



Minnesota District Court (Carver County)
Civil and criminal case files

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No. 3124

DISTRICT COURT,
CARVER COUNTY, MINN.

Linna Kloss
Plaintiff.

vs.
G. A. Hatzel
Defendant.

Child & Drake
Plaintiff's Attorney.

H. C. Odell
Defendant's Attorney.

Date of Entry *July 21st* 19*08*

Register of Actions *"9"* Page *544*

Term Tried *At General* 19*09*

Judgment for.....

Amount of Judgment \$.....

Date of Judgment *7* 19.....

Judgment Book..... Page.....

Default Judgment Book..... Page.....

Date of Docketing..... 19.....

Form No. 61.

12-18-1902.

JURY.

(NOTE—Write FIRM name in title. Write NAMES of both Plaintiff's and Defendant's Attorneys.)

No.

District Court,
HENNEPIN COUNTY.

Linna Kloss

Plaintiff

AGAINST

G. A. Gatz

Defendant

NOTE OF ISSUE.

S. B. CHILD & BENJ. DRAKE

Attorney for Plaintiff.

W. C. ORRILL

Attorney for Defendant.

Will the Clerk please file this note of issue
and enter the cause on the General Term
Calendar of said Court for the 27th day
of September, 1909.

Yours, etc.

CHILD & DRAKE,

Attorney for Plaintiff.

LAST PLEADING SERVED.



CARVER COUNTY,
FILED

MAY 28 1909

H.O. Muehlberg Clerk.

(544)

STATE OF MINNESOTA :
COUNTY OF CARVER :

DISTRICT COURT.
EIGHTH JUDICIAL DISTRICT.

Linna Kleos,

Plaintiff,

-VS-

G. A. Gatz and Henry Baer,

Defendants.

.....
Due service of the Proposed Case in the above entitled
action is hereby acknowledged by receipt of a copy thereof at
Chaska, Minnesota, on this 19th day of November, 1908; And the
transcript was also received at the same time.

W. C. O'Connell
Attorney for Defendant G. A. Gatz.

STATE OF MINNESOTA :
COUNTY OF CARVER :

DISTRICT COURT.
EIGHTH JUDICIAL DISTRICT.

Linna Kloos, Plaintiff,

-vs-

G. A. Gatz and Henry Baer, Defendants.

* * * * *

The above entitled cause of action came duly on for trial in its order, at the General September, A. D. 1903, Term of the above named Court, at the Court House, in the City of Chaska, in said county, on the 29th day of September, 1903, before the Honorable P. W. Morrison, Judge of said Court, and a Jury; whereupon, the following proceedings were had:

G. E. CHILD and BENJAMIN DRAKE, Esquires, appeared as Counsel for the plaintiff:

W. C. ODELL, Esquire, appeared as counsel for the defendant. Exhibits A, B, C, D, E & G, offered and received in evidence. Exhibit F offered by plaintiff: objected to by Mr. Odell as immaterial, incompetent. (7) Objection sustained; exception by plaintiff. (9) MRS. LINNA KLOOS the plaintiff called as a witness in her own behalf, being first duly sworn testified as follows: (10) DIRECT EXAMINATION by Mr. Drake. At the present time I reside in St. Paul. I am Linna Kloos the plaintiff in this action: my husband is the gentleman sitting directly behind you. His name is Louis C. Kloos and at the present time he lives in St. Paul. In the year 1904 I lived upon an 80 acre farm in Dahlgren Township. In the year 1904 I rented 60 acres from George H. Kloos, the west 60 acres of the SE $\frac{1}{4}$ of section 10, township 11S, range 24. (11) Q Do you know who owned this land that you rented? A Yes sir. Q Who? BY MR. ODELL. Objected to as calling for the opinion or conclusion of the witness and not the best evidence. Sustained; exception. The wheat was raised upon this 60 acres that I spoke of. f

owned the wheat; I raised it. I owned it from the time it was raised and continued to own it until the sheriff did whatever he did do with it. In renting the land I had two-thirds and the party I rented of, one-third. That party was my father-in-law, George H. Kloos. I saw the sheriff, the defendant in this action, in August, 1904. (12) The first time I saw him was at my house Aug. 19th, 1904. At that time something was said about wheat on the 60. The sheriff asked me if we had some wheat out on the 60 acres and I said yes I had some; I rented it. I told him that I rented that. Nothing further was said at that time that I can recollect. I always referred to this land as the 60 acre tract. This conversation took place at my homestead outside of the house. I do not remember whether the defendant said anything about levying on the wheat at that time. He said something about having an execution with him. He said he had an execution; he asked for my husband. (13) said he had an execution for him. Q Did he tell you in what the execution was about? Do you remember? A It was to pay a judgment. Q Against your husband? A Against my husband. After I told him I owned the wheat he made a little memorandum in a book. He went for my husband then, went toward the road from our house and took out some kind of a brown book; I think he made a memorandum. Anyway he wrote in it. Then he went toward the road and waited till my husband came home. Up to that time I do not remember that he said anything about levying upon the grain. After this he saw my husband; then my husband came home; they came to the house and my husband said that this was the sheriff and that he had an execution and that he had an execution and that he was going to levy on the all the grain. I says I didn't see how he could do it as long as I owned it. I said that I could----I showed him the deed. I showed him that it was my property, my homestead. I showed him a deed of the homestead 30 acres where we lived: I showed him this deed in the house. All the conversation I have testified to last, was in the presence of Mr. Gatz. (15) Nothing further that I know of, was said by any of the parties

in reference to Mr. Gatz having levied on the grain. Q Did you at any time during this first interview, tell Mr. Gatz, the defendant, how you happened to own the grain? A Yes sir. Q What did you tell him? A I told him I rented the 60 acres. I don't know when it was after this that I next saw the sheriff. I think it was in Sept. sometime. I never saw him between the time I have just referred to; the first time and the time he came to me on the 22nd day of September, bringing the release with him. I saw him at that time the 22nd day of Sept. Before the 22nd day of Sept. the wheat had burned. (16) All 6 stacks on the 60 acres had burned. This was the wheat that I have testified that I owned and raised. At that time the defendant said something about the levy. He said "I have brought you your release." Then I said "It comes too late." I meant by that that the wheat had burned. The sheriff said "I don't see how anybody could burn their fingers and do such a thing." Q Now Mrs. Kloos, you have testified that you did not see the sheriff that you recollect of, between the first time he visited your house on Aug. 19th, until he brought this so-called release of the levy on Sept. 22nd. I will ask you if at any time between those dates, you authorized your husband to go and see the sheriff in regard to the release? A I did. I said that he should go and see that the sheriff released the levy on the grain so that I could thresh it. Wheat was up in price and I needed the money. (17) I wanted to thresh it. I don't know what my husband did in the matter, except as I heard it from him. I was not present at that time. CROSS EXAMINATION BY ODELL. I am the wife of Louis Kloos. We were married in 1892. Q 1892; at the time of your marriage where did you go to live? A Dahlgren township. Q On the 30 acres that you say constituted your homestead in 1904? A Yes sir. Q Who owned that 30 acres at that time? BY MR. DRAKE. I object to that as incompetent, irrelevant, immaterial, not cross-examination, not admissible under the pleadings. Overruled; exception. A Yes, I think so; my father-in-law owned it. (18) Q Mr. George H. Kloos? A Yes. This was in May, 1892. At that time I went

to live upon the 80 which was later my home and that 80 was then owned by my father. In the month of August, 1904, I was the owner of that 80 acres of land. Q How long had you been the owner of it at that time? A I don't remember. Q About how long? About 5 or 6 years. Q From whom did you get title? BY MR. DRAKE: Well, just a moment, I object to this for the reasons last given, if it please the court. BY MR. ODELL: Well, it wasn't necessary for him to prove title to that 80. BY MR. DRAKE: I object further on the ground that this matter is res adjudicata. Overruled, exception. A Transferred. Q Well, it was transferred by your husband to you? A I don't know, I think it was Bondemeier. Q That is, your husband Looie transferred it to Bondemeier and Bondemeier transferred it to you; that's the way, wasn't it? A I don't know. Q You don't remember then, how you ever got title to that 80 acres of land? (19) Q Is that what you wish to be understood as saying? A Well, it was transferred from Mr. Bondemeier to me. Q Who was Bondemeier from whom you got the title? A Bondemeier whom whom I got title, had a farm in Carver. He lived in Carver. (20) This 60 acre tract is the tract of land situated about half way, 3/4ths of a mile west of the 80 acres upon which I once lived. There were no buildings upon that land in 1904. There never have been any buildings upon it since I knew the 60 acre tract. It never has been occupied by anybody; that is as a living place. Q Now your husband Looie owned that land from some time in December, 1893, down to May, 1901, did he not, this 60 acre tract? (21) BY MR. DRAKE. Objected to as incompetent, irrelevant, immaterial; overruled, exception. A Yes sir. It looks as if I was one of the parties to the action mentioned in this judgment roll marked Exhibit "G". When the sheriff came to my house on the 19th of August I say that I showed him the title to the 80 acres of land upon which I lived. (22) I did not at that time show him any title deed to the 60 acre tract, or any instrument which gave to me the right of possession to the 60 acre tract. I rented that land from my father-in-law in the spring of 1904, I am sure about that. That was the first year that I had cropped that land. Mr. George

H. Kleos cropped it in 1903. I don't know exactly; I don't remember who cropped it in 1903. I don't remember where the wheat raised upon that farm in 1902 was hauled. (23) Q Wasn't the crop of grain upon that 60 acres in 1902 hauled to your husband's grainery? A I don't remember, it was so long. Q Wasn't the wheat grown upon that 60 acre tract in 1903 hauled to your husband's grainery? A I don't remember. Q Don't remember; now, isn't it a fact that your husband had the crop grown upon that 60 acre tract of land every year after the year 1901 until the year 1904? A No sir. Q Who did have the crops? A His father had it. Q What year did he have the crop, his father? A 1903. Q Are you sure of that? A Yes sir. (24) I don't remember who had it in 1903; but I am sure that my husband did not have it in 1903. I worked this farm, this 60 acres tract in 1904. I had my husband work it for me. The plowing that was done on the 60 acre tract was done by my husband and the hired man. My husband did some plowing out there. I don't remember whether he or the hired man did it. Q And the seeding that was done on the 60 acre tract in 1904 was done by your husband? A He did it for me. Q Well, answer the question? A Yes sir. Q And the harvesting of the grain upon that 60 acre tract was done by your husband, was it not, in 1904? (25) A Part of it. I had a hired man that year. It was Henry Rolkes. He was about 17 at that time. He worked for me all the winter before and during the entire summer season and up to November, about the middle of November, 1904. Whatever work was done upon the farm was done by this hired man and my husband and some others; Erick Trillof did work there during harvest. (26) Albert Bondemaier also worked there during stacking. There were several others helped; I don't remember who it was. During all the time my husband was working there he was working for me. When I rented the land I hired him to do the work for me. In the spring of 1904 I rented the 60 acre tract and at that time I hired my husband to go to work for me. Q How much did you pay him a month or agree to pay

him? A I didn't make no agreement. Q You didn't make any agreement with him, you say? A No. Q What is it? A No sir. Q Then your husband wasn't at work for you in seeding that (27) land and in harvesting the crop upon it under any agreement between him and you, was he? A No sir. Q No; who transacted the business of your farm ^{there} during the year 1904? A I did. Q You did personally? A Most of it. Q Did you do it all? A I had him do it for me. Q Yes, he did it for you; now, whatever was sold from the farm was sold by your husband, wasn't it? A No sir. Q Did you sell anything from the farm yourself, in 1904? A No sir, it burned up. Q It burned up on those 60 acres; well, you had some other land, hadn't you? A Yes sir. Q Who hired this man to work on that 60 acre tract in 1904? A I did. Q Where did you see him? A Well, he came to our place. Q When did he come to your place? A I don't remember the date. Q Well, was it in the winter time or fall or spring? (28) In the winter. I think he came there to get work. The first time I saw him he was alone. I hired him for a month that time. My husband made the bargain for me. Q Your husband hired the man did he when he first came there? A He hired him for me. He was not hired specially to work on the 60 acre tract. He was hired for all work. Q The only hiring, the only contract of hiring he had was the contract your husband made with him when he came there some time in the winter? A At that time he hired him only for the chores. Q Well, when did he hire him to work upon the farm? A In March. Q Who hired him then? A I did. I talked with him myself about working. (29) Q Did you or your husband hire him? A I don't remember. Q You don't remember whether you hired the boy for the crop season in March or not? A I had my husband ask him. He should tell him for me if he would not stay. Q Then your husband is the man who made the bargain, is he? A I think it was, with him. Q What is it? A I think it was, with him. Q But you had your husband do the talking, and your husband did the talking and made the bargain with the hired man, did he; isn't that a fact? A I think he did. Q Yes,

you think he did; now, at that time this law suit which is referred to in this judgment roll was still pending against you and your husband, was it not? MR. DRAKE: Objected to as incompetent, irrelevant, immaterial, not cross examination, and not the best evidence. Overruled; exception. A I don't know. (30) Q You don't know; you had knowledge of the suit brought by Henry Baer against your husband and his brother Henry, had you not? MR. DRAKE: Objected to as incompetent, irrelevant, immaterial, nor cross examination and no part of the issues in this case; not admissible under the pleadings. BY THE COURT: The judgment roll was introduced by the plaintiff. Overruled, exception. A I did. Q Yes, you knew that Henry Baer had obtained a judgment against your husband and his brother Henry for a large amount of money, did you not? MR. DRAKE: Objected to as incompetent, irrelevant, immaterial, not admissible under the pleadings, not cross examination. MR. ODELL: All bearing upon the question of ownership; it (31) is preliminary; I am going to follow it up by showing she took ~~the~~ this lease for the purpose of covering the property. Overruled; exception. A Yes sir. Q And in the spring of 1904, at the time you say you rented that 60 acres of land, you knew that that judgment was still unpaid, didn't you? MR. DRAKE: Objected to as incompetent, irrelevant, no part of the issues of this case, not cross examination. Overruled, exception. A Yes sir. I rented the 60 acre tract of land from my father-in-law, George H. Kloos. I was at his place at the time the bargain was made. It was in the spring sometime; I don't remember the date. It was either April or May, somewhere around there. It was before seeding. I don't ~~knew~~ exactly remember the month. I don't remember what day of the week it was. I don't remember who all was present at the time the rental was made. (32) My father-in-law, myself, I think my mother-in-law was there, I don't remember, my husband, Nobody else that I remember of. I think my husband was there, went all together. Q Now did Louis do the talking about renting the 60 acre tract? A I did. I am sure that I did the talking. Q How did you come to rent that 60 acres? A

I had to look out for the family. Q You had to look out for the family, who so? A They had to have something to eat and to work. Q Now, the reason why you wanted to rent the 60 acres was because you were afraid that if Louis worked that 60 acres in his own name, that Baer would collect his judgment out (33) of the crops; isn't that the reason? MR. DRAKE. Objected to as incompetent, irrelevant, immaterial, not cross examination. A Overruled, exception. A I don't know. Q Now, isn't it a fact that you and your husband Louis went over there to your father-in-law's for the purpose of making an arrangement with your father-in-law under which that 60 acre tract could be worked and the crops upon it could be beyond the reach of Baer, your husband's judgment creditor? MR. DRAKE. Objected to as incompetent, irrelevant, immaterial, not cross examination, inadmissible under the pleadings, as already settled, being adjudicated, in this court, and res adjudicata. Overruled, exception. A No, we went for a social visit. Q You went for a social visit? A And while we was there talked about the land, and I rented (34) it. I rented that 60 acre tract for one year. The term was to commence in the spring of 1904 before I had it seeded. My lease commenced in the spring when it was seeding time. I don't remember but I think they seeded in April. Q You can't tell when the term you rented the 60 acre tract for commenced under your agreement with your father-in-law? A I don't remember any more, it was so long ago. Q When did it expire? A I don't know, I had it for one year. Q But you don't know when your lease expired? A For that year, till spring. Q What time in the spring? A Seeding time. Q Have you ever been on that 60 acre tract of land, yourself? A Yes sir. Q You are quite familiar with it, are you? A Yes sir. In the spring of 1904 there were about 40 acres of cultivated land upon the tract. 40 to 45. There was some timber, about 12 acres. There was about 3 acres of meadow. (35) In the other portion of the 60 acres we had some barley. In 1904 we had wheat and oats upon the 60 acre tract and hay on the meadow. We had about 30

to 35 acres of wheat. Something around that, and about 10 acres of oats. We had no other crops upon the land. The sheriff came up to our house on the 19th of August, 1904. I had never seen the sheriff before and had no personal acquaintance with him. I did not know that he was related to my husband. He is not related that I know of. He is not connected with him by marriage that I know of. If it is a fact, I do not know it. I don't think he is. At the time he came to our place I was outside by the house, out on the porch. (36) I was washing milk cans. The hired man came for lunch. I do not remember whether he was there when the sheriff came. He was right there or coming right after. He was not there when I talked with the sheriff. I think he was in the house eating lunch. The children were there at the time I had the talk with the sheriff when he came to the house. At that time they were 5 and 6 years old, something like that. Nobody else was present or heard the talk. I don't know where my husband was when the sheriff came to our house. He was somewhere about the farm. I didn't see anybody with the sheriff. He came alone; when I saw him he was alone in the horse and buggy. I have never measured the distance as to how far our house stood back from the public highway. (37) It is not very far. I cannot tell you how far. It is 3 or 400 feet more or less. I really could not say how far the house is back from the road; it is not so very far. At that time between the house and the public highway we had some stacks of grain. Our barn and barn yard lie between the house and the public road. This setting of grain was by the house. I don't know exactly how many stacks; it was one stack of barley and a few stacks of wheat and oats; I don't remember exactly how many, it was so long ago. As stacked there between the house and the road, all the wheat that was harvested on the 30 acre farm, the crops were stacked between the house and the road. The sheriff inquired if my husband was at home. I told him he was somewhere about the farm; told him he would be there in a few minutes because it was lunch time.

I don't know where he was. (38) The sheriff met my husband down near those stacks of grain. I did not watch them but I suppose they had something of a talk there. I don't know, I did not see them. They were together there a few minutes before they came up to the house. It was when they came into the house into the dining room that I showed the sheriff the deed to the 60 acre tract of land. That was when my husband and the sheriff came up together. That deed to the 60 acre tract was the only title or instrument of any kind that I showed to him there. Q You said the sheriff made some memorandum in his book: where was he when he made that memorandum? A He walked toward the road, from the house toward the stacks, and it was just near the stacks. This was before my husband came. When the sheriff left me on the porch and walked down towards the stack, I saw him make some memorandum in his book. (39) I don't know if it was a book, something brown. It was a little brown memorandum. I saw him write in a book when he was by the stacks. He walked from the driveway between the driveway and the barn, and just about halfway between the house and the road was where he stood when he made the memorandum. I could not exactly tell how far these stacks are from the porch of the house; they are the other side of the barn. I did not see the sheriff again from the 19th of August until he came to our house on the 23rd of September. I didn't see the sheriff at out on the 60 acre tract on the 19th of August. I never saw him there; it was so far from the house I could not see. Q And you never had any talk with him about that 60 acre (40) tract of land except such talk as you claim you had on the 19th of August. A Only what I told him that I told him, that was all I ever talked with him about it, that I had rented it. Q And you never had any talk with the sheriff about the wheat grown on the 60 acre tract of land in 1904, except the talk you claimed you had with him on the 19th of August. A Not personally, but I had my husband, somebody else, do it for me. MR.ODELL. That she had somebody else do it for me, is not responsive. THE COURT.

Strike it out; all after the word "personally". Plaintiff excepts to the ruling of the court. I saw the stacks of wheat on the 60 from a distance after it was stacked. I was not able to walk. I did not go out personally on the 60 acre tract to see the wheat, no. I was not able to walk that year. Q So that you didn't see the stacks of grain standing on the 60 acre tract in the fall of 1904 except as you saw them from a distance? (41) A From the house I could see them.

RECESS taken until 9 o'clock tomorrow morning. MRS. KLOOS still on the stand. Crossexamined by Mr. Odell. Q ~~Were those three men at your house and upon that 60 acre tract of land the~~ Mrs. Kloos I understood you to say yesterday that in whatever your husband did respecting that 60 acre tract and the crops grown upon it, he did acting as your agent? A Yes sir. I probably have met Henry Stocking of Laketown. I have met John Hesse of Dahlgren several times. I probably met Peter Wirtz who formerly lived at Laketown; I don't recollect. Q Were those three men at your house and upon that 60 acre tract of land the day after the wheat stacks burned? MR. DRAKE. Objection, incompetent, irrelevant, immaterial, and not cross examination. Overruled, exception. A I don't remember if they were that day. I don't remember what day it was. Q But you remember that they were there after the stacks burned? A I can't tell whether --Q What? A I don't know for sure whether they were there; so many were there. (42)

REDIRECT EXAMINATION, By Mr. Drake.

My sister was at our place during the months of July and August, 1904. She was there off and on. The sheriff first came to our house on the 19th of August. He at that time, showed me an execution and said he had an execution. He first talked with me. He didn't upon that day or before he left, leave any execution with me. (43) That is my signature to plaintiff's Ex. "H". I signed the instrument on about the day that it purports to be signed, the 2nd day of September, 1904. When the sheriff arrived at our house, my husband was not there. (44) I told him he could wait for my husband; he would be home in a little

while. I did not send for him; I didn't know where he was. Nobody went for him but he came in about ten minutes. (45) In regard to the renting the 60 acre tract of land in 1903, I wish to say that I made a mistake yesterday in my crossexamination by Mr. Odell. I rented it in 1903 and in 1904. The first I had to do with the land was in 1903. I went on it and tilled it in the summer of 1904. The crop of 1904 was put in abee by my husband and a hired man. George H. Kloos is my father-in-law. (46) RE-CROSS EXAMINATION; by Mr. Odell. Q You have talked the matter of the renting of this farm over with somebody since you were on the stand, yesterday, have you? A I recollected. Q Well, answer my question. A I did not, I just thought it over myself. Q Now, you wish to be understood as saying that the renting of the land that you testified to yesterday was in the spring of 1903 instead of the spring of 1904; is that it? A Both years. Q Both years? A Yes sir. I think it was in March, 1903 that I rented that land; somewhere around there.

C.A. GATZ, defendant, called for Crossexamination under the statute, being duly sworn testified as follows. DIRECT EXAMINATION by Mr. Drake. I am at present sheriff of Carver County and have been sheriff for 6 years. I live in Chaska. (47) Q In the summer of 1904 you levied an execution upon the six stacks of wheat that have been referred to frequently in this trial, did you not? MR. ODELL. Objected to as calling for the conclusion of the witness and not for the facts. Sustained; exception. Q You have admitted in your answer in this action that you levied such execution? MR. ODELL. I object to that as not the best evidence of the contents of the answer, and as not true. Sustained; exception. Q On or about the 19th day of August, 1904, did Mr. (48) Odell place in your hands, a certain paper which he designated as an execution, directed against Louis C. Kloos and others? A Yes, sir. Q What instructions, if any, did he give in connection with them? MR. ODELL. Objected to as immaterial and incompetent. Sustained; exception. Upon receipt of this paper, I went out to Mr. Henry Baers,

the judgment creditor?)49). At this time S.R.CHILD undertook the examination of the witness. Witness examined by Mr. Child. This is the execution referred to: execution marked ^{plaintiff's} Exhibit "I". I had the execution with me when I first went out to Henry Baer. I inquired of Mr. Baer as to what property, if he knew the Kloos' had, the judgment debtors, that could be levied upon in the case. After talking with Baer I went to see Louis Kloos. I saw him about his place. I did not go up to the 60 acre piece before I saw him at his place, I saw Mrs. Kloos at the place also. (50) I saw Mrs. Kloos before I saw Louis. I had some talk with her at that time when I saw Louis Kloos. I talked some with him and her together. Q After that what did you do in regard to the execution? A There was nothing more done that day; the next day----I did not make any memorandum on the execution that day. Q Did you on any paper? A I did. That was all that was done that day. (51) Q Well, what the next day; what did you do in connection with the execution? A I went out there again to Kloos' and went out to the sixty as referred to here and looked over that wheat there, the setting; I came back and went on what they called the homestead and looked over the property there, also, and made notes of all the property; that was all. I went home then and filled up the execution, description of the property in the execution. I made it out and completed it as it is now; made my return on the back of the execution, Exhibit "I". MR.CHILD. I offer that execution together with the sheriff's ~~went~~ return and all writing and certificates on the back in connection therewith, in evidence. Received. I think the six stacks of grain was the wheat referred to up the road from the homestead further up the road. I don't know how far it was from the Kloos homestead, half to three quarters of a mile. I went out on the right hand side of the road. Those 6 stacks of grain were situated on the 60 acres. (52) I think the next thing I did was to serve a copy of the levy on the judgment debtor, Louis C.Kloos and Henry F. Kloos. Plaintiff's Exhibit "J" marked. I think Exhibit "J" is ^{the} a copy that I served, I think it is the very one. As to the ser-

vice on Linna Kloos, I believe that I left it at the house with the sister of Mrs. Kloos, Mrs. Kloos not being at home that day. Mr. and Mrs. Kloos were not at home that day; I refer to the plaintiff Linna Kloos. I left it at their house with somebody who was there. Plaintiff's Exhibit "J" offered and received in evidence. BY MR. CHILD. I will not need to read this. It is a copy of the original execution with the endorsement of the sheriff's levy thereon, and his certificate of endorsement on the back. I believe that the next thing done was the filing of the certified copy of the execution with the town clerk of Pahlgren. Nothing else that I can think of was done in connection with the execution. (53) It was probably ten, or two weeks that I first heard anything from the plaintiff in this matter. That was the filing of an affidavit of ownership. It may have been on or about the 2nd day of September; I don't remember the date exactly. I think that Exhibit "H", which you show to me, is the affidavit of ownership that I speak of as having been filed with me. Louis Kloos left it with me. Louis Kloos brought it to me on or about the time that it is sworn to there, Sept. 2nd. Louis Kloos had come to see me before he brought this affidavit to me. About 4 or 5 days after that I filed the levy. Louis inquired of the levy, what was to be done in the matter. Among other things he asked for the release of the property. He wanted me to release the levy on the property. I believe ^{he} told me why. He talked about wanting to thresh his grain, or word to that effect. I think he told me there was a threshing machine in the neighborhood. (54) and he wanted to thresh his grain because he wanted food for his stock. He might have said something about wanting flour. I think that the next time I heard anything about it was when Louis Kloos brought me this exhibit "H" and left it with me. At that time I talked with him about the levy. Plaintiff's Exhibit "H" offered and received in evidence. At the time Louis Kloos left that notice with me, I had a talk with him, practically the same talk took place as the first time. I don't know whether there was any talk about

the threshing at that time. I don't know but what there was. There might have been. I think it was practically the same talk we had the first time he wanted to have the grain threshed, being out of flour and feed along that line. Q He told you that there was a threshing machine in the neighborhood (55) that he could have it done with? A Well, at one of the other times he was talking about a threshing machine; it might have been this time. Q Did you refuse to release the levy? Objected to as calling for the witness conclusion, not for what he said, not showing the conversation. A I claimed, of course, there was not any refusal when the conversation is shown. Sustained; exception.

Q Now Mr. Gatz, when he asked you if you wouldn't release the levy, you told him that you wouldn't release it, didn't you? A I did.

After this affidavit was left with me, this Exhibit "H", it was something like 5 or 6 days later that I saw Louis again. Q Was that the only time you saw him after the notice was served on you before the wheat was burned? A Well, I don't know exactly, I remember I saw him once at least; yes, only once before the wheat had burned. Q After the notice was served on you? A Yes. Q And that was the night before the wheat was burned? A I think so. Q And what did he say to you then, Mr. Gatz? A He was talking about the release of the levy upon the property, and---Q When you testified in the former case, you said Kloos was there 4 or 5 days after the notice was served on you? (56) A It may be such a matter? Q What is it? A It may be such a matter, about 4 or 5 days. Q Yes, about Sept. 10th; and at that time what did Louis say to you? A He was talking about having the levy released. Q And you told him you wouldn't release it? A Well, I don't know; it was words to the effect that the release wouldn't be made until the proper time came; I don't remember the exact words that was spoken. Q Well, at the time he told you about there being a threshing machine in the neighborhood and he wanted to thresh the wheat, didn't he? A He might have; I know it was at one of those talks we was talking about a threshing machine; it might have been at this

time. Q Well, at that conversation that we are now speaking of, he told you why he wanted the wheat released, didn't he? A Yes, I think he did. Q Now, you knew, did you not, that there had been trouble between the Kloos's and Baer, the judgment creditor in that execution? A Well, I knew there was a judgment against the Kloos' in favor of Baer. Q That is not an answer to my question, Mr. Gatz; Didn't you know that there had been trouble and considerable feeling when that execution was given to you and from that time on between the judgment creditor on that execution, Baer, and Louis Kloos and Mrs. Kloos, the plaintiff? (57) A Well, I don't know whether they had any trouble or not; I know that they had a case or law-suit. Q Well, you knew the Kloos' had had stacks of grain burned next to their barn only a short time before? MR. OBELL. Objected to as immaterial and incompetent, as having no tendency to prove any fact in this case. Sustained; exception. Q You knew that George Kloos, the father, had had stacks of hay burned that same fall? Objected to as immaterial and incompetent. Sustained; exception. Q Now, Mr. Gatz, in your testimony upon the former trial of this case, you testified, did you not that when Louis came down to see you after he had served the affidavit exhibit H on you the first time after he came to see you after he served the exhibit H on you, that he asked you to release the property so he could thresh, and that you refused; did you not so testify? A I might have. Q Well, that is the fact, isn't it that he did ask you to release the property and you refused at that time? A He asked me to release the property and I refused to release it. (58) Q Then he came down to see you about the release of the property again the night before the wheat burned? A Well, now, I don't know about that; he was there at least once between the time he served the affidavit claiming ownership, and the first, but whether he was there twice I am not positive. Well, the wheat burned, I couldn't say as to the date, I suppose it was along about the 22nd of September, It burned before I served any notice

of the release of the levy. I finally told Louis that unless I got an indemnifying bond I would release the levy. Q If you had got an indemnifying bond you was going to hang onto the levy, were you? A Yes sir, that is, I told him at that time that if I didn't get the indemnifying bond, that I would release, that I wouldn't hang onto it. And the wheat burned before I had a chance to release it.

REDIRECT EXAMINATION. By Mr. Odell.

On the 19th day of August I went out to the premises occupied by Mr. and Mrs. Kloos; and before going to those premises I went to Mr. Baer's and had a conversation with him. The premises then occupied by Mr. Baer (59) are situated with reference to the premises then occupied by Mr. and Mrs. Kloos, immediately north of the public highway between Baer's and Kloos'. Q Now, just fix that location a little bit; now Mr. Gatz, the public highway which runs between the premises occupied by Mr. and Mrs. Kloos at that time and those occupied by Mr. Baer, runs east and west, does it not? A It does, yes sir. And the premises occupied by Mr. and Mrs. Kloos are situated upon the south side of that road. And those occupied by Mr. Baer upon the north side. This 60 acre tract which was about half or three quarters of a mile farther west, was also upon the north side of the road. When I was out there on the 19th of August, I made some sort of a memorandum. I have the memorandum here. Memorandum produced and marked Defendant's exhibit 1. Q Mr. Gatz, I show you defendant's exhibit which I have marked defendant's exhibit 1, and you may state whether or not that is the memorandum which you made at Mr. Kloos' house on the 19th of August and to which you referred in your testimony? A Yes sir, that is the memorandum. I made no other memorandum there that day. MR. ODELL. I offer that in evidence. (60) Objected to as incompetent, irrelevant and immaterial, not cross examination, ~~not proper cross exami-~~

~~tent and immaterial as it has no tendency to prove any of the issues,~~
and it is a statement by the party himself. ^{Objection overruled.} Exception. Q Mr.

Gatz, you may state what the letters, W, W, B, W, and O, O refer to on this memorandum? Objected to for the same reasons last given, and as calling for a conclusion. Overruled; exception. (61) A The letters W indicate wheat and the letter B stands for barley, the letter O stands for oats, and where there is two letters, B and O, it stands for part barley and part oats. Q Now you may state what that figure there the lines surrounding those letters indicate, what it was drawn for? Same objection; overruled, exception. A That indicates the way the stacks were situated, the two settings of wheat, or the eight stacks. Q Indicates the setting there of grain upon what farm? A Upon Kloos' farm as referred to, on the homestead.

Q On the homestead, yes; Now the first conversation, Mr. Gatz, to which counsel called your attention was a conversation which you say was had between you and Mr. Louis Kloos, 4 or 5 days after you had made this paper levy? A Yes sir. Q Now you may state what was said by Mr. Kloos in the course of that conversation and what was said by you; give us the entire talk as you can recollect it? Objected to as not cross examination, as I understand it is outlined by the court, and as incompetent, irrelevant and immaterial being a statement by a party not in interest. Objection overruled; exception.

A Mr. Kloos asked--he started in to talk about the levy on the property and asked to have it released, talked about the being out of feed and flour, that a threshing machine (62) was near, that he had a chance to thresh, and I told him if he had a chance to thresh or wanted to thresh that he could at any time; that I wouldn't stop him from threshing. I think he said "You better release the property or there is going to be some trouble over it," or words to that effect. I think it was practically all that was said in regard to his wanting the grain threshed and being out of flour or feed, I don't remember the exact words, but that was practically all that was said. Q

When he told you that he wanted to thresh his grain, what, if anything, did you say in reply to it? A I told him that he could go on and thresh, that I wouldn't prevent him or keep him from threshing at any time, that I wouldn't come out there and stop him from threshing his grain. Q Now, you say, if I understand you, Mr. sheriff, that you didn't see Louis Kloos between the time that you had made this levy, or did whatever you did do under that execution until the service of this exhibit D but once? A Once, that was all. I think exhibit H was served upon me about the time it bears date, which is the 2d of September. Q Was it served on that date? (63) A Well, I am sure I don't remember the date, it was about that time, or along there. At the time exhibit was served on me, I don't remember receiving any other paper from Louis Kloos. MR. ODELL. Where is the notice of claim of property made by Mr. George H. Kloos, Mr. Child? 10 minute recess. Marked defendant's exhibit 2. Q Mr. Gatz, I show you defendant's exhibit 2; look at that, please, did you ever see that paper before? I think I have, yes. Q When did you first see it? A It was handed me, I believe by Louis Kloos at the time that he served the affidavit of Linna Kloos. Exhibit H, plaintiff's exhibit H and defendant's exhibit 2 were handed me at the same time by the same person. At the time this exhibit H was handed to me, I had a conversation with Louis Kloos. (64) Q You may give that conversation? Objected to as incompetent, irrelevant and immaterial, not proper cross examination, specially as being the statement of a person not a party to the action, and further as hearsay. Overruled, exception. A We had a conversation concerning the levy upon the property he asked to have it released for the reason that he wanted to thresh, was out of flour and feed, and that the machine was somewhere near close to the neighborhood, and I told him that he could go ahead and thresh at any time he got good and ready, that it wasn't a case of starvation, that I wouldn't come out there and stop him at all. I don't know what, if anything, further, there was said; there might be some more words spoken. Q Well, just to refresh your recollection, you may state whether anything was said

in that conversation as to your intention to take the wheat after it was threshed? Objected to as incompetent, irrelevant and immaterial. Overruled; exception. A I told him he could go ahead and thresh when he got good and ready, it wasn't a case of starvation, that I wouldn't come out there and take his wheat and stop him from threshing at any time. Q I have given all that was said by myself and by Mr. Kloos in those two different conversations, that I can now recollect.

(65) Q Now, your attention has been called to a conversation between Louis Kloos and yourself about the 10th of September; you may give the entire conversation which took place ~~that~~ ~~th~~ at that time? Objected to as incompetent, irrelevant and immaterial, hearsay, not cross examination. Overruled; exception. A He inquired as to the levy on the property, what was to be done and asked to have it released for the reason he wanted to thresh the grain; there was a machine in the neighborhood, and being out of flour and feed, practically the same conversation that took place at the other times. Q Well, what did you say in answer to ~~th~~ his statement that he wanted to thresh, if anything, in that conversation? The same objection as last given. Overruled; exception. A I told him he could go on and thresh when he got good and ready, that I wouldn't stop him or come out there and take his wheat, it wasn't a case of starvation at all. As I remember it, that is all I said at that time. I had a talk with him the night before the stacks burned.

Q You may give us that conversation in full, all that you can now remember of it. Objected to as incompetent, irrelevant, immaterial, not proper cross examination and as hearsay. (66) Overruled; exception.

A Louis came to my place and inquired as to the levy and I told him that I had seen Baer and that he had told me he would be in Monday or Tuesday, this was on a Tuesday evening, if I remember right that Louis called upon me, and I told him that if Baer didn't bring forth the indemnifying bond that day, that I would release the property the next day. And he says, All right, and he got up from his chair and he left. I have told all the talk there that took place as I remember it. Q

Well, to refresh your recollection, what, if anything, did Mr. Kloos in the course of that conversation warn you that there was going to be trouble and that he didn't want to get you into it, if anything? Objected to for the reasons last stated and also as leading. Overruled, exception. A He spoke about having, advising me, or saying You better release the property, there is going to be some trouble, and as a friend of mine I wouldn't like to see you get into it. Q And what, if anything, did you say in answer to that? Objected to for the same reasons as last given. Overruled; exception. A I told him that I was only trying to do my duty as an officer, (67) and that was all I could do, and that if Baer didn't come forth with the bond that same day that I would release the property in the morning. Q Did you ever get a bond of indemnity from Mr. Baer? A No sir. Q Now Mr. Gatz, your attention has been called to what you did on the 19th of August; you may state now all that was done by you on the 19th of August in connection with the execution which is here in evidence. A All that was done; I went out to see Baer in the first place, had a talk with him, went over on the Kloos place and met Mrs. Kloos, later met Louis Kloos, made that memoranda; that was all that was done. Q After making that memorandum, what did you then do? A I came home. Q Now, you said in your cross examination that you on the day following, I believe, you again went out to Louis Kloos' is that right? A I did. Q What did you do on that day with reference to your execution? Tell us all that you did (68) A I went out on the 60 acre piece, looked over the--what I could see in the line of wheat or property, and came back to what is referred to as the homestead, and made notes of all the settings of wheat and description of the property. Marked defendant's exhibits 3A and 3B. Q Mr. Gatz, I show you defendant's exhibit 3A and defendant's exhibit 3B, and ask you to state whether or not that is the memorandum which you made on the 20th of August? A It is the memorandum that I made on that day. MR. ODELL. I offer that part in evidence referring to Louis Kloos stock. Objected to as incompetent, irrelevant and immaterial, not cross examination of this

witness at this time and as hearsay. (69) Overruled; exception. Q Now, after making that memorandum, what further did you do on the 20th of August, if anything? A Nothing more was done with reference to the execution. Nothing more. I believe it was on the 20th that I first went out to the 60 acre tract after receiving this execution.

(70) At that time there were no buildings upon that tract. I found a setting of wheat stacks, grain. Nothing else. I did nothing with that wheat on the 20th of August. I found no person there upon that 60 acres at the time I was there. Q Now, Mr. Gatz, I want you to tell the jury all that you did at any time in respect to the property which is mentioned in this return of levy upon this execution, if anything. A There was nothing done with that property at all, either of it or any of it any more than the description taken of the property and entered upon the execution. (71) When I was out there on the 20th of August, the property which is mentioned in my return as certain cows and heifers and calves, were in the pasture; in the pasture on the homestead as referred to. Nothing was done with those animals or either of it or any of them? And there were some stacks of grain, some stacks over on the homestead. I did nothing with those stacks.

RE-CROSS EXAMINATION BY MR. CHILD. Q Well, you understood that you had made a levy on that wheat, didn't you? (72) A Yes. Q You did, Mr. Gatz, all you ever do as sheriff in making levy upon stacks of wheat, didn't you? Objected to as immaterial; it don't make any difference what he sometimes does; the question is what he did here as against Mrs. Kloos. Sustained; exception. I filed a certified copy of the execution and of the return in the clerk's office. Q Well, that was all that was necessary to do in addition to what you otherwise did in making levy upon stacks of wheat, isn't it? Objected to as incompetent, it is an attempt to prove the provisions of the statute as to what is necessary to be done in making a levy. Sustained; exception. Q Now, you understood, Mr. Gatz, that you had done all that was necessary for you to do in order to levy on those six (73) stacks of grain,

didn't you? A Well, the copy, certified copy, filing ~~the~~ with the town clerk and all which I have said that I did do is shown, what I did do. Q Well, you thought that was all that was necessary to do in order for you to protect your levy? A That was all I did do. Q Now didn't you think that was all that was necessary for you to do in order to make your levy good on those six stacks of wheat? A Possible, yes. Q Do you ~~ka~~ now think you did all that was necessary for you to do-- (73) A Possibly yes, that was all that was necessary. Q Now, you have testified on cross examination that the first time Louis Kloos came to see you, you told him he could go ahead and thresh the wheat whenever he got good and ready? A Yes sir. (75) Q Now, upon your cross examination by Mr. Odell, you did not testify that there was any such conversation had between you and Louis Kloos in the first conversation; isn't that right? A Now, I don't remember whether it was on the cross examination or direct examination, but there was such conversation. Q Now, you have here testified and you now say, do you that that conversation of about threshing the grain was had at the first time he came to see you? A I am not positive as to that. There were two or three conversations that we had in regard to threshing the grain, but I positively could not swear whether he was talking about threshing the first time. Q Oh, now you are not so positive about the first time; as a matter of fact you did testify upon the first trial of this case as follows, did you not: (76) Did he at that time, the first time he came to see you, say anything to you about wanting to thresh his grain, the first time he came to see you? Answer, he did not the first time; did you not so testify in answer to that first question? A Yes, I think I did. Q Well, is that right or is your statement here today right? A That is right, what I testified in the first trial, and, as I said now I don't remember whether I did or not, I don't recollect, it was three years ago. I do not remember whether the question you have just asked me was in response to the question by my attorney or not. Q Now, did you not upon your first

examination, testify as follows, being examined by myself; After Mr. Kloos served the affidavit he came down there again and asked me to release the property so that he could thresh, and I refused, did you so testify? A Well, if it is there in the evidence, I did, if it is in the record. Q Well, if it is there in the evidence, I did, if it is in the record. Q Well, do you concede that you did so testify or not? A Well, it is three years ago, and to what particular question I made this answer I can't remember, but if the record shows so, I did. Q Then was this question asked you; when did you next see Louis Kloos, and did you answer, the night before the wheat stacks burned? A Yes, I think that's so. Q Then did I ask you this question. Came down and asked you to release the property levied upon, did he, and did you answer, he did? A I think so. Q And the next after this, did I ask you, and you still refused, and did you then say, well, not directly? A Possibly. Q Then was this question asked you: what did you tell him? Then did you answer, I told him that if he wanted to thresh his grain that I couldn't keep him from threshing; he should go on and thresh? A Yes. Q But what was the first time upon the first trial of this case upon my examination, that you said anything about telling Louis to go and thresh the wheat, wasn't it? A No, I don't think it was. Q You don't think it was? A No sir, I am sure it wasn't. Q Well, we will have to prove that by the record. Well, you told them to go home and thresh their wheat, but they didn't go home and thresh it; they came again and asked you to release the levy, did they? You were speaking for the benefit of Mrs. Kloos, were you not? In the time she was talking with Louis? A I didn't know Mrs. Kloos had anything to do with this at all until the affidavit claiming ownership was filed. Q Well, then, you knew it, didn't you? A Well, it stated so in the affidavit. Q Well, you knew it, didn't you? A Not any more than I seen from the affidavit which claimed ownership. (73) I didn't know or believe anything more about it than was stated in

the affidavit. At the time Kleos brought the affidavit of ownership and served it on me, there was some more talk in that conversation. He asked me to release the wheat for the reason that he was out of feed, grain and flour and that there was a threshing machine in the neighborhood, and upon that I told him to go ahead and thresh. Q

Well, you didn't expect that he would go ahead and thresh, did you?

A I did. Q In view--you did, in view of the fact that you had levied?

A I did and I told him so. (79) Q Well, you didn't expect he would go ahead and thresh the wheat and pay the threshing bill for the benefit of the sheriff or of the judgment creditor? A I didn't care what the result would be, if I didn't get the indemnity bond I wouldn't come out, and I told him I wouldn't come out there and take the wheat. Q

Well, he came again and asked you to release the levy? A Yes. Q

As a matter of fact, you knew when you told him to go ahead that he wouldn't do it because you knew the threshing would be for the benefit of the levy, didn't you? A Oh, I didn't know that, no sir. RE-

DIRECT EXAMINATION. Q Mr. Gatz, you have testified in answer to counsel that you understood that by what you did you had made a levy upon that wheat, as against whom did you understand you had so made a levy? MR. CHILD: Objected to as incompetent, irrelevant, immaterial, not proper cross examination or re-cross examination and calling for a conclusion. Overruled; exception. Q Mr Gatz, your attention has been called to a portion of your testimony given upon the trial of this former action (30) in regard to the conversation between yourself and Mr. Kleos and in answer to that you testified that upon the former trial you testified as follows, What did you tell him - (question) Answer. I told him if he wanted to thresh his grain that I couldn't keep him from threshing; he should go on and thresh; now, did you also in that connection testify on the former trial as follows: question, What else did you tell him; Answer, that as long as I wasn't indemnified I wouldn't come out there when he was threshing to get his wheat, I told him it wasn't a question of starvation, I told him if I wasn't indemnified I

would release the next day? MR.CHILD. Objected to as not cross examination, incompetent, irrelevant and immaterial. Overruled; exception.

A Yes sir, I did so testify. Q Now, counsel has called your attention to the testimony contained in the record as to your refusal to release this levy; in that connection I ask you, did you not upon the former trial of this case testify as follows: Question, Now, did you ever at any time refuse to permit Mr.Kloos to thresh the wheat that you had made paper levy upon; Answer, I did not at any time. Did you so testify?

MR.CHILD: Objected to as leading, incompetent, irrelevant, immaterial and hearsay. Overruled; exception. A I did so testify. (31)RE-CROSS-EXAMINATION. (32) MR.CHILD: I offer all the testimony of G. A. Gatz contained in this bill of exceptions being from the fourth line of page three, in folio six down to and including page---the end of page 10 or within four lines of the end of folio 36, and I offer that together with the judge's certificate thereon that it contains all of his testimony. I offer that because I cannot in any other way show my contention that he did not testify as he says on this trial. RECESS until 1:30 p.m. Exhibit received in evidence without objection.

ALBERT BANDMIER, a witness called in behalf of plaintiff, being first duly sworn testified as follows: DIRECT EXAMINATION by Mr. Child: (33) I live in Carver. I am a brother-in-law of the plaintiff. My wife is Mr. Kloos' sister. I am familiar with these six stacks of wheat in question. I helped stack them. After this the witness gave testimony tending to show that the six stacks of grain in suit, were of the reasonable value of a sum in excess of \$700. PLAINTIFF RESTS. (34)

26.a.

GEORGE H. KLOOS, a witness on the part of plaintiff, being duly sworn testified as follows:

7 I live in Dahlgren Town, and am familiar with the 60 acres that have been referred to. I have lived in Dahlgren town for the last 49 years. The plaintiff in this action Linna Kloos, raised the crop on this 60 acres in 1904. She rented the premises from me that year. I am the father of Louis Kloos. She rented the premises the year before, 1903. In 1904 I lived about a quarter of a mile distant from this 60 acre piece. In 1904 there were about 34 or 35 acres in wheat on the 60 acre tract. It would run about 25 or 26 bushels to the acre, more or less. I should say that there were about 750 to 800 bushels in all the six stacks and it was worth \$1.03 a bushel on the ground there, the latter part of August, 1905.

G. A. Gatz, defendant called as a witness in his own behalf, testified as follows: DIRECT EXAMINATION, By Mr. Odell. The execution which is marked plaintiff's exhibit 1, was delivered to me on the 19th of August, 1904. At that time I did not have any process against the debtors mentioned in this execution other than this writ. It was about three o'clock in the afternoon of that day when I reached

Mr. Kloos farm. I don't know who the family consisted of at that time. (85) Louis Kloos and Mrs. Kloos were living there, the plaintiff and his wife. I think they had some children. Plaintiff was living there at that time with her husband. When I first reached the Kloos premises, I found Mrs. Kloos at home at the house. I believe she just came out of the house when I came there to the house. I had some talk with her at that time. I inquired of Mrs. Kloos where Mr. Kloos was and she said he was somewhere about the place, the farm; didn't know just where he was. I heard the testimony of Mrs. Kloos here as to the conversation I had with her at that time. I did not have the talk with her she testified to yesterday. No, sir. I didn't in the course of that conversation mention to her the purpose of my visit out there. (86) I didn't tell her I had an execution. I didn't tell her that I was out there for the purpose of making a levy on any property. I didn't mention the 60 acre tract of land with the stacks of wheat on it while talking with Mrs. Kloos. Mrs. Kloos didn't ask me the purpose of my visit. She didn't say anything about any of the grain upon either of the farms. She didn't say anything to me about who owned any of the grain there. The testimony of Mrs. Kloos with reference to what was said, what she said about the property out there, is certainly not true. I did not have any such conversation there. I probably remained at the house with Mrs. Kloos two or three minutes. Then I walked down towards where the wheat stacks were, toward the public highway. The dwelling house stands back from the highway probably 4 or 500 feet. The setting of stacks was between the road and the house, (87) closer to the road than the house. When I walked down to those stacks, I walked around between the stacks of grain standing there, making a drawing, a diagram, making notes of the stacks. The memorandum produced in evidence here today and marked defendant's Exhibit 1, is the memorandum and diagram which I made at that time. I saw Mr. Kloos while I was out there near those stacks. I had a conversation with Mr. Kloos there. From the stacks Mr. Kloos and I went toward the house. (88) We went into the house there; Mrs. Kloos

was in the house with me and her husband. I had a conversation there with Mr. Kloos and with the plaintiff when all three of us were together. When we got to the house, or into the house, Mr. Kloos says to his wife that I was out there for the purpose of getting that judgment satisfied and had an execution with me, and probably would levy upon the personal property, and he asked his wife to get the deed; his wife went in the other room and brought a paper which purported to be a deed from someone to her of the homestead. I don't know what was said more with reference to the execution; I laid the deed on the table, and we had some other talk there. Q Now, was anything said in that conversation about the stock which was there upon the farm upon the homestead by Mr. Kloos. Objected to as leading and immaterial; Overruled, exception. A Yes sir, there was. He told me that his stock was in the pasture and his horses were in the barn if I wanted to levy on them. (39) Mrs. Kloos didn't say anything with reference to the stock there upon the homestead. She was present when her husband referred to it. I don't think there was anything said about Mr. Kloos or his wife or either of them, as to the ownership of the grain standing upon the 80 acre tract. Q Now, did Mr Kloos in your presence there, after you had got up to the house say to his wife that you were going to levy on the grain there, and did she say in answer to that, "I don't see how he can do it as I own the property," anything of that kind said there? A No sir. I heard Mrs. Kloos testify to that yesterday and it is not true. No talk of that kind took place. During the time I was there, there was not a word mentioned of that 80 acre tract me or Mrs. Kloos or Mr. Kloos or by anybody. Q Now, after the conversations to which you have just testified, you may state what, if anything, you did upon that (90) farm there on the 19th of August? A Not anything more than I made a memorandum and a description or diagram of the personal--setting of wheat. In the memorandum is the one which has been offered in evidence. That is all of it. I did not go down to the pasture to see the stock on the 19th of August. Q

Now when next did you do anything under that execution? A The following day. It is a fact that on the 20th day of August I again went out there and at that time made the endorsement of levy upon my execution. The 20th day of August was the first time that I ever went upon the 60 acre tract for the purpose of looking at the wheat there. Nobody went with me and I didn't find anybody there. (91) I was alone at that time. I found 6 stacks standing upon the 60 acre tract. Q Did you make a memorandum of the grain upon the 60 acre tract at that time? Objected to as irrelevant and immaterial. Overruled; exception. A Yes sir, I did. I have worked as a farmer and was raised upon a farm. I followed that business up to about twenty years of age. Thereafter witness testified as to the value of the six stacks of wheat in question, testifying that the value thereof was less than \$500. Q Now, what did you do that wheat on the 20th of August, if anything? A I didn't do anything. Q Did you ever do anything with it after the 20th of August? A No sir. Q Did you ever see it again after the 20th of August? A No sir. I did not see Mrs. Kloos on the 20th day of August. I didn't have any talk with Mrs. Kloos on the 20th day of August, concerning that grain on the 60 acres. I never did have any talk with her concerning that wheat. (92) She never said anything to me about it or I to her. Mrs. Kloos never personally asked me to release that wheat. The first time that I heard that Mrs. Kloos claimed to have any right to the wheat was when her husband handed me the affidavit claiming ownership, of which I forget the date. That was the very first time that ever any claim of ownership to that wheat was made by anybody; Q When Mr. Kloos handed you that affidavit, what did he say to you in relation to the wheat? Objected to as incompetent, irrelevant, immaterial and hearsay. Overruled, exception. A Well, he was talking about having the levy released, after I read the affidavit, they wanted the grain threshed, being out of feed and flour. Q And what did you tell him in answer to that? A I told him he could go on and thresh at any time that I wouldn't come out and stop him from threshing the grain. Q You may state whether or

not at any time you ever refused (93) to permit Mrs. Kloos to take possession of that grain and thresh it if she wanted to? A No, dr, I never did; at no time. CROSS EXAMINATION. They did bring me the deed when I was up to the Kloos place. I do not know what they were trying to do; there was nothing said as to who owned the stuff upon there, only they handed me the deed. I looked it over and laid it back on the table.

MRS. LINNA KLOOS, the plaintiff, called for the purposes of cross examination under the statute testified as follows: examined by Mr. Odell: I rented that 60 acre tract from my father-in-law in the spring of 1903. I cropped that tract during the season of 1903 and 1904. I owned the crops which were grown upon the tract of land during those seasons. Q Did you have any insurance upon that crop grown upon that tract of land in the season of 1903? (94) Objected to as irrelevant and immaterial. Overruled, exception. A I don't know. Q Don't know; did you have any insurance upon the crop grown upon that land in the season of 1904? Objected to as irrelevant and immaterial. Overruled; exception. A I don't know as to that alone, the whole crop together. Q The crop upon the 60 acre tract and the crop on the 30 acre tract was all insured for the crop season of 1904, was it not? Objected to as irrelevant and immaterial. Overruled; exception. A I think it was. Q Yes, it was insured in the Farmers' Mutual Insurance Company of Laketown, was it not? Objected to as not the best evidence, incompetent, irrelevant and immaterial. BY THE COURT. Is it the best evidence? MR. ODELL: Well, I am not trying to prove the contents of the policy, but simply the company for the purpose of identifying the policy. Overruled; exception. A I think it was that company. Q Now, do you know in whose name the crop was insured? Objected to as irrelevant and immaterial. Overruled; exception. A I am not certain as to that. Q You are not certain, don't you know whether you do or not? A No, I don't remember (95)

Q Now, wasn't the crop grown upon the 60 acre tract insured for the year 1903 and for the year 1904 with the Farmers' Mutual Insurance Company of Laketown, this county, in the name of your husband Louis Kloos? Objected to as irrelevant and immaterial. Overruled; exception. A I don't know. Q You don't know! Didn't your husband, after those stacks of wheat burned, receive \$300.00 insurance money from the Farmers' Mutual Insurance Company of Laketown, for the loss of that wheat? Objected to as incompetent, irrelevant and immaterial. Overruled; exception. A I don't remember. Q You don't remember! Do you mean to tell me, Mrs. Kloos, that you don't know whether your husband got any insurance? A I don't remember how much it was. Q Oh, you don't remember how much it was; you remember he did get insurance from that insurance company for the loss of that wheat, you remember that? A I don't know. Q You don't know! Do you wish to be understood as swearing that you don't know whether your husband collected any insurance there or not? A Of course, I don't know whether he did or not. A I don't know. (96) I saw John Hesse of Dahlgren. I don't know if I saw him at our house on the 23rd day of September the day after the wheat burned. I saw him shortly after the wheat burned at our house. I probably do know Henry Stocking of Laketown. I saw Henry Stocking at our house shortly after the wheat burned, in company with John Hesse of Dahlgren. I knew Peter Wertz who lived at Laketown; they told me who he was. I don't know if he was Peter or Henry Wertz, or who he was. I think I saw Henry Wertz at our house shortly after the wheat burned, in company with John Stocking and John Hesse. Q You sent your husband over after those men the next morning after that wheat burned, didn't you? A I think I did. Q What? A I think they were. Q Yes, one was president, the other the secretary, and the other treasurer of that insurance company, weren't they? A I don't know. (97) Q But you know they were officers of that company? A Yes. Q Now, you sent your husband over to bring those men over to ascertain the loss caused by the burning of that wheat, didn't you? Objected to as irrelevant and immaterial; Overruled; exception. A Yes. These men came. I don't know whether or not they came in

company with my husband Louis. I don't know whether these men went out upon that 60 acre tract of land and examined it with a view of ascertaining what the loss was. I didn't go with them. I don't remember whether I heard them talk about the loss at our house after they had been out in the field. Q You don't remember; now, didn't you hear Henry Stocking ask your husband whether that 60 acre tract was in the same section with your home farm? Objected to as irrelevant and immaterial. Overruled, exception. (98) A I don't think I heard it. My husband didn't tell Henry Stocking in my presence that he rented the 60 acre tract from his father and owned the crop that had been grown upon it that year. Louis Kloos did not say in the presence of Henry Stocking, John Hesse and Henry Wertz and in my presence that he rented that farm and owned the crop that had been grown upon it that year. I am sure of that. I know there was some insurance upon that crop for the year 1904. I don't remember that that insurance, whatever it was, was afterwards paid. I don't remember entirely; there is so much on my mind that I don't remember. Q Your memory of the transactions respecting that crop isn't very clear, is it, Mrs. Kloos? A Not all, there was so much of it. Q And you wish this jury to understand from your testimony that you don't remember whether your husband collected insurance for the wheat that you lost there or not, do you? A I think we got some. I don't know how much I got. Q Now, the men whom I have named, Mr. Wertz, Mr. Stocking and John E. Hesse agreed with your husband in your presence the next day after the fire, or shortly after the fire, that (99) the loss which had been sustained by reason of the burning of those stacks of wheat was \$300? Objected to as incompetent, irrelevant, immaterial and calling for a conclusion. Overruled; exception. A I didn't hear it. I didn't hear for what sum. I didn't hear what the sum was. Q You didn't hear what the sum was; but you know that they did arrive at some agreement there? A I don't know if they arrived there at the agreement or in some other place. Q Didn't Mr. Stocking say to your husband Louis in your presence, that he would make out a check in payment of the

loss for that wheat but would hold it a few days until the Board of Directors of the company met, in your presence? Objected to as irrelevant and immaterial. Overruled; exception. A I don't remember that. Q Don't remember whether anything of that kind was said or not? A No.

(100) HENRY STACKER, called on behalf of defendant, being duly sworn testified as follows: Direct Examination; by Mr. Odell. I live in Laketown. I am a farmer. I have lived there since 1863. In 1904 I held an office in the Farmers Mutual Insurance Company of Laketown. (101) I held the office of president. Henry Wirtz was secretary of the insurance company at that time. Carl Siltz was treasurer. I know John Hesse of Dahlgren. He held the office of Director of that insurance company in 1904. I am now an officer of that company. I am Secretary. As Secretary of the company I have charge of the records of the insurance company showing the insurance outstanding and the payments made on account of insurance. I know Louis Kloos who lived in Dahlgren in 1904. Q Do you know the 60 acre tract of land upon which some wheat stacks burned in the month of September, 1904? A Well, I didn't know them before I was there I adjust the loss. I was there on the 23rd day of September, 1904. Henry Wirtz and John Hesse were there with me. When we were out upon the land where the wheat had stood, Mr. Kloos was out there with us

(102) Q You, did you make an examination for the purpose of ascertaining the loss which had been sustained because of the burning of that wheat? Objected to as irrelevant and immaterial. Overruled; exception. A Yes. I saw Mrs. Kloos, the wife of Louis Kloos that day. I saw him in the house. There were Louis Kloos, Johnny Hesse and Henry Wirtz present. Q Now, you may state whether or not at that time, in the presence of Mrs. Kloos, any agreement was arrived at as to the amount of loss because of that fire? Objected to as calling for a conclusion, incompetent, irrelevant and immaterial. (103) Overruled; exception. A Yes, sir. Q How much was the loss fixed at by that agreement? Objected to as incompetent, irrelevant and immaterial, calling for a conclusion. Overruled; exception. A \$300. Q Was that money afterwards paid by the company? Objected to as incompetent, irrelevant and immaterial. Overruled;

exception. A yes sir. Defendant's Exhibit 4 marked. (104) Q You may state whether or not this defendant's exhibit 4 was one of the records of the insurance company, in your possession as secretary of the company? A Yes sir. Marked defendant's exhibit 5. Q At the time Mr. Wirtz, Mr. Hesse and yourself were at Mr. Kloos' house, was anything said by Louis Kloos in the presence of his wife as to who rented that 60 acres for the season of 1904? Objected to as irrelevant and immaterial. Overruled; exception. A Yes. Q What did Louis Kloos say in that particular in the presence of his wife, to you? Objected to as immaterial. Overruled; exception. A He said that he has rented that farm from his father. Witness shown defendant's exhibit 5. That is Louis Kloos' signature there. I guess he wrote that himself. Q What is this book, exhibit 4, what is that? (105) A That is the--made out the orders of every loss we got, or we got during that year, you know, and the stub is just the same as the order was made out, and for what purpose. That stub which is here in exhibit 4, is the receipt which the party gave us for the order on insurance, and that is the receipt which Louis Kloos gave for that order of \$300. MR. ODELL. I offer that in evidence, Mr. CHILD. Objected to as incompetent, irrelevant and immaterial. Overruled; exception. Q Mr. Stacken, for what was that \$300 paid to Louis Kloos. Objected to as incompetent, irrelevant and immaterial. Overruled; exception. A It was paid for that grain what was burned on this 60 acres. Q The grain that was burned there in the month of September, 1904? Same objection as before. Overruled; exception. A Yes. (106) I believe that six stacks had stood upon that tract as shown by the evidences there upon the ground. Q Could you tell from the evidence upon the ground the size of the stacks? A Yes. Q Were they all of uniform size? A I guess not, I guess there was two a little smaller than the others as far as I can recollect. According to my best recollection four of them were of about the same size and two of them were smaller. The stacks themselves were entirely destroyed. CROSS EXAMINATION, by Mr. Child. We did not refuse to pay any insurance on that loss. Q

Why didn't you pay it then right after you were over there? A Well, of course the policy -- the grain what in the policy was called for was in the other section than the farm where the (107) grain was burned.

Q Then the reason you didn't pay it was because you weren't liable under it. A Well, I thought so. Q Well, that is what your company thought? A Well, I told Louis I would see the other directors soon about the matter. When we were over there, we agreed to pay the \$300 loss if the other directors were satisfied. They were not satisfied.

Q No, then when you testified that we agreed that we would pay \$300 there, that wasn't so, was it? The insurance company didn't agree to pay \$300, did it? A Yes sir, they agreed to pay \$300. Q Well, then, why did they wait until the next May before there was anything paid? A Why, they left that to the annual meeting and left that to the people. We left the disagreement to the people. Q Well, then, if you disagreed, you didn't agree did you, or did you think you were the whole insurance company?

A No sir. Q Well, then, how could you agree for the insurance company, if you were not the whole insurance company; explain to the jury how you made this agreement when the other fellows (108) wouldn't? A Well, I can state in the German; Well, we made a settlement. Where we made a settlement---we went in the house and settled this matter up. Q The point is this, is this not true, the directors of that company act for the company, don't they? A Yes sir. The company does not act except thru the directors or thru the members at its annual meeting. Q Well, now, the directors refused to pay any loss on that policy, didn't they? A They didn't refuse it at all. Q What is that, didn't refuse it at all? A No, they didn't, the committee adjusted the loss; they didn't refuse it. Q The committee didn't refuse it, but it was finally referred to the annual meeting? A Yes sir. And the annual meeting passed upon it. And there wasn't anything paid to Louis Kloos until after the

annual meeting in May? A No. REDIRECT EXAMINATION, by Mr. Odell. (109)

Q You say that your committee out there for the purpose of adjusting the loss agreed with Louis Kloos as to the amount of the loss? A Yes.

Q \$300; now, what did Louis Kloos say to you there in the presence of his wife when you asked him whether the 60 acre tract was in the same section with his farm or not; what did he say in answer to that? Ob-
jected to as incompetent, irrelevant and immaterial. Overruled; exception.

A He said it wasn't. Q Well, what did he say, if anything, there in the presence of his wife as to his right to claim the insurance for the wheat upon the 60 acres? Objected to as irrelevant and immaterial, and calling for a conclusion. Overruled; exception. A Well, he said that he has rented that land from his father. Q Did he say there in the presence of his wife as to whether or not he owned that wheat that had been destroyed there? Objected to as irrelevant and immaterial. Overruled; exception. A No; he did not. (110)

Q Now, you say in answer to Mr. Child that afterward the Board of Directors got together and instead of paying Louis at that time they referred the matter to the annual meeting; why did the board of directors take that action, if you know? Objected to as irrelevant, immaterial and calling for a conclusion. Overruled; exception. Q Well, it was because that his policy calls for the grain insured on section 10, I believe, I am not sure. A 14, I guess? A 10 or 14, I don't know, and that is where his buildings stand, and where his policy calls for in that section 10 only. A If that piece of land was in the same section as his buildings, his other property insured in this policy; he says it is not; then I told him-- For that purpose we keep that order, I told him I keep that order for 14 days, I will see the other directors, that was on account that his grain was in the other section as his policy calls for.

Q Now, your board of directors got together and considered (111) the matter, did they? A Yes. Q And was Louis Kloos there? A I can't remember; I can't remember that. Q Well, for the purpose of refreshing your recollection, I will ask you if Louis

Kloos didn't appear before the board of directors and ask them to have

the order made out in the name of his wife? Objected to as leading, irrelevant, immaterial and hearsay. Overruled; exception. A He. It was at the time we adjusted the loss, and I told the secretary to make out an order for \$300. but I would keep---- RECROSS EXAMINATION. by Mr. Child. (112) Our adjustment of the loss was not based on the full valuation of the wheat, I guess not. I couldn't exactly tell whether the wheat was worth much more than \$300. It is a fact that the insurance policy only called for \$300. The only thing we had to do with the wheat was \$300. We adjusted the loss at that limit. If there had been a thousand barrels we could not have adjusted it at any more.

JOHN HESSE, a witness called on the part of the defendant, being duly sworn testified as follows: DIRECT EXAMINATION by Mr. Odell. I am a farmer and have lived in Dahlgren a little over fifty years. in 1904 I held the office of director in the Farmers Mutual Insurance Company of Laketown. (113) I now hold the office of Treasurer in that company. As Treasurer of that company, I have the custody of the books and records. I heard the testimony of Mr. Stacken here and I am one of the persons referred to by him as the committee that went out to the Kloos 60 acres to adjust the loss there in 1904. As representatives of the company, there was there at that time, Mr. Stacken, Henry Wirtz and me. Henry Wirtz is now in Canada; moved there two years ago. At that time I went out on the 60 acre tract, Mr. Kloos was with us. Afterwards we returned to Mr. Kloos' house. I saw Mrs. Kloos there. Whatever our committee transacted of business in reference to the payment of that loss, or whatever was done looking toward the payment of the loss, was done at the house, (114) in the presence of Mrs. Kloos. Q Now you may state whether or not your committee and Mr. Louis Kloos agreed as to the amount to be paid by the company for the loss upon that grain, in the presence of Mrs. Kloos? Objected to as calling for a conclusion, irrelevant and immaterial. Overruled; Exception. A Well, in some parts we disagreed. Q Did you agree as to the amount to be paid? Same objection. Overruled; exception.

A Yes. Q Now, was anything said to your committee by Louis Kloos in the presence of his wife as to who had had that 60 acre tract rented during 1904? A I think it was. Q What was it? Objected to as irrelevant and immaterial. Overruled; exception. A I think it was this way, if he had that place rented or not. Q Well, what did he say? A He said yes. (115) I have the record showing the losses which were paid for the year 1904. I have them with me; I have the book right here. That (showing it) is the Treasurer's book. It shows the record what is kept. Q Well, it is a record showing the receipt, moneys received by the treasurer, and the moneys paid out, isn't it? A That is what it is. Q Now, I call your attention to page 7; you may state whether or not you find upon that page the record of a payment made to Louis Kloos for the loss upon the six stacks of wheat burned out on that 60 acre tract in the fall of 1904? Objected to as irrelevant, immaterial, and calling for a conclusion. Overruled; exception. A yes sir. Q That record is the first line of the page. (116) MR. ODELL. I offer that in evidence. Objected to as no foundation laid, not the best evidence, incompetent, irrelevant and immaterial. Overruled; exception. MR. ODELL: That record, Mr. Reporter, is as follows: The caption of the page is "Expenses from May 23, 1905, to May 8, 1906; May 29th, number 1, Louis C. Kloos, loss by fire, \$300." Q Mr Hesse, do you know what fire this payment was made for? A Yes I do. Q What fire was it? Objected to as incompetent, irrelevant, immaterial, and calling for a conclusion. Overruled; exception. A That was for the six stacks of wheat that stood on the 60 acres. I have been unable to find the order which was issued to Mr. Kloos and paid by the treasurer. It was issued by the treasurer before me. CROSS EXAMINATION, Mr. Child: (117) Q Well, this insurance policy didn't cover that 60 acres at all, the insurance policy you are speaking about didn't cover that 60 acres at all. A I think not the 60 acres. Q Well, really then the company didn't owe Louis Kloos anything, did they, upon that loss? A The way in the first beginning as it stood there, no. Q Well, it didn't as it stood afterward, did it? Objected to as incompetent, and calling

for the opinion of the witness upon a legal proposition, upon the legal liability of the company. Sustained; exception. (118) Q Mr. Hesse, who passes upon the losses of your insurance company; who did pass upon it at that time? Objected to as double and for the reason that part of the question calls for the provisions of the by-laws governing the Laketown Mutual Insurance Company, as not the best evidence. Sustained; exception. Q At the time that you were out there on the Kloos place who of the insurance company passed upon that loss? A Well, it was the president and the secretary and myself. Q Before any loss was paid did it have to go before the board of directors? Objected to as calling for the construction of the by-laws. Sustained; exception. Q This committee that went out there went out simply for the (119) purpose of adjusting that loss and nothing else, is that right? A Yes sir. Q They had no authority to agree to pay it? Objected to for the reason that the authority of the adjusting committee is fixed by the by-laws of the company, and cannot be shown by parole. Sustained; exception. Q Now, you don't claim that you entered into any agreement, your committee that day, to pay that loss? A No, not that day. Q As a matter of fact, you simply went out there to ascertain whatever loss there was, if any, under the policy? A In the first beginning we had our notion to pay the loss. Q But the point I was making now, you simply went out there to ascertain what the amount of the loss was if any? A That was what it was. Q And after you got out there and found where the wheat was, you found that it wasn't included in the policy, at all, didn't you? A Yes, sir. Q Now, the reason why the amount of \$300 was set as the loss was because that was all the policy called for? A That is what it was; it didn't call any higher. Q You didn't claim that as all the loss there was, did you, (120) in the burning of the wheat? A Well, if he didn't insure more we couldn't pay more. Q No, so that you was simply arriving at the largest amount of loss that could be under the policy? A Well, if it was burned that much, then we will pay it. Q Well, now, as a matter of fact, there was no agreement over there that day that you would pay any specific amount upon that loss, was there? A Well, in the first beginning it was. Q But then there

wasn't finally? A But afterwards, looking over the papers and everything, they wouldn't agree to pay it. Q No, then you didn't agree; but that conclusion was all arrived at there at the same time when you were in the house? A Yes. Q Then that loss wasn't paid, or whatever was paid to Louis Kloos wasn't paid until the next spring, in May, was it? A That is right. Q The committee who had the matter in charge for the company refused to pay anything? A That's what they did. Q And they refused to pay because there was no loss under the policy, didn't they? A Well, the policy was written in his---Q Well, isn't that a fact? A Under the policy, the policy ran to him, and she claimed the grain. Q She was claiming the grain, and that was why you didn't pay it? (121) A That is it. Q Well, now, then you didn't agree with him to pay him anything when you was out there, did you? A No sir. And the reason was because she claimed the grain. Q Then when you were out there she claimed to own the grain, that she owned the grain? A That is right, but he called for us, and in the first beginning he said it was his. Q But before you got thru she said the grain was hers? A That's it. Q Well, where was it he said the grain was his, out by the stacks? A No sir, it was in the house. Q But right in the same conversation she claimed it was hers? A In the house she did. Q Well, didn't Louis concede it was hers too? A I guess he did. Q Then, as a matter of fact while you were out there and after you had gone up and looked over that loss and came back to the house, you concluded that you wouldn't pay the loss under that policy because both he and she, both claimed it was hers? A We said he should come before the director's meeting. Q But wasn't that the reason why you wouldn't pay it because they both claimed it was her wheat and not his; isn't that right; answer the question. A Yes. Q Now, the directors never did authorize any payment there (122) A No sir. Q They refused to authorize any payment there because he claimed and she claimed the wheat was hers and not his. A Yes sir. Q Is that right? A Yes. Q And then he finally went before the stockholders or the members, what do you call them, the members? A That's what he did. Q At the annual meeting in May? And how many were present? A I couldn't say.

Q Well, there was a large number? A I think a little over a hundred.

Q And there was a squabble over whether they should pay Louis Kloos anything, wasn't there? A I think there was. Q And it was stated at that meeting that the policy read to him and that he claimed that she owned the grain, and not he; is that right? Objected to as incompetent, irrelevant and immaterial. BY THE COURT: The material matter to be considered in this case is whether or not the plaintiff received \$300. from that insurance company, and how she got it and when she got it isn't material at all; I don't see any need of taking up the time of the court along this line; the objection is sustained.

MR. CHILDS: I except to the ruling of the Court and to the statement of the Court in connection with the materiality. (133) Q Well, at the time that payment was made, I offer to show by this witness, I make the offer because the question was ruled on, that at the time this \$300 in question was ordered paid in May, 1905, it was stated before the members of the association who ordered it paid that the policy did not cover the six stacks of wheat in question, and that the insured didn't claim that he owned the same at the time of the loss but that the same was owned by his wife. Objected to, as incompetent, immaterial and hearsay. Sustained; exception. (124) RE-DIRECT EXAMINATION; Mr. Odell.

Q Now, Mr. Hesse, while your committee was there adjusting the loss upon the six stacks of grain, and in the presence of Mrs. Kloos, was anything said by Mr. Kloos as to his right to have the insurance upon that grain paid, and if so, what? MR. CHILDS: I object to that as having already been gone over in his direct examination and being fully covered on cross examination; as leading, irrelevant and immaterial. Overruled; exception. A In the first beginning, yes. (125) Q Now, was anything said there, Mr. Hesse, about the making out of the order for that loss then and there? Objected to as having already been gone over and leading, irrelevant and immaterial. Overruled; exception. A Yes, in the beginning it was said about drawing an order. Q Now, you say at some time during the talk, Mrs. Kloos claimed that she was to have the money? Objected to as leading. Overruled; exception. A Yes, that was after-

wards, before the order was drawn. Q Now, then, Mr. Hesse, you may state whether or not when it was proposed to make out the order, Louis Kloos didn't ask to have that order ~~wie~~ written in his wife's name, and if that wasn't the time that she said she owned the wheat? MR. CHILD: Objected to as having already been gone over, and as leading, and, I guess that covers it. Overruled; exception. A Yes. Q Then this time Mrs. Kloos claimed to be the owner of the wheat was when it was proposed to make that order in her name, was it? A Yes sir. RE-CROSS EXAMINATION. by Mr. Child. Q And that is the reason that the order wasn't drawn that day, was because they claimed that Mrs. Kloos owned the wheat and not Mr. Kloos; that was the reason? (126) A Yes sir.

HENRY STACKEN, recalled as a witness on the part of the defendant, testified as follows: DIRECT EXAMINATION; by Mr. Odell. That book which I hold is the record of the policies; I mean the applications for policies. I have made a search thru my papers for the purpose of finding the original application for the insurance upon the six stacks of grain. I have tried to find the application, the original application for this insurance. I didn't find it, it is destroyed. I have the record of the application. Q Turn to it, will you? Now calling your attention to page 458 of this book, you may state whether or not that is the application of the insurance which was paid as you have testified to? Objected to as calling for a conclusion, incompetent, irrelevant, immaterial and not the best evidence. Overruled; exception. Q That is the record of that application, is it? A Yes. Q Now, to whom was that policy that was issued upon that application (127) delivered? A To Louis Kloos. Q Now, calling your attention, Mr. Stacken, to the figures 915 in the column at the left margin of the page, what do those figures refer to? Objected to as not the best evidence, incompetent, irrelevant and immaterial. Overruled; exception. A To the number of the policy. Q Mr. Stacken, have you in this book an application for any previous insurance upon the property covered by this same policy? A Not previous to that, I believe. Q This is

the first policy that was taken out or applied for? A Entered in this book. MR. ODELL, Well, I offer that in evidence. MR. CHILD: Objected to as no foundation laid, therefore incompetent, irrelevant and immaterial, not the best evidence and hearsay. Overruled; exception. MR. Odell. I will read this application into the record. "Number of application, 915, Louis C. Kloos, Dahlgren, post office---" "Number of apl 915 Louis C. Kloos Dahlgren, post office Chaska, 2 story dwelling house, brick, 22,32 wad ad 24 furniture 50 sewing machine 10 piano 30 fr barn 20 74 4000 chicken house 13 by 24 60 hay 70 grain 300(123) granary 14 20 16 by 26 2001 in section number 14 town 116, range 24, Carver County, Minn., date 24 March 1904, expires March, 1908." Q Mr. Stacken, I call your attention to the word renewed, which is written upon that application; when was that written there? When was that word renewed written upon that? A When the next application was taken. Q Well, now, where is your new application? A That is on the other page; I have got to get the other book and find out. (Produced). CROSS EXAMINATION; by Mr. Child. This is the application. This word "renewed" on here means that it was renewed from a former policy. Q Renewed from that policy to some other one; well, what is that transferred on there? A Yes, and the same time it was transferred and renewed. Q Now, in whose handwriting is this stuff here? A That is the former secretary's. (129)Q Well, we have received some interesting information since you were on the stand which I want to ask you about; Mr. Hesse says that when you and he were out there that day, that Mrs. Kloos claimed to own that wheat; is that right? A Not that I know. Q He says that she and Louis both said she owned that wheat that day that you were there; how about that? A Well, of course she said his wheat was burned. Q Said his wheat was burned; Mr Hesse says the reason you didn't pay that \$300 that day was because you found out that she claimed to own it and not he? A No, that isn't right. Q He is mistaken about that? A That isn't right. Q And you think that Louis said that he rented that farm? A Yes sir. Q Now would you be willing to swear to that before this jury and allow the

rights of these parties to depend upon it? A Yes sir. Q Where was she when Louis said that, where were you sitting when this talk was had? A I don't know where she was at that time; she was in the kitchen almost all the time we was there. Q Was she talking with you at the time this was said? A Not at the time we arranged the business. Q No, did she take part in this conversation at all? A Not as long as we been talking over this business. She didn't take part in the conversation. (130) Q She had no talk with you and Louis and Mr. Hesse when you were talking about the arrangement? A No. She was in the kitchen, in the same room we were in. It is a large room. Not quite so large as this room here back to the railing. It is a very large kitchen. Q And she was about her work while you were talking; well, then, she didn't hear your talk of course? A I guess so. Q Then she wouldn't hear your talk, would she, working about? A Well, I don't know. Q Well, you don't think she did hear it? A I think she heard it. Q She didn't take any part interest in the talk? A No. Didn't take any part in it in any way whatever. Q And then as to whether she heard Louis say she rented the farm, you don't know. A I ~~thin~~ don't know. Q Well, you don't think she did, if she was about her business there, do you? (131) A Well, I can't tell for sure. Q But before you went away from there that day Louis said his wife owned the grain? A Yes, he said---Q He said so, and she said she owned the grain before you went away from there that day, didn't she? A I can't recollect. But I do remember Louis said she owned the grain. And that was the reason why I didn't pay the insurance policy that day to him/. Q Was because it appeared there from their statements that he didn't own the grain? A Yes sir. DEFENDANT RESTS.

MRS. LINNS KLOOS the plaintiff, recalled as a witness in rebuttal, testified as follows: DIRECT EXAMINATION; By Mr. Child. I have heard the testimony of Mr. Hesse and this witness here on the stand. (132) As to what was said in regard to the renting of the place that Louis rented, I do not remember, I heard some of it; He said that I rented it, not him. I heard that I rented the place, the 60 acres, not him. Louis said that I rented that and that it was not his grain, it was mine.

Q Mr. Vesse didn't say that Louis said he rented it, but this last witness when he was on the first time testified that Louis said when you were there that he rented that 80 acres; did Louis say anything of that kind in your presence? A I did not hear that; he didn't say that. He didn't say anything of the kind. It was talked over that day and it was said that I rented the place and that the wheat belonged to me.

CROSS EXAMINATION; by Mr. Odell. Q Did you make that application for insurance upon the wheat? An application for the insurance on the wheat?

A I don't remember. Q Was there any insurance on the wheat? (133)
 Objected to as not cross examination, irrelevant and immaterial, having all been gone over. Overruled; exception. A I don't know. Q You don't know. Now Mrs. Kloos, isn't it a fact that when these men were all assembled in your house, they looked at Louis's policy and told him that they couldn't pay him anything for the loss on that wheat because it was in another section; isn't that the reason? MR. CHILD: We will concede that. Q Now, didn't Louis in answer to that statement by that adjusting committee say, well, that is part of my farm, I had it rented from my father? A I didn't hear it. Q Your recollection is pretty clear? A He said that I rented it. Q Yes, he said that you rented it; is your recollection pretty clear about that transaction there that day? A I didn't hear all the transaction. Q Oh, you didn't hear all the transaction? PLAINTIFF RESTS.

DEFENDANT RESTS.

(133) BY MR. ODELL. It is admitted by counsel for the plaintiff (134) subject to his objection as to its relevancy and competency, in this case, that ^{at} the time stated in the answer of Defendant Gaiz, a judgment was entered in this court in the action of Henry Baer against Louis C. Kloos and Henry E. Kloos for the amount stated in the answer, the same being the judgment upon which the execution in evidence here was issued. Objection overruled, plaintiff excepted.

Counsel for the defendant, before commencing his argument reads to the Court Sec. 4213 of R. L. 1905, and requests the Court to either read that section of the Statute to the jury or to state its substance as the law which governs the conduct of a sheriff under an execution.

Y. MR. CHILD: Plaintiff's counsel claims the section has no reference, no application, to the facts of this case, and should not be applied to it or read to the jury.

A R G U M E N T .

During his address to the jury, Mr. Odell said in part, referred to the judgment roll introduced in evidence.

The complaint, I say, recites the fact that at the time the verdict in the original action was recovered, Louis Kloos was the owner of a large amount of personal property which (135) was liable on execution to pay that verdict, and that for the purposes of defrauding his creditors, for the purpose of preventing Baer from collecting the verdict which he had obtained in that action, Louis Kloos and his wife Minna Kloos fraudulently conveyed that 60 acres to George H. Kloos.

BY MR. CHILD: If the Court please, I except to the line of argument of counsel as reciting the allegations of the plaintiff's complaint in the judgment roll in evidence, on the ground that those matters are not issues in this case, that the allegations, the matters spoken of, are not material facts in this case, and are not for the consideration of the jury and on the ground that the judgment roll has no bearing

upon the issues in this case except as to the ownership of that land, and I ask that the counsel be instructed to confine his argument upon the judgment roll to that. BY THE COURT. I shall instruct the jury that the judgment roll has no bearing upon the issues in this case except as bearing on the ownership of this property. BY MR. ODELL.

The record may show that counsel for the defendant insists that any evidence which was introduced and received upon the trial of this case is proper for the consideration of this jury, and that it is a question for the jury to determine as to what effect shall be given to any portion of the evidence introduced upon the trial of this case; and the record may show that counsel for the defendant in this case insists upon discussing the evidence in the case in his own way and making such application as he deems pertinent and proper; if I travel outside of the record, I am perfectly willing to be called down. Now I say, Gentlemen of the Jury, that this is part of the evidence (136) in this case; it is a part of the evidence in this case; it was produced here by the parties themselves; did I offer it? A No. I couldn't have offered it; he offered it. Why, the gentleman who sits there managing this case for the plaintiff in this law suit, he brought this record up here, and he offered this record, every single, solitary line of it, in evidence; and I tell you, gentlemen of the jury, all the evidence of the case is for the consideration of the jury, and no Court in Christendom can take from the jury the right to consider every single, solitary part of the evidence in the case, and render their decision upon the evidence as it is made up by the whole case. No Court possesses that power, Gentlemen of the Jury; what is a jury for if the jury isn't to decide the case upon all the evidence; why empanel a jury; it is the province of the jury to consider all the evidence, it is the province of the jury as it is the duty of the jury to consider all of the evidence and to take all the evidence into consideration in determining its verdict. Now, as a part of that record, Gentlemen of the Jury, - and they introduced it in evidence, as a part of their

own case - they went down here into the Clerk's office and they brought up this record, and they introduced it in evidence; and does it lie in their mouths now to say, oh, we don't want the jury to look at it, we put it in for our own purposes, but we want the jury to close their eyes to it; does it lie to their mouths to do it? No. What does the record disclose?

MR. CHILD: We still insist on our exception to your line of remarks.

MR. ODELL: You can insist till doomsday, but your insistence won't close my mouth on this line one sentence; you can stand here and interrupt me every three minutes during (137) my argument, but before I get thru you will find out a few things.

BY MR. CHILD: Will the Court rule upon that objection?

BY THE COURT: What do you want?

BY MR. CHILD: I want the Court to rule whether this is a proper line of argument. BY THE COURT: Well, I will determine afterward, whether or not it is, and if I determine it is not within the issues, why I shall so instruct the jury.

To which ruling of the Court the plaintiff duly excepted.

What is the evidence, Gentlemen of the Jury, which they brought here themselves; evidence which they brought here; now, this finding is long, and I am going to read only that part of it which relates to Linna Kloos and to her husband Louis Kloos and will not occupy your time in reading those portions of the findings which relate to Harry Kloos or to George H. Kloos because that portion of it cuts no particular figure in this case.

"The above entitled action was tried by the Court without a jury at the March, 1900 general term of said Court on May 9th and 10th and was argued and finally submitted to this Court on May 31. W. C. Odell, attorney for the plaintiff; S. R. Child, attorney for the defendants. After hearing the testimony given on the trial, and the arguments of the attorneys for the respective parties, and reading the authorities cited on the argument, as conclusions of fact I find as follows: That on the 7th day of March, 1901, in an action

brought by the above named Henry Baer in said Court against Louis C. Kloos and Henry W. Kloos, the said Henry Baer recovered a verdict against said defendants in said action in the sum of \$1305; and thereafter on the 10th day of June following, judgment (138) was duly given and entered in said action upon said verdict obtained by said Baer as plaintiff and against said defendants for the amount of said verdict and interest thereon, together with plaintiff's costs and disbursements in said action, amounting in the aggregate to \$1445.76, and thereafter, on said last mentioned date, said judgment was duly docketed in Court, in said Court; and said Baer is still the owner thereof and the same is wholly unpaid. That at the time of the commencement of the action referred to in the preceding paragraph and at the time of the rendition of the verdict therein, said defendant Louis C. Kloos was the owner and in possession of 50 head of cattle, four horses, and other personal property not exempt from levy and sale under execution and was also the owner and in possession of the following described parcels of land situated in said county and state, to-wit: the west 60 acres of the southeast quarter of section 10, township 11S range 24, and the southwest quarter of the northeast quarter of section 14 in said township and range and other land in said section 14, and said southwest quarter of the northeast quarter of said section 14 and the other land in said section 14 comprising a little more than 80 acres was at the time of the rendition of said judgment and had been for more than six years prior thereto the homestead of the said defendant Louis C. Kloos under the homestead laws of this State, upon which he then and for six years prior thereto had resided with his wife, the defendant Linna Kloos and his family."

Then follow some findings as to Henry Kloos which I deem immaterial.

That defendant George H. Kloos is the father of the defendant Louis Kloos and Henry Kloos; said defendant Amelia Kloos is the wife of defendant George H. Kloos, and said (139) defendant Linna Kloos is

the wife of said defendant Louis C. Kloos. That on the 29th day of December, 1893, the defendant Louis C. Kloos purchased said property mentioned and described in paragraph two of this decision, and on the same day, in part payment executed to one Charles E. Kloos his five promissory notes of 500 dollars each, payable respectively the 1st of January, 1898, 1899, 1900, 1901 and 1902, with interest thereon at the rate of 5 per cent per annum annually; that to secure payment of said notes, said Louis C. Kloos, together with said Linna Kloos mortgaged said lands to Charles C. Kloos by mortgage recorded in the office of the register of deeds of said county on the 4th day of January, 1904, in Book T of Mortgages. Thereafter on the 5th day of February, 1900, said mortgagee Charles T. Kloos sold, transferred and assigned said mortgage by an instrument in writing, duly signed, witnessed and acknowledged to defendant George H. Kloos, and which said assignment of mortgage on the 4th day of May, 1901, was duly recorded in Book C on page 621; that on and prior to the 3rd day of May, 1901, no part of said notes or the interest fallen due thereon was paid, and there was due thereon the sum of \$2759.11; that on said 3d day of May, 1901, the said Louis C. Kloos and Linna Kloos, his wife, joining with him therein conveyed the said west 60 acres of the southeast quarter of section 10, township 11S, range 24, west, according to the government survey thereof, to the defendant George H. Kloos by warranty deed duly sealed, witnessed and acknowledged for the consideration of the sum of \$3150 mentioned therein, which said deed was thereafter duly recorded in the office for the registry of deeds in said county on the 4th day of May, 1901, at ten o'clock, in book 13, of deeds on page 633. (14) That said Louis C. Kloos and wife so conveyed said premises to said defendant George H. Kloos in consideration for the amount due on said mortgage heretofore-mentioned, to the defendant, and at the time of the execution of said conveyance George H. Kloos satisfied of record the said mortgage heretofore mentioned."

Now then follows an allegation with reference to the execution by Louis Kloos to George H. Kloos of a chattel mortgage for the

the sum of \$300, and the allegation that that chattel mortgage was fraudulently executed. I wish to say with reference to that, and I am bound to say, in telling you about it, that that finding was held by the Supreme Court not to be supported by the evidence, that is, fraud is not to be deemed testimony against the parties here.

Now 7. I have omitted one finding. That prior to said 3d day of ~~May~~ May, 1901, the defendant Louis G. Kloos disposed of all of his non-exempt personal property except two horses, one buggy, and about forty-five cords of cord-wood, which said defendant Louis Kloos thereafter and on the 24th day of-----1901, mortgaged to the defendant George H. Kloos to secure the payment of \$300; that allegation, that prior to the 3rd day of May, 1901, Louis Kloos disposed of all of his non-exempt property, personal property, except two horses, one buggy and about 45 cords of wood which he afterward mortgage for the \$300, as I say, that finding that that mortgage was fraudulent, the Supreme Court says was not supported by the evidence.

That the deed of conveyance whereby defendant Louis and Linna Kloos conveyed to George H. Kloos the west 60 acres of section 10, township 11S, range 24, was made and executed by said defendants Louis and Linna Kloos, his wife, with (141) the fraudulent intent, purpose and design to hinder, delay and defraud Henry Baer and prevent the collecting of said verdict of Henry Baer against Louis Kloos and the judgment rendered, and said conveyance was taken and accepted by said defendant George H. Kloos with full knowledge on his part of the fraudulent intent, design and purpose of said Louis and Linna Kloos in conveying the same.

Now, I am bound to tell you that the Supreme Court reversed that finding, upon the ground that Mr. George H. Kloos had a mortgage upon that land which was substantially the full value, and consequently there wasn't anything left to be conveyed from him. That the allegations of paragraphs 9 and 10 herein are true. Now, those paragraphs relate to the levy of the execution and the issuance, and the bankruptcy of Louis Kloos and Henry Kloos as the result of it, which I will not stop to read.

Now, I say, gentlemen of the jury there is a record which they

themselves have produced, which shows that at the time Henry Baer recovered a judgment against Louis Kloos and Henry E. Kloos, Louis Kloos was in possession of personal property out of which that judgment could have been satisfied, and that Louis Kloos, for the purpose of preventing Henry Baer from collecting that judgment, fraudulently transferred it.

Now, I tell you gentlemen of the jury, that there isn't but one kind of a transaction that is safe for a man to enter into at any time, and that is an honest transaction. Just the moment a man attempts to do a dishonest thing, just that moment, gentlemen of the jury, he has embarked upon a sea amongst the breakers, and he doesn't know how long his craft is going to float. What is the purpose of putting property beyond the reach of your creditors? What is the purpose of it. It is to dishonestly defraud your (142) creditors. Just the moment a man does that, then what does it become necessary for him to do? Why, Gentlemen of the jury, the moment a man makes a fraudulent conveyance, just that moment he has embarked his craft upon a sea of dishonesty, upon the seas of perjury; why, what if he would admit at any time that his conveyance was fraudulent? Of course, it could be set aside. In order to make the act which he committed of any benefit to him, in order to make that fraudulent transfer a cover for his property, he has got to claim, and claim all the time that it wasn't a dishonest transaction, but was an honest one. That is what he has got to do. In other words, Gentleman of the Jury, when a man makes a fraudulent transfer for the purpose of covering up his property, in order to make it effective for that purpose, he has got to lie about it every time it is called in question, otherwise his transfer is of no account, of no avail.

Now Gentlemen of the Jury, I say to you, that, so far as the ownership of that 60 acre tract of land in George H. Kloos is concerned, so far as the ownership of that tract of land in the spring of 1903, when the plaintiff claims she rented it, there isn't any claim

or pretence on my part that that title wasn't in George H. Kloos. Why, they showed, gentlemen of the jury, they showed title in the best way in the world to that 80 acre tract of land. How did they show it? Why, they commenced way back with the government entry of that quarter section of land by John Price; they showed John Price entered that quarter section of land a great many years ago when most of us were boys and they showed chain of title down to George H. Kloos. Now, that made a perfect record chain of title that George H. Kloos was the owner of that land; of course that chain of title showed that for a long period of years it during that time (145) was in Louis Kloos, but the chain of title also showed that they it went out of Louis Kloos to his father. I say that they made just as perfect proof of title in George H. Kloos as could possibly be made. Now, for the purpose of proving title it wasn't necessary to offer this judgment roll; they had already proved that; and I tell you, Gentlemen of the Jury it isn't necessary for you to anticipate that somebody else is going to prove something. It is an old saying that the guilty flee when no man pursueth. Why not rest upon the record title, and stop there? They sought to go one step further and introduced this judgment roll, for what purpose I know not, I care not. I say gentlemen of the jury, that that record and judgment and every part of it is part of the evidence in this case, and is proper for your consideration. (144)

~~Upon his argument to the jury, MR. CHILD having read to the jury certain requests of charge made by Mr. Child which the court had indicated and stated that he would give to the jury at the request of Mr. Child, and being about to again read portions thereof to the jury, Mr. Odell objected to the reading to the jury of any portion of the charge of the court, as not within the province of counsel in discussing the evidence in the case and as within the exclusive province of the court, which objection was sustained and plaintiff excepted.~~

During the argument of Mr. Child to the jury, Mr. Odell, 653a
on the part of the defendant, objected to counsel for the plaintiff
reading the law. Counsel for the plaintiff is not permitted to re-read
the requests indicated by the Court that would be given to the jury,
he having already read them.

Mr. Child: I have not read them all, your Honor.

The Court: Well, I will confine my ruling to those you have
already read.

To which ruling plaintiff duly excepted.

Mr. Odell: Now, for the purpose of making the record a little
fuller, I object at this time to the reading to the jury of any portion
of the charge of the Court, whether indicated by the requests or not,
as not within the province of counsel in discussing the evidence in
the case, and as within the exclusive province of the Court.

The Court: Well, I think that counsel has already read nearly
of those requests, have you not, Mr. Child?

Mr. Child: I am satisfied to take the ruling of the Court.

The Court: Mr. Child, have you any requests there now that
you have not already read?

Mr. Child: I don't think I have: I think I have gone over them.

The Court: If you have read them all, the objection will be
sustained.

Mr. Child: The record should not show that I have admitted
that I have. Well, I won't attempt to pick out those that I haven't
read from those that I have.

county, under and by virtue of an execution issued out of the district

of the office of the sheriff of the county of Carver, Minnesota, and that the plaintiff, Linna Kloos, is the owner of said wheat and that the defendant, G. A. Gatzert, is the sheriff of said county and that the plaintiff is entitled to recover damages for an alleged conversion, and the issues involved in it are now before this Court and jury for determination.

It is claimed on the part of the plaintiff that on the 22d day of August, 1904, she was the owner of six stacks of wheat situated on the west sixty acres of the southwest quarter (146) of section 10 in the township of Dahlgren, Carver county, Minnesota, and that on the 22d day of August, 1904, at said township the defendant, wrongfully, unlawfully and maliciously levied upon said wheat under and by virtue of an execution issued out of the district court upon a judgment rendered in said court in July, 1901, in favor of Henry Baer against Louis C. Kloos and others, and that the defendant thereby unlawfully retained the same from the plaintiff and that upon the 23d day of September, 1904, said wheat, while under said levy was burned without any fault on the part of the plaintiff and was thereby wholly destroyed.

C H A R G E .

Gentlemen of the Jury: This action is known in the law as an action in conversion; it is brought by Linna Kloos against G. A. Gatzert to recover damages for an alleged conversion, and the issues involved in it are now before this Court and jury for determination.

It is claimed on the part of the plaintiff that on the 22d day of August, 1904, she was the owner of six stacks of wheat situated on the west sixty acres of the southwest quarter (146) of section 10 in the township of Dahlgren, Carver county, Minnesota, and that on the 22d day of August, 1904, at said township the defendant, wrongfully, unlawfully and maliciously levied upon said wheat under and by virtue of an execution issued out of the district court upon a judgment rendered in said court in July, 1901, in favor of Henry Baer against Louis C. Kloos and others, and that the defendant thereby unlawfully retained the same from the plaintiff and that upon the 23d day of September, 1904, said wheat, while under said levy was burned without any fault on the part of the plaintiff and was thereby wholly destroyed.

She further alleges that on the 2d day of September, 1904, and prior and subsequent thereto she demanded of the defendant that he release said stacks of grain from said levy, and she be permitted to thresh the same; and she also sets forth that on the 2d of September, 1904, she made affidavit of her title to said wheat and her right to possession thereof and served upon the defendant in this action.

The defendant for his answer to that complaint of the plaintiff, sets forth among other things that he denies each and every allegation contained in the complaint of the plaintiff except what he admits in his answer; that he admits that the defendant was the sheriff of Carver county, and that on the 22d day of August, 1904, he levied upon said six stacks of wheat standing upon the west sixty acres of the southwest quarter of section ten, township of Dahlgren, in said county, under and by virtue of an execution issued out of the district

court of said county upon said judgment of the district court entered on the 10th of June, 1901, in favor of Henry Baer and against Louis C. Kloos and Henry E. Kloos, by endorsing such levy upon said execution (147) and depositing a copy of said execution and return of his levy in the office of the town clerk of Dahlgren. He expressly ~~ad~~ denies that at the time he levied upon said grain said plaintiff was the owner thereof, that he converted the same to his own use, or interfered with the threshing of it, either as stated in the complaint or at all; and he admits in the answer that at the time stated in the complaint the wheat was destroyed by fire.

He alleges that on the 10th day of June, 1901, Henry Baer recovered a judgment in the sum of 1445.76 in the District Court in and for said county against Louis Kloos and Henry E. Kloos, and the said judgment was on said date docketed in said county, and that on the 19th day of August, 1904, an execution on said judgment, directed to this defendant as sheriff of said county, was issued out of and under the seal of said Court, endorsed by the attorney for said creditor, the party applying therefor.

Now, the answer of the defendant so interposed puts in issue the allegations of the plaintiff's complaint upon which she bases her right to recover in this action.

Now, gentlemen of the jury, I will say at the outset that it is the duty of the court to state to you the law by which you are governed in determining the issues of fact involved in this case. No matter what the attorneys may have said to you respecting the law, you should take the law from the Court and not from the attorneys for either party. The court has no right to usurp your functions; it is your duty to determine the facts and take the law from the court, and apply the law as the Court sees fit to give it to you to the facts as you find them to be.

Before I start in upon the general charge, I shall read certain requests of the plaintiff.

The 1st, 2d and 3d are refused. (148) The 4th I give.

When a sheriff under an execution levies upon property, he does so at his peril; and if he levies upon the property that does not belong to the judgment debtor, the levy is wrongful and he is liable therefor. When an officer levies on property not belonging to the defendant, whether by mistake or design, such act makes him a trespasser. He stands in the same position as any other person a trespasser, and is liable in an action for conversion of the property levied upon the instant the trespass is committed.

The 5th is refused.

The 6th is given: The person who rents land owns the crops thereon.

The 7th is given: The wife has a right to rent land and raise crops thereon, and the fact that the husband lives with her on the farm and assists her more or less in the cultivation and management of the land does not justify a conclusion that he is the owner of the crops.

The 8th is given: A married woman is entitled to the rents, increase and product of her property, real or personal, and of the land rented by her and may manage the same thru the agency of her husband.

The 9th is given: A married woman has a right to rent a piece of land and raise crops thereon, and own the same in her own right, and the mere fact that her husband lives with her and works on the land without any agreement as to his compensation, employing his farming implements and animals in the work and acting for her as her agent will not justify the conclusion that the crops belong to him.

The 10th is refused. I don't see any 11th or 12th here, MR. CHILD. The next is 14 that I find. The 14th is given: It was not the plaintiff's duty to place herself in antagonism to the sheriff and his process and (149) take possession of her property. She could yield to the sheriff's levy on the property and sue him for a conversion of it.

The 15th is given: I instruct you as a matter of law that from the evidence and the admissions in the pleadings it conclusively appears that the defendant levied upon the six stacks of wheat in August, 1904.

The 16th is refused. As is also the 17th, which is not numbered.

The 11th is given: As a general rule any distinct act of dominion exerted over the personal property of another in denial of his rights or inconsistent with it is a conversion, altho there be no manual taking of the property.

The 12th is given also: To constitute conversion of the chattels of a third party by an officer levying a writ of execution thereon, it is not essential that he take them into his actual possession, provided there be an assertion of dominion over them and an interference with the owners' right to the possession thereof.

The 13th is given: It is immaterial in case where a levy is made on personal property without taking possession of it that the officer assumes the levy only on the interest of the execution debtor; it constitutes conversion if the sheriff undertakes to assert dominion over the property or interfere with the owner's rights to the possession of the property.

Now Gentlemen of the Jury, I take it that there are three distinct questions of fact which are likely to arise in this case for your consideration. The first question of fact that will confront you when you retire to your jury room for deliberation is, who is the owner of the wheat in controversy, or who was at the time the levy was made in August, 1904. (150)

You have heard the evidence bearing upon that proposition, and it is for you to say whether or not the plaintiff, who seeks to recover in this action, was the owner of the two-thirds interest of this wheat located upon the 60 acre tract of land in Dahlgren town, which has been mentioned here.

If you find from the evidence that she was ~~the~~ not the owner

of that tract, or that wheat so located upon that 60 acre tract of land, then and in that case, you need go no further; your duty will be to return a verdict in favor of the defendant.

Now, some time in 1905 a judgment was entered in this Court declaring George H. Kloos to be the owner of that 60 acre tract of land, and so far as the ownership of that tract of land is concerned, I charge you as a matter of law that George H. Kloos, the father-in-law of the plaintiff in this action was, at the time of the levy, the owner of that 60 acre tract of land, and the judgment roll received in evidence has no bearing upon the issues in this case except as showing the ownership of the land on which the wheat was grown. He being the owner of that tract of land in 1903 and 1904 had the right to lease it to whom he pleased, and a question of fact for your consideration in this case is, to whom was this 60 acre tract of land rented. You have heard the evidence bearing upon that proposition, and it is for you to say, Gentlemen, from all the evidence in this case who was the owner of that wheat and who rented that 60 acre tract of land from Mr. Kloos, the father-in-law of the plaintiff in this suit.

Now, if Mrs. Kloos, the plaintiff in this action, rented that land from her father-in-law she was the owner of the crops so sown and grown upon it in 1904. It matters not what her (151) motive was when she rented that land, she had the right to rent it; the law gives her the right to acquire and keep property separate and distinct from her husband; and it is for you to say and from all the evidence, whether or not she rented that land from her father-in-law. If you find from the evidence that Louis Kloos was the person that rented the land, why then of course he would be the owner of the wheat so levied upon by the sheriff; and in case you so find, then it will be your duty to return a verdict in favor of the defendant.

If, however, Gentlemen, you find from the evidence that she rented this land from her father-in-law and was the owner of the wheat of two-thirds of the wheat, so located upon the 60 acre tract, then you will pass along to the proposition as to whether or not there was any

conversion of it by the sheriff.

It is conceded, Gentlemen, that on June 10th, 1901, a judgment was obtained by one Henry Baer against Louis C. Kloos, the husband of this plaintiff, and one Henry Kloos, for the sum of \$1445.76 I believe; that on that execution--on that judgment was issued an execution on the 19th day of August, 1904, and such execution was placed in the hands of the sheriff of this county for service; and on the 22d day of August, 1904, the sheriff, under and pursuant to that writ of execution, went out upon the premises in controversy and made a levy upon the wheat in controversy. And it is further established by the evidence that on the 22d day of September, 1904, this wheat so levied upon was burned by some means or other which the evidence in this case does not establish.

Under the laws of our state, personal property, capable of manual delivery shall be levied upon by the sheriff taking it into custody. On bulky articles, when personal (182) property, by reason of its bulk or other cause, cannot be immediately removed, it shall be a sufficient levy thereon if the officer within three days thereafter, file with the clerk of the town in which the property is situated, file a copy of the execution and of his return of levy thereon.

Now, Gentlemen of the Jury, so far as that levy is concerned, it was complete in every respect; the evidence establishes that fact.

The law also states what the remedies of persons are whose property is levied upon wrongfully, or if the property is claimed by a third person. If any property levied upon or taken by the sheriff by virtue of an execution, writ of attachment or other process or in an action in replevin is claimed by any person other than the defendant or his agent, and such person or his agent or his attorney shall make and serve on the sheriff an affidavit of his title or right to the possession of such property, stating its value and the grounds of such title or right, the sheriff may release such levy or taking unless the plaintiff on demand shall indemnify him against such claim by a sufficient bond in the penal sum of at least double the sum alleged in such affidavit. No claim by any person other than the de-

fendant or his agent shall be valid against the sheriff unless so made, and he may retain the property for a reasonable time after such claim to obtain such indemnity.

The section to which I have called your attention, Gentlemen, does not apply, or is not applicable in case where the property seized is found in possession of the defendant named in the writ or his agent so as to create ownership or the presumption of ownership in him. If the crops or the property, or the wheat was in the possession of the plaintiff at the time of the levy, no claim or demand would (153) be necessary for her to make as a condition precedent to her maintaining this action against the sheriff.

Now Gentlemen of the Jury, the question then for your consideration in this case, if you find that she was the owner of the property as I have already told you, is whether or not the sheriff made a conversion of it. The Supreme Court of this State has laid down the rule that any distinct act of dominion exerted over the personal property of another in denial of his right or inconsistent with it is a conversion altho there be no manual taking of the property. To constitute a conversion of the chattels of a third party by an officer levying a writ of attachment or execution thereon, it is not essential that he take them into his actual possession provided there be an act of dominion over them.

Now, Gentlemen, that is a question for your consideration and for you to determine as to whether or not the sheriff of this county at the time that he made this levy or at any time, exercised any dominion over that property inconsistent with the rights of the plaintiff in this action, in denial or inconsistent with her rights, as owner and entitled to the possession of that property.

You have heard the evidence, Gentlemen, bearing upon that question, and it is for you to say from all the evidence that you have heard in this case, whether or not there was any conversion, whether or not the defendant in this case exercised any dominion over that property in denial of or inconsistent with the rights of the owner, to take it and use it as he pleased.

You have heard the statements made concerning it at the time that the husband of the plaintiff called upon the sheriff, what he said respecting it; and from what you have heard and all the evidence in the case, it is for you to say what (154) was the sheriff's intention or purpose in consenting that the wheat might be threshed, coupled with the refusal to release the levy. That is a question, Gentlemen of the Jury, solely and exclusively for your consideration.

If you determine from all the evidence in the case that the sheriff--that the acts of the sheriff pleaded and testified to here in Court amount to a conversion, then and in that case, you will be called upon to determine the amount of damages the plaintiff has sustained by reason of the levy and conversion of the wheat in controversy, or two-thirds thereof. It is claimed, or it is admitted now, that George H. Kloos, the father-in-law of the plaintiff is the owner of one-third of this property as his share for the rent of the premises, and that she is only entitled to recover, if at all, for two-thirds of the wheat in controversy.

As a general rule the measure of damages in such cases would be the difference in value, or the value of the wheat as located upon the premises which have been spoken of here. There is some evidence respecting the payment of \$300 by an insurance company here to Louis G. Kloos, the husband of this plaintiff, and it is for you to say, Gentlemen, whether or not that \$300 was paid by the insurance company for the loss which the plaintiff sustained by reason of the burning of that wheat. If you find that it was, then the measure of damages would be, if you find that the insurance company paid the husband of the plaintiff \$300 for the plaintiff, for the wheat so burned, and that Louis Kloos was authorized ~~to~~ by her to receive the money for her, then she was not damaged to the full extent of the value of the wheat, and her measure of damages would be the difference in the value of the wheat, there upon the ground where it was burned, and the amount so paid to her by the insurance company. (155)

Now Gentlemen, you have been selected as jurors in this case

61.

with considerable care and caution, as I take it. It is your duty to weigh the testimony given here carefully, and give it such weight and credibility as you deem it is entitled to. You are the sole and exclusive judges of all questions of fact in this case, and the weight and credibility to be given to the testimony of each and every witness who has been produced and sworn here upon the trial of this case.

In case you find in favor of the plaintiff under the instructions which I have given you, after you determine the amount she is entitled to recover, your foreman, whom you will select from your number will insert the amount that you might find in the form of verdict prepared for you in that event; and you will return it into Court.

If you find for the defendant under the instructions which I have given you, your foreman will sign the form of verdict prepared for you in that event, to the effect that "We, the jury in the above entitled action, do find a verdict in favor of the defendant."

62.

Plaintiff requests the court to instruct the jury as follows:
PLAINTIFF'S REQUESTS TO CHARGE REFUSED ARE:

1. The evidence conclusively shows that the plaintiff was the owner of an undivided two-thirds of the six stacks of wheat in question.

2. From the evidence and the admissions in the pleadings, it conclusively appears that defendant Gatz converted the wheat in question, and he is therefore liable in damages to the plaintiff, because of the conversion.

3. Plaintiff is entitled to a verdict of two-thirds of the value of the six stacks of wheat in question on the 22d day of August, 1904.

5. It is not the duty of the sheriff to levy upon property under execution placed in his hands unless he knows it to be the property of the judgment debtor, and he has a right to demand indemnity or a bond for his protection from the plaintiff in the execution, before levying upon property, the ownership of which is in doubt.

10. On the issue of the ownership of the six stacks of wheat, there is no conflict of evidence and I instruct you as a matter of law that an undivided two-thirds of the six stacks of wheat belonged to the plaintiff.

16. The fact that Louis Kloos received \$300 from the Insurance company, if you find that he did, does not affect (153) plaintiff's rights to recover the full two-thirds value thereof.

17. The court instructs you that the issues in this case are as to the ownership of the wheat; as to whether defendant converted the wheat; and if he did, as to the amount of damages plaintiff suffered, which are the value of the wheat that she owned.

Plaintiff duly excepted to the court's refusal to give each of the above requests of charge numbered 1,2,3,5,10,16 and 17.

Plaintiff's Exhibit "A" was pages 63 and 69 of book A of Entries of the records of the Register of Deeds in and for Carver County, in the State of Minnesota, and was the original certificate of entry by John Preiss from the SE $\frac{1}{4}$ of section 10, township 115, range 24, and was dated May 1st, 1859.

Plaintiff's Exhibit "B" was page 147 of book B of Deeds of the official records of the Register of Deeds in and for Carver County, State of Minnesota, and was the record of a deed dated July 7th, 1863, from John Preiss and wife to Lawrence Richmiller, conveying to said Richmiller the west 60 acres of the SE $\frac{1}{4}$ of Section 10, township 115 range 24.

Plaintiff's exhibit "C" was page 633 of book 4 of deeds of the official records of the Register of Deeds in and for the County of Carver, State of Minnesota, and was a deed dated July 7th, 1863, from Lawrence Richmiller to George Henry Kloos conveying the premises described in plaintiff's exhibit "B".

Plaintiff's exhibit "D" was page 396 of book 9 of deeds of the official records of the Register of Deeds in and for Carver County, Minnesota, and was the record of a Warranty Deed from George Henry Kloos and wife to Louis G. Kloos, dated December 29th, 1893, and conveying the premises described in plaintiff's exhibit "C".

Plaintiff's Exhibit "E" was page 633 of book 13 of Deeds of the official records of the Register of Deeds in and for Carver County, Minnesota, and was the record of the Warranty Deed from Louis G. Kloos and wife to George Henry Kloos, dated May 29th, 1899, and conveying the premises described in plaintiff's Exhibit B.

Plaintiff's Exhibit "F" was the amended complaint in an action entitled Henry Baer, Plaintiff, vs Louis G. Kloos and Linna Kloos, his wife, Henry E. Kloos, George H. Kloos and Amelia Kloos, his wife, defendants, brought in Carver County, Minnesota.

Plaintiff's Exhibit "G" ^{was} ~~and~~ the judgment roll in an action entitled Henry Baer Plaintiff vs Louis G. Kloos and Linna Kloos, his wife, ~~Henry E. Kloos and George H. Kloos and Amelia Kloos, his wife,~~ defendants, brought in Carver County, Minnesota, 8th Judicial

District. Said judgment roll consisted of an amended complaint in said action.

Separate answer of defendants Louis C. Kloos and Linna Kloos, which was a General Denial; the separate answer of defendant Henry E. Kloos and separate answer of defendants George H. Kloos and Amelia Kloos.

The substitution; the consent of J.M. Aretz, Trustee that he be substituted as plaintiff in the above entitled action.

Notice of Motion for leave to file and serve amended complaint in said action.

~~Notice of motion for leave to file and serve amended complaint in said action.~~

Findings of the court, conclusions of law and order for judgment in said action.

Notice of motion to settle case.

Notice of motion to amend court's findings and order for judgment.

Notice of motion for order setting aside findings of fact of said court and new trial.

Order of the court dated Dec. 22nd, 1902, denying motion for order amending court's findings in said case, and also denying motion for an order setting aside the order for judgment and decision of the court and for an order granting a new trial of said action.

Mandate of Supreme Court of Minnesota, dated February 27th, 1905, in above action, reversing and remanding the case with directions to enter judgment for the defendants unless the court below shall be of the opinion, upon proper application made, that a new trial shall be granted, and that judgment be entered accordingly.

JUDGMENT AND DECREE, Dated March 3rd, 1905. Title of the action.

The above entitled action being regularly upon the March, 1902 General Term calendar, of said court, came on for trial at an adjourned term thereof and was tried by the court.

Upon such trial the court on the 30th day of September, 1902, made and filed its findings and order for judgment therein, dismissing said action as to Henry H. Kloos, but in favor of the above named plaintiff and against the defendants Geo. H. Kloos and Louis C. Kloos, and said court therein found as CONCLUSIONS OF LAW,

First: That the said conveyance of the west sixty acres of the southeast quarter of section 10, town 115, range 23, in said Carver County, by the defendants Louis C. Kloos and Linna Kloos, his wife, to the defendant George H. Kloos, was made and taken with fraudulent intent, purpose and design on the part of the said defendants Louis C. Kloos and George H. Kloos, to hinder, delay and defraud the said Henry Baer in the collection of his said judgment and was fraudulent and void as to said Henry Baer.

Second: That the said chattel mortgage executed by the defendant Louis C. Kloos and accepted by the defendant George H. Kloos with the intent to hinder, delay and defraud said Henry Baer as aforesaid.

Third: That the plaintiff recovered of the defendant Louis Kloos and George H. Kloos the costs and disbursements of in this action.

Fourth: That the said personal property and said real estate levied upon by said execution hereinbefore described and mentioned, be sold by the sheriff of said county of Carver to pay said judgment in favor of the said Henry Baer and against the defendants Louis C. Kloos and Henry H. Kloos and the interest thereon, and the costs of this action and the costs of making said sale under said execution, and ordered that judgment be rendered accordingly.

The defendant George H. Kloos having appealed to the Supreme Court of the State of Minnesota from said order and said cause being on the April, 1903, General Term calendar of said Supreme Court, was heard and said Supreme Court filed its order therein, wherein said Supreme Court did adjudge, determine, decree and order that the said order of said District Court appealed from, be and the same hereby is in all things reversed and the case remanded with directions to enter judgment for the defendant unless the court below shall be of the opinion upon proper application made, that a new trial shall be granted and that judgment be entered accordingly.

Now Therefore, upon a mandate of said Supreme Court, herein, and upon the motion of S. R. Child, attorney for the appellant George H. Kloos and Louis C. Kloos, it is hereby adjudged that the above entitled action be and is hereby dismissed upon its merits as against all of said defendants.

BY THE COURT,

H. O. MUEHLBERG, Clerk of District Court.

Plaintiff's Exhibit "H" is as follows:

Title of the Action.

STATE OF MINNESOTA :
COUNTY OF CARVER :SS.

Linna Kloos being duly sworn says:

That she is the owner and entitled to the immediate possession of that certain personal property claimed to have been levied upon, or taken by G. A. Satz, sheriff of said Carver County, under and by virtue of a certain instrument, purporting to be an execution issued out of said court and bearing date the 19th day of August, 1904, in the above entitled action, which property is described as follows:

1 red and white spotted cow, 1 black and white spotted cow, 2 red cows, 1 cow brindle color, 1 brown and whitish steer, 2 years old, 2 red heifers, 1 heifer red and white, all 2 years old, 3 calves about 9 months old, all cattle without horns; grain, at house 4 stacks of oats, 3 stacks of wheat, 1 stack of barley, 3 stacks of wheat situated on west 30 acres of SE $\frac{1}{4}$ of Section 10 Dahlgren Town, Carver County, Minnesota.

That the value of said property is the sum of \$1744.00

That the grounds of my title to and right of possession to said property is that I am the owner thereof.

Subscribed and sworn to before me LINNA KLOOS.
this 2d day of September, 1904.

L. STRENNKENS,
Justice of the Peace,
Carver County, Minn.

Plaintiff's Exhibit "I" which was as follows:

District Court, Eighth Judicial District, State of Minnesota, Carver County:

THE STATE OF MINNESOTA TO THE SHERIFF OF THE COUNTY OF CARVER.

WHERE, Judgment was rendered on the 10th day of June, in the year 1901, in an action of the District Court of the State of Minnesota, for the Eighth Judicial District, in the County of Carver between Henry Baer, Plaintiff, and Henry E. Kloos and Louis C. Kloos, Defendants, in favor of said Plaintiff and against said Defendants for the sum of One Thousand Four Hundred Forty-five and 76/100 Dollars, (\$1445.76), as now appears by the Judgment Roll filed in the

office of the Clerk of said Court, for said County of Carver.

AND WHEREAS, said Judgment was docketed in your County, on the 10th day of June in the year 1901, at 10 o'clock a.m., of that day and the sum of Fourteen Hundred Forty-five and 76/100 Dollars (\$1445.76), is now actually due thereon, with interest on \$1445.76 from June 10th A.D. 1901, together with \$---accrued costs in District Court in this County.

THEREFORE, You are hereby required and commanded as we have formerly commanded you to satisfy the said Judgment, with interest, out of the personal property of the said Judgment Debtor within your County, and if sufficient personal property cannot be found, then out of the real property in your County belonging to said Judgment Debtor, on the day when said Judgment was docketed in your County, or at any time thereafter not exceeding ten years; you are also required to return this Execution within sixty days after its receipt by you, to the Clerk of said District Court in and for the County of Carver.

WITNESS, The Hon. Francis Caldwell one of the Judges of the

District Court aforesaid, at Chaska, this 19th day of August, in the year of our Lord 1904.

(SEAL).

H.O. MUEHLBERG,

Clerk of the District Court.

ENDORSED ON THE BACK THEREOF.

STATE OF MINNESOTA,
COUNTY OF CARVER SS.

I hereby certify and return that by virtue of the within execution, I have on this 20th day of August A.D. 1904, at the Town of Dahlgren, in said County, levied on all the right, title and interest of the within named defendants, in and to the following described personal property, to-wit: The following of Henry Kloos: Five stacks of wheat, one stack of oats, two stacks partly oats and partly barley, one stack barley. And the following cattle: 2 cows about 7 years old, red and whitish mixed, no horns; 3 black cows, white spots, about six years old, no horns; one bull, no horns, about 2 years old; 5 red cows, about 4 to 6 years old; 4 red heifers, 2 years old, and one heifer partly red and partly white. The following of Louis C. Kloos: One red and white spotted cow; one black and white spotted cow; two red cows; one cow brindle color; one brown and whitish steer, two years old; two heifers; one heifer, red and white; all two years old; eight calves, nine months old; all cattle without horns. (Grain) at house, 4 stacks of oats, three stacks of wheat, situated on the west 60 acres of Section 10 Dahlgren Town, County and State aforesaid,

Witness my hand this 22nd day of August, 1904.

G.A. GATE, Sheriff of Carver County, Minn

-6- /

Further Endorsed on the Back as follows:

STATE OF MINNESOTA, COUNTY OF CARVER. SS.

I hereby certify that I have compared the within copy of Execution and my Inventory of Levy thereon as above, with the original in my possession, and that the same are true and correct copies therefrom and the whole thereof.

WITNESS my hand, this 22 day of August, 1904.

G.A. GATZ, Sheriff Carver County, Minn.

FURTHER ENDORSED ON THE BACK THEREOF AS FOLLOWS:

Received Aug. 19th A.D. 1904 at 1 o'clock P.M. G.A. GATZ, Sheriff of Carver County.

Returned and filed in the office of the Clerk of District Court of Carver County, Minn., Jan. 10th, A.D. 1905.
H.C. MUEHLBERG, Clerk.

The Sheriff of Carver County will collect on the within Execution \$1445.76 with interest on that sum from the 10th day of June A. D. 1901, together with \$---accrued costs in-----County and \$x---accrued costs in his County and \$1.00 for this Execution and his fees and legal disbursements W. C. Odell, Attorney.

Defendant's Exhibit 1 is as follows:

2 settings at house of L. Kloos.

(Diagram).

7 cows; 10 head cattle 1 years old.

2 head cattle, 2 " "

Defendant's Exhibit "2" is the affidavit of ownership of the property, made by George H. Kloos and the same is a duplicate of plaintiff's exhibit "H" except that the affidavit of ownership was made by George H. Kloos instead of Linna Kloos, and is fully set out in the clerk's return to this court.

Defendant's Exhibit "3-a" is as follows:

Louis Kloos. Cattle.

1 brown and white checked cow.

1 black " " " "

2 brown " " " "

1 roan " " " "

1 brown & white ish Stear, 2 years.

3 heifers, 2 of them some whiteish.

3 calves about 3 months old.

Defendant's Exhibit "3-b", is as follows:

Grain, 2 settings.

4 Stacks of Oats, 500

3 stacks of Wheat, 300

1 " " Barley, 100

60 acres. about

Wheat about 6 stacks, 400 bush.

Defendant's Exhibit "4" consisting of the first line of page 7 "Treasury Book of the Laketown Mutual Fire Ins. Co."

Head of page entitled, "Expenses from May 22, 1905 to May 16, 1906."

M. D. No.

May 29, 1 Louis C. Kloos, loss by fire, \$300.00

Defendant's Exhibit "5" is as follows:

\$300 due Louis C. Kloos. Date May 29, 1905, favor of Loss by fire. Drawn on-----/

(Signed) LOUIS C. KLOOS.

No. 1.

Marked across the face thereof "PAID".

STATE OF MINNESOTA :
COUNTY OF HENNEPIN :

DISTRICT COURT.

Linna Kloos, Plaintiff,

-vs-

G. A. Gatz, Defendant.

.....

I hereby certify that the foregoing case consisting of ~~62~~ ⁶² pages of typewritten matter and 7 pages of exhibits has been examined by me and found conformable to the truth and to contain all the evidence offered or introduced on the trial of this cause, and also the charge in full, and all objections, rulings, orders and all other proceedings of such trial, and I hereby settle and allow the same as the settled case herein.

Dated January 19, 1909.

W. W. Markham
JUDGE.

STATE OF MINNESOTA.

COUNTY OF CARVER.

.....
DISTRICT COURT.

.....
Linna Kloos,

-vs-

G. A. Gatz and Henry
Baer.

.....
PROPOSED CASE.
.....

CARVER COUNTY,
FILED

JAN 26 1909.

H. O. Muehlberg Clerk.

(544)

STATE OF MINNESOTA :
COUNTY OF CARVER :

DISTRICT COURT.
EIGHTH JUDICIAL DISTRICT.

Linna Kloos, Plaintiff,

-VS-

G. A. Gatz, Defendant.

SIR: YOU WILL PLEASE TO TAKE NOTICE, That the issue of law and fact in the above entitled action will be brought on for hearing and trial at the next General Term of the District Court to be held in and for the County of Carver at the Court House, in the City of Chaska in said County, on the 27th day of September, 1909, at the opening of said Court on that day, or as soon thereafter as Court.

STATE OF MINNESOTA :
COUNTY OF HENNEPIN. :SS.

Benjamin Drake being duly sworn says:
That he is one of the attorneys for the within named plaintiff, and resides in the City of Minneapolis in said county: that on the 20th day of May, 1909, he served the within Notice of Trial hereto attached upon W. C. Odell, Esq. attorney for the within named defendant, who resides in the City of Chaska, State of Minnesota, between which place and said City of Minneapolis, there is a regular communication by mail, by depositing a copy of said Notice of Trial in the post-office within and for said City of Minneapolis, properly enveloped, sealed, postage paid thereon, and directed to said W. C. Odell, Esq., at said City of Chaska, Minnesota.
Subscribed and sworn to before me
this 20th day of May, 1909.

Amette Martenson
Notary Public, Hennepin County, Minn.
My commission expires Nov. 14, 1910.

Benjamin Drake

State of Minnesota,)
County of Carver.)
-----)

(IN DISTRICT COURT.
(
(8th Judicial District.
-----)

Linna Kloos,
Plaintiff.

-VS-

G.A.Gatz and Henry Baer,
Defendants.

At Chambers, in the Village of Norwood, Carver County, Minnesota,
pursuant to notice duly given, on the 8th day of February, a.d. 1909, the
plaintiff in the above entitled action, made and submitted to the Court
a motion for an order setting aside the verdict in said cause and for a
new trial thereof upon the several grounds stated in said notice of mo-
tion.

S.R. Child and Benj. Drake Esqrs; appeared as Counsel for the
plaintiff in support of said motion.

W.J. O'Dell Esq; appeared as Counsel for the defendant, Gatz, in
opposition to said motion.

After hearing the arguments of counsel for the respective par-
ties, reading the authorities cited in support of their respective conten-
tions and giving all matters and things involved in said cause due con-
sideration, the court is of the opinion, that it was error on the part of
the court not to have charged the jury as a matter of law under the evi-
dence that the plaintiff was the owner of the wheat in controversy.

IT IS THEREFORE ORDERED:

That the said motion of the plaintiff be,
and the same hereby is, granted, and a new trial of said cause be, and the
same hereby is also granted.

Dated at Norwood, this 1st day of May, a.d. 1909.

J.W. Morrison
Judge of said Court.

State of Minnesota
County of Carver
In and for

Simon Kloss

— vs —

vs A. Isely et al.
et al.

Order Sequestering
System for New
Trial

CARVER COUNTY,
FILED

MAY 3 1909.

H. O. Muehlberg, Clerk.

(544)

STATE OF MINNESOTA :
COUNTY OF CARVER :

DISTRICT COURT.
EIGHTH JUDICIAL DISTRICT.

Linna Kloos,

Plaintiff,

-vs-

G. A. Gatz and Henry Baer,

Defendants.

To W. C. ODELL, Attorney for Defendant:

Please Take N O T I C E , That on the Settled Case herein, the plaintiff will move the court at its chambers at the Village of Norwood, Minnesota, on the 6th day of February, 1909, at eleven o'clock A. M., or as soon thereafter as counsel can be heard, for an order setting aside the verdict herein and granting a new trial on the following grounds:

1. That the verdict is not justified by the evidence and is contrary to law.

2. That there were errors of law occurring at the trial and excepted to at the time and that there were errors of law occurring at the trial and are assigned as follows:

1st. The court erred in giving the following instructions to the jury:

"The first question of fact that will confront you when you retire to your jury room for deliberation is, who is the owner of the wheat in controversy, or who was at the time the levy was made in August, 1904?"

2nd. The court erred in giving the following instructions to the jury:

"You have heard the evidence bearing upon that proposition, and it is for you to say, Gentlemen, from all the evidence in this case who was the owner of that wheat and who rented that 60 acre tract of land from Mr. Kloos, the father-in-law of the plaintiff in this suit."

3rd. The court erred in giving the following instructions to the jury:

"If you find from the evidence that Louis Kloos was the person that rented the land, why then of course he would be the owner of the wheat so levied upon by the sheriff; and in case you so find, then

it will be your duty to return a verdict in favor of the defendant."

4th. The court erred in instructing the jury as follows:
"The law also states what the remedies of persons ~~who~~ are whose property is levied upon wrongfully, or if the property is claimed by virtue of an execution, writ of attachment or other process or in an action in replevin is claimed by any person other than the defendant or his agent, and such person or his agent or his attorney shall make and serve on the sheriff an affidavit of his title or right to the possession of such property, stating its value and the grounds of such title or right, the sheriff may release such levy or taking unless the plaintiff on demand shall indemnify him against such claim by a sufficient bond in the penal sum of at least double the sum alleged in such affidavit. No claim by any person other than the defendant or his agent shall be valid against the sheriff unless so made, and he may retain the property for a reasonable time after such claim to obtain such indemnity."

5th. The court erred in instructing the jury as follows:
"You have heard the evidence, Gentlemen, bearing upon that question, and it is for you to say from all the evidence that you have heard in the case, whether or not there was any conversion, whether or not the defendant in this case exercised any dominion over that property in denial of or inconsistent with the rights of the owner, to take it and use it as he pleased."

6th. The court erred in instructing the jury as follows:
"You have heard the statements made concerning it at the time that the husband of the plaintiff called upon the sheriff, what he said respecting it; and from what you have heard and all the evidence in the case, it is for you to say what was the sheriff's intention or purpose in consenting that the wheat might be threshed, coupled with the refusal to release the levy. That is a question, Gentlemen of the Jury, solely and exclusively for your consideration."

7th. The court erred in instructing the jury as follows:
"If you find that it was, then the measure of damages would be, if you find that the insurance company paid the husband of the plaintiff \$300 for the plaintiff, for the wheat so burned, and that Louis Kloos was authorized by her to receive the money for her, then she was not damaged to the full extent of the value of the wheat, and her measure of damages would be the difference in the value of the wheat, there upon the ground where it was burned, and the amount so paid to her by the insurance company."

8th. The court erred in refusing to ^{each of} give plaintiff's requests of Charge to the jury, numbered 1, 2, 3, 5, 10, 16 and 17 on page 62 of Settled Case.

R. C. Child and Benj. Drake
S. R. CHILD & BENJ. DRAKE,

Attorneys for Plaintiff,

816 Lumber Exchange,

Minneapolis, Minn.

STATE OF MINNESOTA :
:SS.
COUNTY OF HENNEPIN :

Benjamin Drake being duly sworn says:

That he one of the attorneys for the within named plaintiff, Linna Kloos, and resides in the City of Minneapolis in said county; that on the 31st day of January, 1909, he served the within Notice of Motion for a New Trial hereto attached, upon Mr. W. C. Odell, attorney for defendant G. A. Gatz, who resides in the City of Chaska, State of Minnesota, between which place and said City of Minneapolis, there is a regular communication by mail, by depositing a copy of said Notice in the post office within and for said City of Minneapolis, properly enveloped, sealed, postage paid thereon, and directed to said W.C. Odell, Esq., at said city of Chaska.

Subscribed and sworn to before me
this 32nd day of January, 1909.

Annette Martinson

Benjamin Drake

Notary Public, Hennepin County, Minn.
My commission expires Nov. 14th. 1910.

STATE OF MINNESOTA.
COUNTY OF HENNEPIN.

.....
DISTRICT COURT.
.....

Linna Kloos,

-VS-

G. A. Gatz et al.

.....
NOTICE OF MOTION FOR A
NEW TRIAL.
.....

*Filed this 5th
day of Feb 1909
P. J. [unclear]
Judge*

CARVER COUNTY,
FILED

MAY 3 1909
H. O. Muehlberg Clerk
(544)

District Court.

VB.

January 19th., 1909.

Judge.

STATE OF MINNESOTA.
COUNTY OF CARVER.

.....
DISTRICT COURT.
.....

Linna Kloos,

-vs-

B. A. Gatz and Henry Baer.

.....
COURT'S ORDER EXTENDING
STAY OF PROCEEDINGS.
.....

CARVER COUNTY,
FILED

JAN 26 1909

H. O. Muehlberg Clerk.

(544)