cabinet Company had put in Mr. Crane's hands, and for that reason that circumstance in the arrangement does not bar the Cabinet Company's title, if it has any. The agent of the Claflin Company may have acted upon seeing the goods in his

30 store, but that they would see if such a bargain had not existed in the arrangement. The mere presence of the goods in the store was perfectly consistent with title in the consignor, and as this term of the arrangement between the Cabinet Company through Mr. Porter the president, and Crane had not affected the Claflin Company in the least, it does not estop them from showing just what the truth is, and having the cause decided upon the truth. So the question comes right back to the intention of the parties,

40 and if you think that these goods were delivered to



Mr. Crane with the intention that on delivery he should be the owner, then you find for the defendant. If you think they were delivered with the intention upon his part and on the part of the Cabinet Company that the goods should remain the property of the Cabinet Company until paid for, then you find for the plaintiff.

Whereupon counsel for the defendant made the following exceptions to said charge of his Honor, the said Justice, and praying that his Honor, said Justice, would set his hand and seal to this bill of exceptions: 10

*First.* I wish to except to that part of the charge which directs the jury that the conclusion depends upon what they think is the bargain.

*Second.* That the question comes back to the jury, and that it is for them to decide upon what they believe to be the intention of the Cabinet Company in shipping the goods—whether it shall be on arrangements made in New York or as the bills alone will indicate, and the defendant contends. 20

*Third.* Also to that part of the question which directs the jury that the question with them is, "What the corporation intended." "If you conclude that the company's intention was to ship under the New York arrangement and to reserve title, then there should be a verdict for the plaintiff." 30

And it was sealed accordingly, subject to the language of the charge as above set forth at length.

JONATHAN DIXON, *Judge.* [L. S.]



# N. J. Court of Errors & Appeals.

|          |                                                                                                                                                                      |   |                                                               |
|----------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------|---|---------------------------------------------------------------|
| 10<br>20 | THE H. B. CLAFLIN COMPANY<br>AND ORLANDO DEMAREST,<br><i>Plaintiffs in Error,</i><br><i>v.</i><br>THE LEWIS-PORTER CABINET<br>COMPANY,<br><i>Defendant in Error.</i> | } | <i>In Error to<br/>         Passaic<br/>         Circuit.</i> |
|----------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------|---|---------------------------------------------------------------|

## ASSIGNMENT OF ERRORS.

And now at this day the plaintiff in error assign the following causes of error :—

20 *First.* Because said Circuit Court erred in denying the motion for nonsuit on the grounds—

(1.) That there was no proof offered of the incorporation of said Lewis-Porter Cabinet Company, or of its capacity to sue ;

(2.) That there was no demand made, prior to the replevin suit, for the return of the goods ;

(3.) That the contract of sale made by said Lewis-Porter Cabinet Company was an absolute sale, and title passed to Frank E. Crane ;

30 (4.) That even if it were a conditional sale the contract was void :—

(a) As against the statutes as to such sales ;  
 and—

(b) As against public policy.

*Second.* Because the Judge of said Circuit Court erred in refusing to direct the jury to find for the defendants, on the grounds :

40 (1.) That there was no proof of the incorporation of said Lewis-Porter Cabinet Company, or of its capacity to sue ;



(2.) That the contract of sale made by said Company was an absolute and not a conditional one ;

(3.) That no demand was made for possession of the goods prior to suit.

*Third.* Because the Judge of said Circuit Court erred in refusing to charge the jury as requested—

(1.) That there was no proof of the incorporation of said Lewis-Porter Cabinet Company, or of its capacity to sue ;

10

(2.) That there was no demand made prior to suit ;

(3.) That the contract was an absolute sale and title passed ;

(4.) That even if a conditional sale the contract was void—

(a) As against the statute as to such sales ;

(b) As against public policy ;

(5.) That if the plaintiff entered into this arrangement not to expose the reservation of title, and The H. B. Claffin Company acted on that in letting Crane go on, the plaintiff now estopped from claiming title ;

20

(6.) That whole question as to effect of parol evidence on the written invoice on question of title is a question for the Court and not for the jury ;

(7.) That on the whole case defendants are entitled to a verdict.

*Fourth.* Because the Judge of said Circuit Court erred in charging the jury—

30

(1.) That the conclusion whether the sale absolute or conditional depends upon what they think is the bargain ;

(2.) That the question comes back to the jury, and it is for them to decide upon what they believe to be the intention of the Cabinet Company in shipping the goods, whether it shall be as arrangement made in New York, or as the bills alone will indicate and the defendant contends ;

40



(3.) That is with the jury to determine "what the corporation intended," and charging as follows: "If you conclude that the company's intention was to ship under the New York arrangement and to reserve title, then there should be a verdict for the plaintiff."

10 *Fifth.* Because the charge of the Judge of said Circuit Court was, as a whole, unfair to the defendants, misleading to the jury as to questions of fact, and erroneous in its statements of law.

FRANKLIN M. OLDS,

*Att'y for and of Counsel with Pl'tfs in Error.*



# N. J. Court of Errors & Appeals.

|                                                     |   |                                               |    |
|-----------------------------------------------------|---|-----------------------------------------------|----|
| THE LEWIS PORTER CABINET<br>COMPANY,                | { | <i>In Error to<br/>Passaic Cir-<br/>cuit.</i> | 10 |
| <i>Defendant in Error,</i><br><i>ads.</i>           |   |                                               |    |
| THE H. B. CLAFLIN COMPANY,<br>AND ORLANDO DEMAREST. | { | <i>Joinder in<br/>Error.</i>                  |    |
| <i>Plaintiffs in Error.</i>                         |   |                                               |    |

And hereupon, afterwards, the said Lewis-Porter Cabinet Company, by Michael Dunn, his attorney, comes into Court and says that there is no error either in the record and proceedings aforesaid, or in giving the judgment aforesaid ; and it prays here that the Court here may proceed to examine as well the record and proceedings aforesaid as the matters aforesaid assigned for error ; and that the judgment aforesaid, in manner aforesaid given, may in all things be affirmed. 20

MICHAEL DUNN,

*Att'y for and of Counsel with Defendant in Error.*







# New Jersey Court of Errors and Appeals.

The H. B. CLAFLIN COMPANY

and

ORLANDO DEMAREST,

*Plaintiffs in Error,*

*vs.*

LEWIS-PORTER CABINET

COMPANY,

*Defendant in Error,*

**In Error to Passaic  
Circuit.**

## EXHIBITS.

LIST OF ORDERS FROM SAMUEL P. PORTER TO THE  
LEWIS-PORTER CABINET COMPANY, READ AT THE  
TRIAL AND REFERRED TO IN THE TESTIMONY.

(1)

Date May 13, '93.

Order No. 362.

Messrs. Lewis-Porter Cabinet Company.

Ship to F. E. Crane,

At Paterson, N. J.

How ship—best route.

Terms: as below.

When—at once.

deliv'd.

1 No. 288 Side Board, ant.

48.

1 " 285 " "

37.

1 " 296 " "

43.

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\$128.



This man is covered by chattel mortgage to H. B. Claflin & Co., this city. I would not agree to sell him these goods, except on consignment. He agrees to pay us in 30 days, otherwise the goods are ours until they are paid for.

He prefers that we do not ship or mark them consigned, but ship them direct to his address in Paterson, N. J. It is distinctly understood though, that they will be considered as consigned in order to protect ourselves in case Claflin should ever foreclose on him. He has a good store, and is a live business man, although handicapped at present. I think he will come out all right in a little time. This is the man that tried some time ago to form a stock Co. & went ahead buying his goods before he got his Co., organized legally. Part or all of the outside stockholders, however, withdrew & he had to compromise with his creditors at some 50 c. on the dollar. This is the time Claflin advanced him money to pay off his creditors & at the same time took a mortgage as security. Knowing these facts, our safest course is to sell him only on consignment.

Yours, etc.,

(Signed) S. P. PORTER.

(2)

Date May 16, 1895

Order No. 372.

Messrs. Lewis-Porter Cabinet Company.

Ship to F. E. Crane,

At Paterson, N. J.

How ship—best route.

Terms: as below.

When—at once  
Delivered.



|   |         |                    |       |
|---|---------|--------------------|-------|
| 1 | No. 409 | China Closet, ant. | 12.75 |
| 1 | " 24    | Book Case, "       | 17.20 |
| 1 | " 11    | " " "              | 12.25 |
| 1 | " 421   | China Closet, "    | 9.50  |
| 1 | " 414   | " " "              | 28.50 |
| 1 | " 417   | " " "              | 15.50 |
| 1 | " 418   | " " "              | 10.75 |
| 1 | " 527   | Buffet "           | 15.   |
| 1 | " 525   | " " "              | 13.   |
| 1 | " 524   | " " "              | 8.    |
| 1 | " 1069  | Desk Mah. finish,  | 10.   |
| 1 | " 1063  | " " "              | 12.50 |

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\$164.95

I have arranged with Mr. Crane that everything I sell him will be on consignment. If he can't pay in 30 days, the goods are ours until paid for.

(Signed) S. P. PORTER.

(Written on margin.)

This makes us safe as far as Claflin is concerned.

(Signed) PORTER.

(3)

Date June 24, '93.

Order No. 393.

To Messrs. Lewis-Porter Cab. Co.

Ship to F. E. Crane,

At Paterson, N. J.

How ship—as before

Terms: as before

When—at once.

Delvd.

1 No. 833 Chiffonier Birch

19.50

1 " 703 Table "

14.75

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\$34.25

If we are out of 703 in Birch, then substitute 711 at 17.00.



The above order, like the former ones, are on consignment. He claims that these pieces are sold, if so, we will get our money when delivd, if not, then we will get it in 30 days, or the goods are ours. Send him brass rod for 524 Buffet He is short glass and back for 295 Board. No mats came for 295, 285 or 288. Send him 1 hdl., like enclosed, by mail. This one came broken. Ship at once and trace. Crane seems to be doing a good business, and will pull through all right. I think, still I feel that we must be on the safe side.

Yours,

(Signed) PORTER.

Send mats by mail or express.



on consign-  
if so, we  
then we  
Send him  
s and back  
85 or 288.  
s one came  
seems to be  
h all right  
afe side.

PORTER.



