Neu-Schagen, 30th Nov. 1863.

Hirsch to Hart
Weiden to Hirsch

Civil Commission
transmit informal report via Chair Care.

(see enclosure)
Civil Commission for the
District of Memphis.
Nov. 30th, 1883.

General

In obedience to your
Order of the 26th instant, (Not sent
or received until the 28th,) direct-
ing an "informal" Report to be sent
For "immediately" of "the facts in the
Cases of Hirsch vs. Hart, Exr. and Alma
vs. Hirsch, in Replevin", we submit the
following: There has been no such
Case before us as "Hirsch vs. Hart, Exr.
but possibly the Case of Hirsch vs. C.B.
Hart and Ellen Hart, his wife, is referred
To. Mrs. Hart was formerly the wife of
A. B. Shaw, and after his death be-
came Administrator of his estate
and married Hart. In June 1871 said
A. B. Shaw executed and delivered
to A. Vaccaro & Co. his promissory
Note at four months for the sum
of $494.05. Said Note when it be-
came due was duly protested
for non payment. After the death
of Shaw and the Marriage of his
Widow to Hart, O. Hirsch, who had
become the owner of the Note
by purchase, and endorsement an
delivery thereof, sued Hart and Wife in the Commission to enforce the payment of said note. This was on the 29th. of May 1853. The Petition was not exactly a faultless model of scientific pleading, but was never deemed so by Defendant, and it contained sufficient averments, though not artistically stated, to justify a judgment. After full statements about the note, it also showed the death of Shaw, that his widow became Administrator and afterwards married Hart, etc. The answer of Defendants, drawn up by their attorney, W. B. Brown, denied nothing, but stated their "belief" that O. D. Eldredge & Co. were the real owners of the note, and claimed that judgment should be rendered against them only as Administrator and Administratrix. So all this the Pff. filed a full and complete replication in the 19th. day of June. The Defendants, by their Attorney, submitted the case the next day without producing any proof or making any defense whatever. In the latter judgment was duly rendered against them in proper
form and was never excepted to by Defts. We have never known that either they or their attorney complained of it or supposed it possible or proper for us to have done otherwise. We were informed by our Deputy Marshal, Mr. Morse, that Mrs. Smith sometimes promised to pay the judgment and did not dispute its justice. At other times she swore that she would defeat the execution that nothing should ever be made on it and that she made many threats against him as an officer with gross abuse and violence. But as we were credibly informed by all whom we ever heard speak of her that she was a woman of infamous character, a demicerb reformed horse, we did not suppose it to be becoming for us to pay any attention to her vile conduct. After she had approved the judgment against her and her husband (and ordered execution to issue), a levy was made by Mr. Morse under the direction of Hirsch upon a quantity of furniture in her possession; she at the time threatening...
violently and furiously to defeat the execution and levy. Soon after his son-in-law, Archer, a clerk in some store, who had married her adopted daughter, reprieved the furniture, claiming it as his own personal property, swearing that he was the owner of it in his own right, and entitled to the possession, &c., and valuing it at one thousand dollars. The statements, charges, &c., of his Petition having been duly traversed by Hirsch in his Answer duly sworn to, and issue joined on the ownership and possession of the property by Archer, trial was had on the sixth day of October. Archer was not present having quarreled with Mrs. Hart, separated from his wife, left his region of Country and gone to St. Louis, Missouri. Mrs. Hart acted as Plaintiff, and she was the only witness for Archer! She testified in a very eager, devit-witness manner, that the furniture sued for had been left in her possession by one Ballantine, who was and is in the "Confederate" Army. That he had offered to sell it to her.
but she did not purchase. That Archer had married her adopted daughter, then went South, and sometime after his return, professed to her that he had bought the property from the said Rebel Ballantine while in the Rebel Service. He showed her some paper, and "told" her that it was a Bill of Sale from said Rebel Officer Ballantine. That the furniture still remained in her house. The same as before, some of it in the room occupied by Plaintiff Archer and his wife, who both boarded with her. On her cross-examination she stated that her son-in-law, Archer was or had been until he left her a clerk in a Drug Store, that he had not had any money to any amount at any time, that she knew of, and that she did not know that he had purchased the furniture, or had any right to it. Her name as a witness rendered her evidence nearly or quite worthless. She was a very eager witness for the plaintiff, and being as the Commissioner well
knew the Defendant on the occasion and extremely anxious to defeat it, (as she had threatened to do,) for her own benefit and advantage. She was to all intents and purposes an interested witness, a fact which must weigh strongly against her credibility, if not her competency.

The Defendant called Deputy Marshal Morse, who testified that he lived on the property as belonging to Mrs. Hart, in whose possession he found it. That the Plaintiff told him he owned it and had bought it from one Flaherty. One Martin also testified to Archer’s having at some time claimed the furniture, but he knew nothing about his having any right to it. That the property had long been in the house of Mrs. Hart, in her possession, and that after Archer married his daughter and became the bailee, some of it was in his room.

On the above evidence, the Commission thought that the plaintiff had not sufficiently proven his case, and gave judgment for the Defendant.
Habeas, re, and for costs. It will be observed that Archer’s different and contradictory stories were very suspicious, that his only witness was discredited by his interest and her eager manner of testifying, that Plaintiff did not produce on the trial any Bill of Sale, which he might have done so easily, if he had possessed any, and that he proved no right whatever even to the possession of the property except by contradictory declarations of his own which were no evidence! How could we give judgment for him, when every circumstance combined to show that his pretended claim was simply got up to cover the property for the benefit of his Mother-in-law and to enable her to prevent the collection of a just debt. Mr. R. B. Brown, the Attorney for Diff. moved for a new trial, but his Motion, after due consideration, was overruled. He then prepared a Bill of Exceptions which proved to be incorrect, and he and the Counsel for Defendant failing
to agree, Judge Hethcote wrote out a Bill which was submitted to Mr. Brown and admitted by him to be correct. He was then informed that in order to be entitled to have the Bill signed by the judge and sent to you for your consideration, he must comply with our usual Rule to have his client pay the costs and give Bond with Security to abide by and perform the judgment which you should render. He said he would do so, and the next we knew of the case, we found that instead of doing as he had agreed to (and as the Rule require all parties to do in similar cases,) he had deceived us and surreptitiously carried the case to you by a false and scandalous affidavit professing to be made by Archer but really made by Mrs. Hard (the actual party in interest,) who swears that Archer is at St. Louis, and uses his name as a convenient instrument, merely for the accomplishment of a fraud, and escaping that payment of her debts. Said Affidavit or Statement
admits and shows clearly a refusal to obey the orders of the Commission and a proper and necessary rule approved by yourself. We are perfectly willing to try said case again if you see any just cause for a new trial, but we request that Mr. Brown's unprofessional and scandalous mode of assailning the Commission be stopped if not justly punished by suspension for a term from all practice of his profession, until he can learn to practice honorably, and that his client (really Mrs. Hall) be required, like other parties, to conform to our rules and to appeal in the regular mode.

Respectfully,

Barbour Lewis

J.W. Williams

A.C. loftin

Brig. Gen. Jas. C. Brent

Commanding District of
Memphis, Tennessee.
Head Quarters Fort Millbank, Memphis, Tenn. 26th May 1863.

The Gen. Comdl. directs that an informal report of the facts in the cases of Anderson in Hunt & Co. and Archer in Atchison, &c., be reported immediately to these Head Quarters. Such report to show the action of the Court in both cases and the present situation of the goods in each case.

Paul A. Dowell
Capt. & Judge Advocate
Capt. 1st Art. Div. of Mississippi

To Gen. Cowan
Memphis, Tenn.

Received until
Nov. 28th. 1863.

P. S.
Some time ago the Marshal of this city and several others of him to satisfy a judgment against me. To effect this, he placed the same which a short time ago was sold in the common market for the value of the premises, about one thousand dollars. I prepared a bill of sale and shipped the same to you, and sent it to you, because I would not pay the costs and you had to pay the same. If I had not, I did not think that the money was required in such a case, and I declined.

The facts in the case were as follows: I procured by my agent, Messrs. Smith, that the premises were placed in the possession by one Mr. Ballentine, that he never did any of the damage. Some time thereafter I married her adopted daughter, and then living with her. I showed her a paper which I had been Ballentine gave her the premises, she said she then delivered me the premises. She was to sell them. She passed them to me. She said she had continued to move to St. Louis, Missouri, and had sold the premises to her husband, which I did, in pursuance.

This was the transmission of my property.
The defendant introduced one person who said he knew me, had been in my home, saw the most of the premises in my possession, and if he claimed by me — the defendant also introduced one Moreau, the Marshal of the Ocmulgee, the 2nd day of his examination yesterday, Dr. Dent's wife, having been restored as a host, who said I claimed the property and showed him some papers showing that I had purchased the time, and he thought it was from Halsett.

This was all the proof on the 2nd day given against me, which was insufficient without proof of Motion for new trial, as overseen.

The Marshall now laid the evidence in his hand, threatening to levy the same against me, as a result of which, I would therefore ask that the cause be suspended and a new trial granted to me to be tried before some other Commissioner.

Mrs. Archer

This day Ellen F. Carter, personally appeared before me, P. R. White, an acting Justice of the Peace for this County, Georgia, and administered the oath to me, as per the order of Commissioner P. R. Archer, to swear to the testimony that she acting as his agent and having the papers in the possession of the

[Signature]

Ellen F. Carter

This sworn to by me, Ellen F. Carter, 2d day of March, 1865.

Wm. D. Hall, Recorder.