No. 14413

Supreme Court of Illinois

Bull

---

vs.

Harris

STATE OF ILLINOIS,

SUPREME COURT,

Third Grand Division

No. 243

15 "3

Bill
vs
Harris

8/15

Mr. Justice Walker delivered the opinion of the Court:

~~Walker J.~~

The Court below erred in award-
ing an execution against the ad-
ministrator. It should
have been, that
in the due course of administration
This is the settled
as announced in numerous cases in this
489 Court. For this error the judgment
31 will be reversed.

It is likewise urged, that the find-
ing of the jury was against both the
evidence, and the instructions of
the Court. The account on which this
recovery was had, runs through a
series of six or eight years previous
to the death of intestate. And the evi-
dence shows that the settlements of
~~the accounts of the defend-~~
~~defendant~~ ~~was~~ ~~court~~, were
annually made at time,
and in no instance were these
items embraced in the books, during
the time this account continued,
from its commencement till the
last settlement, contained no such
charge. Nor is there any evidence
that they were, by accident or mis-
take, omitted in these settlements.

An adjustment and settlement of accounts between parties, af-
=fords evidence that all items prop-
=erly chargable at the time have
been embraced: it is, that it
is not conclusive: it requires
Strip 7.
clear and convincing proof that
items properly chargable have
been unintentionally omitted
by the party claiming to recover.
In this case, no such evidence
is found, or any thing from which
=h it can be inferred. On the con-
=trary, it seems that these charges
were intentionally omitted, and
never designed to have been ma-
=de in any event. The evidence
strongly tends to show that this
service was rendered with no expec=
=tation of receiving pecuniary
=ry compensation during the life
=time of intestate, but that it was
with the expectation, on the part
of defendant in error, that decease
would remember him in his will
There was no promise to pay on
the one part, or expectation of
receiving it, as a matter of adjust
ment, on the other.

There is nothing to show that there was any legal obligation on deceased to pay this charge. It was, at most, a moral obligation, which cannot be enforced. Had Sarah lived, it must be supposed, in the light of this evidence, that defendant in error would never have demanded payment, for services gratuitously rendered, and for which no charge is made or intended to be made. ~~and be recovered.~~ We think the evidence shows these charges to have been of that character.

The finding of the jury was therefore against the evidence as well as the instructions, and the judgment of the court below must be reversed and the cause remanded. ~~reversed~~ Reversed.

D. F. Ball

213. U.S. 111

J. Harris

Opinion by
Walker J.

D. 12

Record Book 13
pp 88, 89,
Comp

Supreme Court of Illinois.

THIRD GRAND DIVISION.

APRIL TERM, A. D. 1863.

E. FOLLETT BULL, Administrator of the Estate of Isaac H. Lamb, Dec'd. Plaintiff in Error. *vs.* JOHN HARRIS, Defendant in Error.	Error to LaSalle County Circuit Court.

1st. This cause has been tried three times in the courts below, and three successive verdicts rendered in favor of defendant in error, and each time resulting in increased damages in his favor.

Admitting, for the sake of the argument, that there are some slight errors it does not necessarily follow that the judgment will be reversed.

No ~~more~~ more frivolous errors will avail plaintiff in error, even if they exist in the record. Some one fatal error must exist, which will naturally work injustice to the party, before the court will set aside the verdict of twenty–four sworn jurors, and the verdict of the Judge of County Court, who, also, tried the cause and rendered a verdict for defendant in error.

See Barry v. *Goff*, 1*st Ohio*, 304.
Hinton v. *McVeal*, 5*th Ham.*, 509.
Maddox v. *Jackson*, *Munf.*, 462.

It is said by counsel that the court erred in rendering the judgment in manner and form as shown by the record. Admitted, what then? Why this court will change the judgment, putting it in a proper form.

The witness, Gilman, is made to say, by the counsel for plaintiff in error, that in a conversation he had with Lamb, a short time before his death, that he (Lamb) intended to remember defendant in error in his will. This is not true. The language of Gilman is that Lamb said, "Defendant in error had been kind to him, and he intended to pay him well for his trouble. See the testimony of witness, Gilman.

It is very gravely claimed by counsel that the verdict of the jury was against the weight of evidence. Well, suppose it is? It is a well settled rule of law, that it is not sufficient cause for granting a new trial, that the appellate court is not satisfied with the verdict, or that upon a view of the testimony, the court would have rendered a different verdict, for if this doctrine were to obtain, the right of trial by jury, would be a farce, and the sooner dispensed with the better, for all parties upon this point.

See Toustal v. *Beshony*, 2d *A.*, 19 *Marsh.*, 521.
Owing v. *Gray*, 2*d A.*, 19 *Marsh.*, 520.
Johnson v. *Blackman*, 11 *Conn.*, 342.

The court will never set aside a verdict, merely because they might, upon the examination of the evidence, have arrived at a result different from that found by the jury.

Wendall v. *Safford*, 12 *New Hemp.*, 171.
Ways v. *Collisan*, 6*th Leigh.*, 230.
Burr v. *Shanks*, 5*th Leigh.*, 598.
16*th Ill.*, 66.

The conviction must must be strong on the minds of the court that the jury have fallen into some fatal error in regard to the nature and force of the evidence, before they will interfere and grant a new trial.

Smith v. *Richards*, 4*th Shep.*, 200.

A verdict will not be set aside because founded on slight evidence.

Goodman v. *Smith*, 4 *Dev.*, 450.
Augus v. *Dickerson*, 1*st Meigs.*

If a verdict is against the mere preponderance of evidence, it will not warrant the court in reversing the judgment.

Dickinson v. *Parker*, 3 *How. Miss.*, 219.

A verdict of an inferior court (where there has been two verdicts) will not be reversed where there is any evidence to support it.

Bayly v. *Lewis*, 2 *Monr.*, 142.
Dodge v. *Brittain*, 1 *Meigs*, 84.

The Supreme Court of Miss., in *Lackey* v. *Lane*. 7th Miss., 220, hold the following principle. It must be a very flagrant case, where the Supreme Court will grant a new trial on the ground that the verdict is against evidence, where it has been refused in the court below, and never where there has been two successive verdicts for same party.

Price v. *Evans*, 4 *B. Monroe*, 386.
Leigh v. *Hodges*, 3 *Scam.*, 15.
Gillett v. *Sweat*, 1*st Gilman*, 475.
King v. *Hill*, 2 *Tayl.*, 211.
Carson v, *Allen*, 6*th Dana.*, 395.

We are satisfied the court will not give a new trial in this case, for the reason that there is no well settled error, and that real substantial justice has been done by the three successive verdicts below, for defendant in error.

GRAY, AVERY & BUSHNELL,
For Defendant in Error.

111 213

E. T. Ball adm &c

vs.

J. M. Davis –

Brief &c argument for Def. in error

Fil[ed] May 16. 1863
L Leland
Clk

G. A. & B.
Def. attys

SUPREME COURT OF ILLINOIS,

THIRD GRAND DIVISION,

APRIL TERM THEREOF, A. D. 1863.

E. FOLLETT BULL, Administrator of the Estate of ISAAC H. LAMB, deceased, *Plaintiff in Error*,
vs.
JOHN HARRIS, *Def't in Error.*

Error to La Salle County Circuit Court.

ABSTRACT OF RECORD.

This was an action originally commenced in La Salle County Probate Court by the defendant in error against the plaintiff in error, for care in sickness, claimed to have been rendered by defendant in error to Isaaac H. Lamb, deceased, at various times, commencing some six or eight years prior to his decease, and continuing down to the time of his death in 1859, and covering a period of time during which the deceased and def't in error had on several different occasions settled their accounts.

1 Commencement of proceeding in Probate Court.

2 Proof of notice to prove claims in Probate Court.

3 Order of Probate Court continuing a hearing of the defendant in error's claim. Order of Probate allowing defendant in error a claim of $25 against estate of deceased.

4 Certificate of Clerk of Probate Court.

5 Bond filed May 27th 1861, by def't in error, appealing from the judgment of Probate Court to Circuit Court of La Salle Co.

6 Summons on appeal to plaintiff in error issued May 27th 1861.

7 Return of sheriff served May 27th 1861. Jury empanelled Nov. 20th 1861 for first trial of cause in the circuit court.

8 Verdict of jury on first trial in Circuit court.

9 Motion by plaintiff in error for new trial. Affidavit in support thereof by plaintiff in error.

11 Affidavit by James Abby read by plaintiff in error in support of same motion.

12 Order of court granting new trial. Order of court entering judgment against plaintiff in error for costs, which is in the words and figures following, viz: "It is therefore considered by the court that the plaintiff have and recover of the defendant his costs and charges by him, at the present term of this court, herein expended, and that he have execution therefor."

13 Jury empanelled for second trial of cause in the Circuit court.

14 Verdict of Jury against plaintiff in error. Damages assessed against him at $283.

15 Motion by plaintiff in error for new trial. Order of Circuit court overruling motion for new trial. Order of court, March 6th 1862, entering judgment in favor of def't in error against plaintiff in error, in the words and figures following, viz: "It is therefore considered by the court that the plaintiff have and recover of the defendant the sum of two hundred and eighty-three dollars for his damages; also his costs and charges herein as well as in the court below expended, and that he have execution therefor." Order of court granting ten days time to file bill of exceptions.

16 Bill of exceptions filed by agreement as of March 8th 1862.

Plaintiff's Testimony.

Norman McFarran, for plaintiff below, testified that he was acquainted with Isaac H. Lamb, deceased, for a long time prior and down to the time of his death. Lamb acknowledged that when he was sick and on a spree he was taken to Harris' house.
17 Has told me that he was taken there from 7 to 10 times. Said they took the best kind of care of him. Sometimes on these sprees he would require considerable attention. Should think it was worth $10 a day to take care of deceased in extreme cases. He was taken to Harris' house at various times from 1851 to 1859. Knew nothing except from Lamb's statement.

John Gray, for plaintiff below, testified that he had known deceased from 1849 to time of his death. That during that time he had from 3 to 4 sprees a year, except for about 2 years, in 1856 and 1857 or in in 1857 and 1858. Usually taken to
18 Harris' house. Worth $10 per day to take care of him. On cross examination, stated deceased always had money, and was always very prompt in payment of his debts.

Steven Finch, for plaintiff below, testified that he saw deceased at Harris' house 3 times when he was on a spree. Was troublesome. Sometimes required the best of care. Sometimes it would be worth $10 per day to take care of him, at others he
19 was no more troublesome than an ordinary sick man. Deceased said he intended to leave Harris a good share of his property; did not intend that his relatives should have a damned cent of it. It was worth more to take care of deceased when he had "*tremens.*" Don't know of his having the "*tremens*" but once.

Charles H. Gilman, for plaintiff below, testified that he knew deceased. Spent an evening vith him a month or two before
20 his death. He said Harris and wife were kind to him; that he intended to recompense them when he died. Thinks he intended to make a will; never heard of his having done so.

Cornelius Harris, for plaintiff below, testified that he is plaintiff's brother. Knew deceased; he had from 4 to 6 sprees a year, except about 2 years in 1856 and 1857, or in 1857 and 1858, during which time he had no sprees. Sometimes his sprees would last a day or two, sometimes a week or more.

21 Never knew him to be so drunk but what he could walk straight. My brother and wife took care of him. Have heard him say he owed my brother a great debt of gratitude; think I heard this remark in 1859. He told my brother that he intended to remember him in his will. My brother and wife and myself were present. Think this was at time of their last settlement. Money and labor items were talked over at this settlement, and it was then deceased said he intended to recompense my brother. Should think, as his sprees averaged, $25 or $30 for each spree would be a fair price for taking care of him. Lived with his brother all the time, but did not take care of ~~him~~ deceased

Defendant's Evidence.

Account books of deceased admitted in evidence, without proof, by agreement of parties.

23 Shows an account kept by deceased with Harris debit ~~of defendant's~~ credit, consisting of numerous items, commencing April 10th, 1848, and continuing until April 14th, 1849, at which time they were balanced and settled by the parties. Also an account, consisting of numerous items, commencing April 16th, 1849, and continuing until April 15th, 1850, at which time the parties again had an accounting and settlement. Also an account between the parties, consisting of numerous items, commencing April 15th, 1850, and continuing until April 14th, 1851, at which time the
24 parties again accounted and settled. Also an account commencing April 25th, 1851, and continuing until the 22d day of
25 April, 1852, when the parties again settled. Also an account commencing December 3d, 1852, and continuing until Jaunary 7th, 1854, when the parties again settled. Also an account commencing September 12th, 1854, and continuing until
26 October 7th, 1855, when the parties again settled. Also an account commencing January 8th, 1856, and continuing until April 25th, 1857, when the parties again settled, and the deceased made the following entry upon his account book with Harris, viz: "Settled and squared accounts, calling them even, as per bill gave Jno. Harris." At each of the above settlements the parties seem to have balanced their accounts.

27 Charles P. Balcomb, for defendant below, testified that for 18 or 20 months in 1857 and 1858 deceased was perfectly sober all

the time. Was well acquainted with habits of deceased. He always had money, and paid his bills contracted when on a spree promptly as soon as he got sober. A good man could be employed at La Salle to take care of deceased when on a spree for about $3,00 or $4,00 a day. Should think that would be enough.

James H. Abby, for defendant below, testified that he knew deceased; knew Harris also. Deceased was not taken to Harris' in his last sickness. Saw Harris two or three weeks after Lamb's death; told him Lamb had "*quit.*" Harris said he was sorry to hear it. Witness said they talked of taking Lamb out to Harris' house in his last sickness. Harris replied he was glad they did not; that he did not want to be bothered with him any more. Witness asked Harris if Lamb didn't pay him for his trouble. Harris replied yes, that Lamb always paid him, and paid him well; but the trouble was more than the pay.

No further evidence by either party.

The first instruction given by the Court for the plaintiff below is as follows, viz:

1. If the jury believe from the evidence that Harris rendered services to Lamb and at his request in his life-time, during the sicknesses of Lamb, from 1851 to 1859, and that such services were never included and accounted for in any settlement made between them, and never paid by said Lamb, then the jury ought to allow Harris such sum for said services, if proven, as the jury may believe, from the evidence, such services were worth, under all the circumstances of the case in evidence. This is the law as qualified by defendant's 4th instruction.

The second instruction for plaintiff below is as follows, viz:

2. If the jury believe from the evidence that Lamb, in his life-time and just previous to his death, had a conversation with the witness, Charles H. Gilman, and in such conversation admitted the kindness and labor of Harris and his wife to him, and that he intended to recompense Harris for such labor and attention, then such admission and promise by Lamb would render

him liable to Harris, even though the jury believe that they had a settlement of other matters of account between them, and if
27 the jury so believe they will find for Harris such an amount as they believe he is entitled to, under all the circumstances in evidence, not exceeding three hundred and twenty dollars. Given as qualified by defendant's 4th instruction.

Exceptions by defendant below to the giving of each of said instructions.

The first instruction given for defendant below is to the effect that if the jury believe that Harris and Lamb had any settlement or settlements of their accounts, they should not find in favor of Harris for any item or items of account prior to such settlement, except such as were omitted through inadvertance or mistake.

30 The second instruction for defendant below was to the effect that, if at the time of such settlement the claim which Harris now presents was well known to him and the settlement purported to be a full settlement, the law would presume that such claim was settled with the rest.

The third instruction asked for by defendant below the Court refused to give, and is in the words and figures following, viz:

3. If the jury believe from the evidence that the plaintiff is seeking to recover for separate and distinct charges for services rendered at intervals of several months, the one having no immediate connection with the other and not forming the subject matter of a book account, then the jury are instructed that (even if they find that the same has not been previously settled for) the plaintiff is not entitled to recover for any such services that
31 were rendered more than five years before the commencement of this suit.

The fourth instruction given for plaintiff below is to the effect that if the jury believe that Lamb settled with Harris and paid him his board during the times that Harris is now claiming for, and that there was no intention on the part of Harris to make any extra charge for care during sickness, but that he relied upon being made a legatee of Lamb, then Harris is now precluded from recovering.

Verdict of jury for plaintiff below, $283.

Motion by plaintiff in error for new [illegible] overruled.

Exceptions by plaintiff in error to ruling of Court.

32 Stipulation between the parties, agreeing to the bill of exceptions, and consenting to the filing of the same.

Certificate and seal of Clerk.

G. S. ELDRIDGE, *for Plaintiff in Error.*
E. F. BULL, *In Person.*

Errors Assigned.

1. The verdict is against the law and evidence.

2. The Court erred in awarding execution against plaintiff in error.

3. The Court erred in overruling motion for new trial, and in rendering judgment for plaintiff below.

4. The Court erred in giving improper instructions to the jury for the plaintiff below, and in refusing to give proper instructions for the defendant below.

5. The Court erred in awarding execution against plaintiff in error for costs, at the June term, A. D 1861.

G. S. ELDRIDGE, and
E. F. BULL,
For Plaintiff in Error.

111 No. 213

E. F. Bull. admr

vs

John Harris

~~Abstract~~

Filed May 7. 1

S Leland

Clk

SUPREME COURT OF ILLINOIS,

THIRD GRAND DIVISION,

APRIL TERM THEREOF, A. D. 1863.

E. FOLLETT BULL, Administrator of estate of ISAAC H. LAMB,
vs.
JOHN HARRIS.

Error to La Salle County.

PLAINTIFF'S POINTS AND AUTHORITIES.

I.

THE Court erred in awarding execution against the plaintiff in error for costs, at the June term, A. D. 1861; and for amount of judgment and costs, at February term, 1862. The judgment should have been that the same be paid in due course of administration. This question has fr e quently been so decided by this Court.

Greenwood *v.* Spiller, 2 Scam. 504.
Gibbons *v.* Johnson, 3 Scam. 63.
McDowell *v.* Wight, 4 Scam. 403.
Judy *v.* Kelly, 11 Ill. 217.

II.

The 3d instruction asked by defendant below was clearly the law, and it was error for the Court to refuse it. It was clearly proven on the trial that the claim presented by Harris against the estate of Lamb, if it existed at all, was not the subject matter of a mutual account, and had

never entered into the accounts of the parties; were rendered at intervals of several months apart, as long a time as two years intervening in one instance; and hence of all such portions of such claim as accrued prior to five years before the commencement of the suit were barred by the Statute of Limitations.

Kimball *v.* Brown, 7 Wend. 322.
Coats *v.* Harris, Bull. N. P. 149.
Trimble *v.* Strocker, 4 M'Cord (S. C.) 214.
Angell on Limitations, 135, 136.

And it was the duty of the plaintiff in error to interpose the statute.

McCoy *v.* Morrow, 18 Ill. 519.

And these proceedings having been commenced in the Probate Court, the pleadings are oral; and there is no necessity of a written plea setting up the Statute.

2. The first instruction given for plaintiff below is erroneous for the same reason that the 1st instruction asked for by defendant is the law. The said 3d instruction virtually ignored the Statute of Limitations, is based upon a state of facts showing a want of mutuality of accounts, consisting of separate and distinct claims, arising at long intervals. Such are the facts as shown by the testimony upon which the instruction is based, and such a state of facts is contemplated by the instruction.

3. The 2d instruction given for plaintiff is clearly erroneous. The Court will see, by reference to Gilman's testimony, (found on page 3 of Abstract,) upon which it is founded, that Lamb merely expressed his gratitude for Harris' kindness, and expressed a determination to remember him in his will. The same idea is conveyed by other witnesses. From such an admission no liability or promise could be inferred, and the instruction was calculated to mislead the jury.

III.

The verdict of the jury was not only against the weight of evidence, but they seem to have paid no regard to the evidence or to the instructions of the Court. Neither the law nor the evidence can sustain that verdict. The nature of the claim shows that it must have been known to the parties at the time of their various settlements,—as well known then as now; and evidently, judging from the appearance of those accounts, every matter of dealing between the parties was settled. (The

accounts will be found in full on pp. 23, 24, 25, and 26 of Record.) Numerous items for board are there settled for, and no doubt can exist in the mind of any one but what that board included the very time covered by this claim. It was apparantly all settled to the satisfaction of each of the parties; but for the reason that Lamb was grateful to Harris for kindnesses rendered, and said he intended to remember him in his will, the jury seem to have taken it for granted that he *ought* to have made a will, and, as he failed to do so, *they* undertook to do it for him. The testimony of Cornelius Harris, the brother of plaintiff below, shows satisfactorily enough, (see pages 20 & 21 of Record) that this claim was all settled as far as any legal liability on the part of Lamb was concerned. Harris had no right to expect more than he received, except as a legatee of Lamb. Again the testimony of Abby (page 27 of Record) shows conclusively that Harris was paid, and well paid, for all his services. The character and nature of the man prompted him to discharge all legal and moral liabilities that rested on him. It was utterly impossible for the jury to find their verdict without totally disregarding the evidence, and for that reason the judgment ought to be reversed.

Vol. 1, Graham & Waterman on New Trials, 361.
do do 367.
Vol. 3, do do 1204–8.

There was also a total disregard, by the jury, of the law, and for that reason the verdict ought to be set aside.

3d Vol. Graham & Waterman on new trials, 1180.

IV.

For the reasons stated above the Court below ought to have set aside the verdict in this case and granted a new trial.

G. S. ELDRIDGE,
E. F. BULL,
For Plaintiff in Error.

213

Bull
as
Harris

Plaintiff Points
Authorities

Filed May 14, 1863
J. Sloane
Clk

Supreme Court of Illinois.

THIRD GRAND DIVISION.

APRIL TERM, A. D. 1863.

E. FOLLETT BULL, ADMINISTRATOR OF THE ESTATE OF ISAAC H. LAMB, DEC'D.
PLAINTIFF IN ERROR.

vs.

JOHN HARRIS,
DEFENDANT IN ERROR.

} ERROR TO LASALLE COUNTY CIRCUIT COURT.

1st. This cause has been tried three times in the courts below, and three successive verdicts rendered in favor of defendant in error, and each time resulting in increased damages in his favor.

Admitting, for the sake of the argument, that there are some slight errors it does not necessarily follow that the judgment will be reversed.

No ~~more~~ more frivolous errors will avail plaintiff in error, even if they exist in the record. Some one fatal error must exist, which will naturally work injustice to the party, before the court will set aside the verdict of twenty-four sworn jurors, and the verdict of the Judge of County Court, who, also, tried the cause and rendered a verdict for defendant in error.

See Barry v. *Goff*, 1*st Ohio*, 304.
Hinton v. *McVeal*, 5*th Ham.*, 509.
Maddox v. *Jackson*, *Munf.*, 462.

It is said by counsel that the court erred in rendering the judgment in manner and form as shown by the record. Admitted, what then? Why this court will change the judgment, putting it in a proper form.

The witness, Gilman, is made to say, by the counsel for plaintiff in error, that in a conversation he had with Lamb, a short time before his death, that he (Lamb) intended to remember defendant in error in his will. This is not true. The language of Gilman is that Lamb said, "Defendant in error had been kind to him, and he intended to pay him well for his trouble. See the testimony of witness, Gilman.

It is very gravely claimed by counsel that the verdict of the jury was against the weight of evidence. Well, suppose it is? It is a well settled rule of law, that it is not sufficient cause for granting a new trial, that the appellate court is not satisfied with the verdict, or that upon a view of the testimony, the court would have rendered a different verdict, for if this doctrine were to obtain, the right of trial by jury, would be a farce, and the sooner dispensed with the better, for all parties upon this point.

See Toustal v. *Beshony*, 2d *A.*, 19 *Marsh.*, 521.
Owing v. *Gray*, 2*d A.*, 19 *Marsh.*, 520.
Johnson v. *Blackman*, 11 *Conn.*, 342.

The court will never set aside a verdict, merely because they might, upon the examination of the evidence, have arrived at a result different from that found by the jury.

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Burr v. *Shanks*, 5*th Leigh.*, 598.
16*th Ill.*, 66.

The conviction must must be strong on the minds of the court that the jury have fallen into some fatal error in regard to the nature and force of the evidence, before they will interfere and grant a new trial.

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A verdict will not be set aside because founded on slight evidence.

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If a verdict is against the mere preponderance of evidence, it will not warrant the court in reversing the judgment.

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A verdict of an inferior court (where there has been two verdicts) will not be reversed where there is any evidence to support it.

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Dodge v. *Brittain*, 1 *Meigs*, 84.

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Leigh v. *Hodges*, 3 *Scam.*, 15.
Gillett v. *Sweat*, 1*st Gilman*, 475.
King v. *Hill*, 2 *Tayl.*, 211.
Carson v, *Allen*, 6*th Dana.*, 395.

We are satisfied the court will not give a new trial in this case, for the reason that there is no well settled error, and that real substantial justice has been done by the three successive verdicts below, for defendant in error.

GRAY, AVERY & BUSHNELL,
For Defendant in Error.

111 213

E. J. Bull admr
vs
Jno. Heard.

Brief and argument
for Def. in error

Filed May 16. 1863
J. Lelaud
Clk

Gray Storey & Brahan
Def attys

State of Illinois } ss Pleas before the Honorable
La Salle County } Madison E. Hollister the Judge
of the Ninth Judicial District of the State of Illinois
and the Presiding Judge of the La Salle County Cir-
cuit court, in said State at a term of said Court.
Commenced and held at the Court House in Ottawa
in said County and State on the Second Monday
in the month of June, the same being the Tenth
day of June in the year of our Lord one thousand
Eight hundred and Sixty one, and of the Indepen-
dence of the United States of America the Eighty
fourth.

Present The Honorable Madison E. Hollister
Presiding Judge
Absalom B. Moore Clerk
David P. Jones States attorney
Eri L. Waterman Sheriff

Be it remembered that on the 27th day of May 1861
a certain transcript was filed in the office of the
Clerk of the Circuit Court [illegible] County in
the words and figures following, to wit;

"State of Illinois }
La Salle County } ss Record of the Proceedings
Orders, Judgments and Decrees
Held and taken, in and before the County Court
of the County of La Salle and State of Illinois

at a regular term of said Court, commenced and held at the Court House in Ottawa in said County, on the Third Monday, (being the Eighteenth day) of February in the year of our Lord One Thousand Eight hundred and Sixty one.

Court met pursuant to law.

Present Hon. John C. Champlin Judge,
Philo Lindley Clerk
Eri L. Waterman Sheriff

Be, it remembered that heretofore to wit, on the 18th day of February A.D. 1861. one of the days of said February Term 1861. of said Court certain proceedings in the Matter of the Estate of Isaac N. Lamb deceased were had and entered of record in said Court, in the words and figures following. to wit,

"In the matter of the estate of Isaac N. Lamb deceased } Proof of Notice and Contin,

This day appeared E. Follett Bull administrator of the estate of said deceased, and produced proof of the publication and posting of notices according to the Statute, notifying all persons interested in said Estate that said administrator would attend before this court on this day, when and where all persons having claims against said estate are required to appear and present and file the same for adjustment.

3

And John Harris appeared and presented and filed his claim in writing, whereupon on application of said administrator, it is ordered that the hearing in relation to the same be continued until the Third Monday in March A. D. 1861,

And afterwards to wit, on the Third Monday (being the 18th day) of ~~February~~ March A D 1861, one of the days of the March Term 1861 of said County Court, certain further proceedings in said matter were had and entered of record in said Court in the words and figures following to wit;

In the matter of the Estate } Allowance of Harris
of Isaac N. Lamb deceased } Claim - appeal

Now on this day to which day the hearing in relation to the claim of John Harris was continued, again appeared E. Follett Bull, administrator of said Estate, and said John Harris also appeared by Bushnell his attorney, and after hearing the proofs and allegations relative to said claim it is ordered adjudged and decreed as follows.

That John Harris is a creditor of said Estate and that there is due him Twenty five dollars	Nature	Class	Amt allowed
	a/c	4	$25.00

And thereupon said John Harris prays an appeal to the Circuit Court of La Salle County Illinois, which is allowed upon his entering into

an appeal bond in the sum of One hundred dollars with Cornelius Harris as security. And this day John Harris filed the required bond.

State of Illinois }
LaSalle County } ss I Philo Lindley Clerk of the County Court in and for said County hereby certify the above and foregoing to be a true and complete Transcript of the record of proceedings in said Court in relation to the claim of John Harris against the estate of Isaac N. Lamb deceased, as the same appear of record in my office, and that the papers transmitted herewith, marked respectively "A" and "B." and "C" are all the papers on file in my office relative to said claim.

Witness my hand and the seal of said Court at Ottawa the 27th day of May A.D 1861.

Philo Lindley Clerk
Frank J. Crawford Deputy "

Be it further remembered that on the said 27th day of May 1861, there was also filed in the office of the Clerk of the Circuit Court an appeal bond in the words & figures following to wit: (Paper "C")

"Know all men by these presents, That we John Harris and Cornelius Harris are held and firmly bound unto E. Follett Bull administratrix of estate of Isaac N. Lamb dec, in the penal sum of One hundred Dollars, lawful

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money of the United States, for the payment of which, well and truly to be made, we bind ourselves, our heirs and administrators, jointly, severally and firmly by these presents. Witness our hands and seals this 18th day of March A. D. 1861

The condition of the above Obligation is such, Whereas, the said John Harris did on the 18th day of March 1861, before County Court in and for the County of La Salle recover a judgment against the above named Estate of Isaac N. Lamb deceased for the Sum of Twenty five Dollars and costs of Suit, from which said judgment the Said John Harris has taken an appeal to the Circuit Court of the County of La Salle aforesaid, and State of Illinois.

Now if the said John Harris shall prosecute his appeal with effect, and shall pay whatever judgment may be rendered by the said Circuit court upon dismissal or trial of said appeal, then the above obligation to be void; Otherwise to remain in full force and effect.

Ack'd in presence of
J. C. Champlin

John Harris (Seal)
Thomas Harris (Seal)

On the back of said bond is the following, to wit

"Taken, filed and approved by me this 18th day of March A. D. 1861

P. Lindley Clerk
Crawford "

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Be it also remembered That on the 8th day of June 1861, a summons issued out of and under the Seal of said Court in the words and figures following to wit;

"State of Illinois } The People of the State of Illinois
La Salle County } ss To the Sheriff of said County Greeting

We command you to Summon E. Follett Bull administrator of the estate of Isaac N. Lamb dec'd if to be found in your county, personally to be and appear before the Circuit Court of said County on the first day of the next term thereof, to be holden at the Court House in Ottawa, on the Tenth (10) day of June next to defend a certain suit, which John H. Harris instituted against him the said E. Follett Bull administrator of the estate of Isaac N. Lamb dec'd and recovered judgment before the County Court in & for said LaSalle County on the 18th day of March 1861, for the sum of Twenty five dollars beside costs, from which said judgment said John Harris has taken an appeal to the Circuit Court of said County, and further to do and perform whatever the said Court may then and there consider in the premises And have you then and there this writ.

Witness Abram B. Mead Clerk of said Court, and the Seal of said Court, at Ottawa, this 27th day of May A.D 1861.

A. B. Mead Clerk

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which said Summons was, on the 8th day of June 1861, returned by the Sheriff of said County, with an endorsement thereon as to service thereof, in the words and figures following, to wit; " Served by reading this writ to E. Follett Bull this 21st day of May 1861

Sheff's fees = Ser & Rt, 50

15. miles .75

$1.25 E. L. Waterman Sheff

Per A. E. Gross Dep'y "

On Wednesday, November 20th A.D. 1861, the same being one of the days of the November Term of said Court for the year 1861, certain proceedings were had in said cause, which are set out in an order of Court in the words & figures following viz:

"John Harris

162 vs Appeal

E. Follett Bull

admr of Estate of Isaac N. Lamb dec'd "

This day comes the plaintiff by Gray, Avery & Bushnell his attorneys and the defendant in person and thereupon come the following jurors of a jury to wit; David Bullock I. N. Morrill, Roswell Lyman, Thomas Hoadley Nathaniel Furbush, Alexander Munger, C. B. Palmer, James Reed, A. C. Harrington Joseph Stout John Patterson and Wm Haskell who are

duly elected tried and Sworn, to try the matters in issue
6 & a true verdict render according to the evidence.

On motion of the Plaintiff by his attorneys it is ordered by the Court that he have leave to substitute & file a new bond herein, thereby releasing Cornelius Harris from the original bond.

And now after hearing a part of the testimony the further hearing of this cause is postponed until the coming in of the court tomorrow morning. "

On Thursday Nov 21st 1861, being one of the days of the November Term of Said Court for said year, a certain order was Entered of record in Said Cause in the words and figures following to wit;

"

John Harris
for vs
E. Follett Ball
Admr of Estate of Isaac N. Lamb dec'd
} Appeal

This day again come the parties hereto together with the jury Sworn herein and after hearing the balance of the testimony and the argument of Counsel the jury retire to Consider of their Verdict, and after due deliberation thereon had they return into court the following Verdict to wit; "We the jury find the issues joined in favor of the Plaintiff and

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assess his damages at the sum of two hundred and fifty dollars."

Defendant now moves the court for a new trial."

On the 22nd of December and on the 23rd of December (the filing being blurred) the following was filed on behalf of the defendant an affidavit in the words and figures following to wit;

"State of Illinois }ss
La Salle County }

Circuit Court

for said County November Term A.D. 1861,

John Harris
vs
E. Follett Bull administrator } Appeal from probate court.
of the estate of Isaac N. Lamb deceased.

E. Follett Bull

the above named defendant, administrator of the estate of Isaac N. Lamb deceased, being first duly sworn according to law on oath says that since the trial of said cause and the rendition of the verdict in said cause has come to his knowledge that shows as affiant believes conclusively that said plaintiff received payment in full during the life-time of said Lamb for all services rendered by him for said Lamb deceased, and for which he brought his said suit - affiant further states that he knew nothing personally about the business transactions between

said deceased and said Plaintiff and that he used every means in his power to get testimony to disprove said Plaintiffs claim, That he examined the books of said deceased carefully, and he conversed with persons intimate with said deceased, and that although he believes from the habit of said deceased in his life time that said claim of said Plaintiff was fully satisfied still affiant was unable to bring proof thereof at the time of the trial of said cause, for the reason that he knew of no one by whom he could prove the payment of said claim ~

Affiant further States that he ascertained for the first time on the 25th instant that he could make proof of the payment of said claim of said Plaintiff and affiant believes that he can now prove the same clearly and conclusively ~

Affiant further State that he believes he can prove by various witnesses that it was the custom of said Land deed, after the Sheets mentioned by witness on the trial of said cause to settle up with every one that he became indebted to at such time As that he can prove as he verily believes by James Abby, a resident of the city of La Salle in said county, that said Pl[illegible] fully paid and Satisfied for all services [illegible] by him for said Land deceased, during [illegible] or at other times, by the said deceased during his lifetime and that he ascertained for the first time that he could make that proof on the 25th inst.

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For greater certainty affiant refers to the affidavit of James Abby herewith filed.

Subscribed & sworn to before me this 26th day November 1861 } E. Follett Bull

John Fornshal Police Magistrate

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Here follows a copy of the affidavit of James Abby referred to above, the same being attached to and filed with the foregoing affidavit of E. F. Bull, viz:

"State of Illinois } ss James Abby being first duly
LaSalle County } sworn according to law on oath
says that he was acquainted with Isaac N. Lamb dec'd and is acquainted with John Harris, plaintiff in said suit —
affiant further states that shortly after the death of said Lamb he had a conversation with said Harris — in which conversation said Harris said he was sorry to hear that Lamb was dead, that he was glad that Lamb was not brought out to his house during his last sickness, that although Lamb always paid him and paid him well for every thing he done for him, still he had made up his mind not to be bothered with him any more as the pay was no object considering the trouble — that he (Harris) was well satisfied however with what said Lamb had paid him for his trouble &c

Further affiant saith not. J. N. Abbey.

Subscribed & sworn to before me this 26th day Nov 1861

John Fornshal

Police Magistrate."

On Monday, December 2d A.D. 1861, being one of the days of the November Term of said Court for said Year, an order was entered of record in said Cause in the words and figures following to wit;

"John Harris

162 vs Appeal

E. Follett Bullard

of Estate of Isaac N. Lamb dec'd

This day again come the parties hereto, and thereupon come on to be heard the motion for a new trial herein, and after argument of Counsel it is ordered by the Court that the verdict rendered in this cause be set aside, that a new trial be granted and that the defendant pay the cost of this term to be taxed.

It is therefore considered by the Court that the Plaintiff have and recover of the defendant his costs and charges by him, at this present term of this Court, herein expended and that he have execution therefor."

State of Illinois } Pleas before the Honorable
LaSalle County } ss Madison E. Hollister the Judge
of the Ninth Judicial District

of the State of Illinois and the Presiding Judge of the La Salle County Circuit Court, in Said State at a term of said Court begun and Held at the Court House in Ottawa in said County and State on the first Monday in the month of February the Same being the Third day of February in the year of Our Lord one thousand Eight hundred and Sixty two, and of the Independence of the United States of America the Eighty fifth

Present The Honorable Meadows E. Hollister
Presiding Judge

Absalom B. Moore Clerk
David P. Jones States Attorney
Eri L. Waterman Sheriff

Be it Remembered that on Friday, February 21st 1862, being one of the days of the February Term of Said Circuit Court for said year, certain Proceedings were had in said Cause and the same entered of record, in the words & figures following to wit:

"John Norris
106 vs Appeal
E. Follett Bull
admr of the Estate of Isaac N. Saunt dec'd

This day the Plaintiff comes by Gray, Avery & Bushnell his attorneys and the defendant

in his own Justices Session, and thereupon come the following jurors of a jury to wit; James Spencer Wm Thatcher, Lyman Waterman, E. Richmond, William Cummings, John Boyle, E. H. Raymond George B. Macy, Richard Harden, James Chase, S. J. Signor and J. W. Drake who are duly elected, tried and sworn, to well and truly try the issues herein, and a true verdict render according to the evidence, and after hearing a part of the testimony, the further hearing of this cause is postponed until the coming in of the court, tomorrow morning."

On Saturday, Feby 22, 1862, being one of the days of Feby Term of said Court, for said year, an order was entered of record in said cause, in the words & figures following, to wit;

"John Harris
vs
E. Follett Bull admr
} appeal

of the estate of Isaac H. Saint decd

This day again come the parties hereto, together with the jury sworn herein, and after hearing the balance of the testimony, and the arguments of counsel, the jury retire to consider of their verdict, and after due deliberation thereon had they return into open court the following verdict to wit; "we the jury find the issues joined in favor of the plaintiff, and assess his damages at the sum of two hundred and Eighty three dollars &

15 The defendant now moves the Court for a new trial herein."

On Monday, March [illegible] being one of the days of the February [illegible] Court for said year a further and [illegible] was entered of Record in Said Cause in the words and figures following, to wit;

John Harris
vs
E. Follett Bull
admr of estate of Isaac N. Bull dec'd

Appeal

It is ordered by the Court that the defendant's motion for a new trial be overruled.

It is therefore considered by the Court that the plaintiff have and recover of the defendant the defendant the sum of two hundred and Eighty three dollars for his damages, also his costs and Charges by him herein, as well as in the court below expended and that he have execution therefor.

On motion of the defendant it is ordered ~~by~~ that he ~~the Court~~ have ten days from and after this date to prepare, tender and file a bill of exceptions herein."

Be it remembered that there was filed in the foregoing Entitled cause, a certain bill of exceptions, the same having been filed April 20. 1863 by consent of parties as of March 8th 1862 and within the ten days specified in the preceding order of court) in the words and figures following to wit;

"State of Illinois } Circuit Court for said County.
La Salle County } Febuary Term A.D. 1862

John Harris
"
E. Follett Ball } appeal
Administrator of the estate of Isaac N. Lamb deceased

The cause coming on to be heard for trial, the — day of February A.D. 1862. the Same being one of the days of said Term of said Court before the Judge of said Court and a jury, the plaintiff to maintain the issues on his part called as a witness Norman McTarnen, who being duly sworn testified in substance as follows, that he resided at La Salle for the last twenty years that he was acquainted with deceased in his lifetime, and up to the time of his death, Knew by the acknowledgments of Lamb, the deceased was taken out to the House of the plaintiff, when the

deceased was sick and on a Spree, deceased said he had been taken out there from Seven to ten times, that he told me of. Lamb said they took the best kind of care of him. Sometimes on those Sprees he would regain Consciousness attention, at other times not, — He would remain at Harris' two or three days a week or longer, In extreme cases when he was affected with the tremens, I should think ten dollars a day would be about right for taking care of him — I know from Lamb's acknowledgment, that he was taken to Harris in 1851 and from that time to 1859 — On his Cross Examination the witness Stated that all he knew about the matter was from Lambs own acknowledgment, — that he had no means of determining the number of times he was taken out to Plaintiffs between 1851 & 1859. The Plaintiff further to maintain the issues on his part called as a witness one John Gray, who being duly Sworn testified in substance as follows, — That he had lived in La Salle Since 1849, that he was acquainted with the deceased and with Harris the plaintiff — That deceased had from three to four drunken Sprees a year, except for about two years in 1856 & 1857, or in 1857 and 1858, that when he had such Sprees he was usually very troublesome using obscene language. He was usually taken out to Harris' house and would be gone from there to five days, and after his

drunken Spree would be very sick. it was worth ten dollars a day to take care of him when he was the worst. One his cross examination witness Stated that deceased always had money and was always a very prompt man in the payment of his debts —

The plaintiff further to maintain the issue on his part called as a witness one Steven Finch who being duly sworn testified in substance as follows. That he knew the plaintiff and knew the deceased in his lifetime, have seen deceased at the plaintiffs house, three times when he was on a Spree, have known of his being there at other times, he acted like any man on a Spree, was troublesome, Harris the plff. his wife and brother waited on the deceased — at times he required the very best of care at other times not. Sometimes he would be in one room and Sometimes in another, just as he desired to, oftimes occupied parlor & parlor bed room — at times he was very filthy, vomited at the table &c. I knew of his going to bed at one time with his boots on, [illegible] deceased was at the plaintiffs a week — I have known of his being there at three different times and the deceased told me at other times that he was there — should think some of the time it was worth ten dollars a day to take care of him — when he was getting well he was like any other sick man, and

required the same attention and no more than an ordinary sick man. Lamb had good care at the plaintiffs, sometimes Mr Harris and wife set up with him — I had a talk with Lamb about his drinking & he appeared to be very much affected - that he intended Harris should be [illegible] intended to leave him a good [illegible] property. Said he did'nt intend his relatives should have a damned cent of his property. On his cross-examination the witness Stated, that he did'nt recollect whether he told this conversation to Harris or not - It was worth more to take care of Lamb when he had the tremens than at other times, dont know of his having the tremens more than once.

The plaintiff further to maintain the issues on his part introduced as a witness one Charles N. Gilman who being duly Sworn testified in substance as follows, that he knew Lamb in his life time, had been acquainted & was very intimate with him from 1852 down to time of his death knew him in Jail [illegible] J. Saw him a short time before his death, Spent an evening with him on my way home from Ottawa, ~~his last sickness~~ This might have been a month or so before his death — He told me that Harris and wife had been kind to him - that if it had not been for them he would have been dead

long ago. That when he was on his Sprees they would send him out to Pfffs, and Pfff and wife would nurse him up - He said he intended that they should be compensated when he died, that he owed them a deep debt of gratitude. I had a talk with him in the Spring of 1859 his feelings of gratitude seemed to be, more particularly towards the Pfff wife I have an indistinct recollection that he said he did'nt intend to leave his brothers any of his property, my recollection is that he intended to make a will and leave a greater portion of his property to Mr & Mrs Harris

Dont know of his making any will — The Plaintiff further to maintain the issues on his part produced as a witness one Cornelius Harris who being duly Sworn testifies in substance as follows viz; That he is a brother of the pltffs had lived with his brother about fifteen years - Knew the deceased — He had from four to Six Sprees every year with the exception of One year and a half or two years in 1856 & 1857 or 1857 & 1858, When he was Sober having no Sprees whatever — [illegible] would last Sometimes, but a day or two and [illegible] a week or two. I never Knew him [illegible] but what he could walk Straight - he was very troublesome when he had his Sprees, after he was over his Sprees he would be quite prostrate, he would need more care than an ordinary sick man

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because he was quite delirious - He was so prostrated at one time for two or three days, that he could not walk without assistance - my brother & his wife was also a good deal nights with Lamb - I have heard him, I have heard Lamb say that he owed my brother and wife a great debt of gratitude and that he intended to recompense them for [illegible] I heard this remark in July A.D. 1[illegible] my Brother that he intended to remember them in his will. my brother & his wife and myself were present, think this was at the time of their last Settlement. It was only labor & money items talked over at this Settlement & at this very time Lamb said he intended to recompense my brother - I did not take care of Lamb any myself - Should think as his Sprees averaged that twenty five or thirty dollars each time would be about right for taking care of Lamb, and thereupon the plaintiff rested his case and offered no further testimony to support the issues on his part.

Thereupon the Defendant to maintain the issues on his part offered in evidence the account books of the deceased which were admitted in evidence by consent of the plaintiff without proof.

(Here follow copies of pages numbered 1 to 9 inclusive of the account books referred to above).

23 John Harris

		Dr	Cr
848 Apr 10	To cash lent	4.00	
" " "	" Lot of hay	2.00	
" " 12	" 2 bushels potatoes	.25	
" May "	" 1 oil barrel @ 3/	38	
" " "	" 4 days planting 6/	3.00	
May	By 2 1/2 ds planting corn @ 6/		1.69
June —	" 2 1/2 " mill & shedd C/		1.68
" —	" board & G.L		2.00
Aug —	To 1/2 ds work	.37	
Sept 9	" Cash	1.00	
" 16	" 172 lbs pork @ 2 1/2 c	4.30	
Nov 10	" 1 hog 16/	2.00	
1849 Jany	" 1 tub 4/ 1 cuck 3/	.87	
" " 6	" cash	3.00	
" " "	" 1/2 ps stove pipe	.50	
" Apr 14.	" note gave up	25.75	
" " "	By 52 wks board @ 6/		39.00
" " "	" cash to new a/c		3.05
" " "	Settled.	47.42	47.42
" " "	To brot from old a/c	3.05	
" " 16	" disc. with Goddard	14.88	
May 13	" 11 bushels wheat @ 4/	5.50	
" "	" 1/2 bu beet seed	.50	
" "	" 1/2 for tobacco	13	
" "	" 4 days planting @ 6/	3.00	
" 25	By Cash per 1/4. seed		50
July	To cash for Bundle	4.00	
"	" 4 ds harvesting	5.00	
Aug	" 2 1/2 ds Shelling 10 c	25	
"	" 2 days work @ 6/	1.50	
"	" Cash in July Bd B.J. for washing	.15	
Sept 5	By hauling wheat 1/2 L.	1.00	1.00
" 22	To 7 hogs & 7 pigs	8.00	
Oct 2	By hauling wheat 3/4 L.		.75
Nov 24.	To Cash lent	10.00	
Dec	To 1 days killing hogs	75	

was more than the pay.

(1849)
24

Dec 4	By work on fence			2.10
" "	" Cash for Hogs			8.00
1850 Jany	" 1½ ds Chopping			1.13
Feby	" hauling 10 loads to Pen			10.00
Mar	" " Rails			2.00
a/s 4th	" " hay			2.00
Apl	To 6 lbs [illegible]		.38	
" 15.	By board 52 weeks			39.00
Jany 14	To 1 [illegible]		20	
Apr 15	To 1 Clock	3/9	2.50	
	To carried to new account.		7.07	
	Settled		66.48	66 48
1850 Apr	To 6 lb nails	c	30	
" " 15	By bot from old ac			7.07
May 15	To 4½ ds planting	6/p	3.38	
May	By Breaking 2½ acres	@ 14/p		4.38
June 24	To cash of S. Hardy		2.37	
July 11	" 6 ds in wheat	9/1	6.75	
" "	" Cash for wallace		5.00	
July	By hauling hay			1.50
" 25	To 3½ ds in oats	9/.	3.94	
" 26	" Cash		5.00	
Aug 28	" ds		3.00	
Sept 1	" 2⅓ ds Thrashing	6/p	1.75	
Dec 16	" 3 " husking @	6/p	2.25	
1851 Jany 1.	" ½ " Killing hogs		.38	
Apl 14.	" part of Sheller ⅓		3.25	
" "	" 1 grind Stone		1.75	
" "	By 52 w. board			44.00
" "	To Cash to bal'c,		17.83	
	(Settled)		56 95	56.95
1851 Apl 25.	To 2 ds Cutting Stocks		1.50	
	To 2½ planting	6/.	1.88	
May 9.	By 3½ wks to date			3.50
Oct 25	To 4 days to date @	6/p	3.00	
Nov 1.	To 2 ds 6/p		1.50	
8	To 1/4 + 3/4 ds 6/p		75	
Nov 22	To 4¼ ds husking @	6/p	3.19	
29	To 3½ " " @	6/p	2.62	
Dec 5	" 4 " " @	6/p	3.00	

was more than the pay.

25

1852 Jany 2.	To 3½ on Stable	a 6/	2.63	
Feby 1.	To 4½ ds lathing	a 6/	3.37	
" 7	" 4½ " on well	6/	3.38	
" 21	To 2 " " "	4/	1.00	
" "	To 3 " " "	6/	2.25	
" 28	To ¾ " " Corn &c		.56	
" "	To 3 " Shelg corn		2.25	
Mar 7	To ½ dy on BK Stable		38	
" 13	To 1 " celler way	6/	75	
" 27	To 3 " BH & C.D.	6/	2.25	
Apr 3.	To 3¾ " on fence	6/	2.81	
Apr 10	To 2 " lathing	6/	1.50	
" 17	To 5 " on fence	6/	3.75	
" 21	To 2½ " " "	6/	1.88	
" 22	By 26½ weeks board			21.50
" "	By note to ball			16.00
	Disct			20
	Settled		$ 46 20	$ 46 20
Dec 3.	To 8½ ds husking	6/	6.38	
" 13	By 3 wks board	8/		3.00
1853. May	To 3½ ds planting	6/	2.62	
Dec 10.	To 15⅓ ds husking	6/	11.50	
	1½ ds painting	6/	1.12	
1854 Jany 7.	To cistern & Killing hogs		1.13	
" 24	By 12½ weeks board @ 8/			12.15
1855, Aug 30.	By Board to balle.			7.25
	Settled		$ 22 75	$ 22 75
1854 Sep 12	To 12 days work	8/	12.00	
" Oct 28	To 11 " "	8/	11.00	
Nov 4	To 3½ " "		3.50	
Dec 9	To 1½ " "		1.50	
" "	To 1 days husking		1.00	
" 19	" ½ " Chopping		50	
" "	" 2½ " "		2.00	
Sept 27	By 4 2/7 w board			

was more than the bal.

November 4	By 3 3/7 W board to date		
Dec 28	" 5 1/2 " " " "		
	13 "		£ 20. 00
Oct 7/55	By 33 ds board & date		9. 50
		32. 50	29. 50
	Carried to new ac.	£ 2. 00	
1855 Jan 8	To 38 1/2 ds work to date		
	1/2 d butchering		
Mar 30.	6 1/2 ds husking		
	45 1/2 ds @ 6/p	£ 34. 12	
	Ball old a/c	2. 00	
Jany 8.	By 10 W 2 ds board to date		
Mar. 4	By 5 W 1 " " "		
" 20	8 ds		
" 30	By 10 2/3 D		
Apr 18	1 1/3		
	18 W 1 day		
	7 " 3 1/2 out at this work.		
	10 W 4 1/2 @ £2.		£ 21 28
		£ 36 12	£ 21 28
May 1. 1856	Ball	£ 14. 84	
1857. Jan 9.	3 6/7 work 6d £2. "		£ 7 1
	Bal due 1st Jany 57	£ 7. 13	
Mar 23 1857	3 ds board @		87
" " "	Bal	6. 26	
Mar 23 "	Box, crow & hauling		6. 26
1857. Apl 25.	Settled & squared a/cs calling them Even as per bill gave Mr Harris.		

I was more than the pay.

The defendant further to maintain the issues on his part called as a witness one Charles Balcomb who being duly sworn testified in substance as follows viz; That he was acquainted with [illegible] had been for some years, lived in one of [illegible] out 1857 and 1858 for Eighteen or twenty m[illegible] perfectly sober, was acquainted with [illegible] prompt man- always had money [illegible] bills contracted whilst he was on sprees u[illegible] sober. A good man could be hired to take care [illegible] at La Salle when he was on a Spree for $3.00 or $4.00 per day, Should think that would be enough - [illegible] kept a Saloon - Lamb usually got his liquor when on [illegible] He was bound to have the liquor at [illegible] advised me to let him have it myself, and I would then know what he had.

Defendant further to maintain the issues on his part produced as a witness one James H. Abby who being duly Sworn testified in substance as follows viz; That he knew Lamb in his lifetime, knew Harris also, Lamb was not taken out Harris' in his last sickness - he saw Harris [illegible] after Lambs death - he remarks that Lamb had got [illegible] Harris said he was sorry to hear it - Witness [illegible] that they talked of taking Lamb out to Pfff's house during his last sickness - Pfff said he was glad they didn't that he did'nt want to be bothered with him any more, witness asked Pfff if Lamb did'nt pay him for his trouble and Pfff replied yes, that Lamb always paid him and paid him well, but the trouble was more than the pay.

Thereupon the defendant rested his case and no other or further testimony was offered or produced by either party on the trial of said cause — whereupon the court at the request of the plaintiff gave the following instructions to the jury on the part of the plaintiff viz;

(Instructions for Plaintiff.)

1. If the jury believe from the evidence that Harris rendered services to Lamb and at his request in his lifetime, during the sickness of Lamb from 1851 to 1859, and that such services were never included and accounted for in any settlement made between them and never paid by said Lamb, then the jury ought to allow Harris such sum for said services, if proven, as the jury may believe from the evidence, such services were worth, under all the circumstances of the case in evidence. This is the law as qualified by defts, 4th Instruction.

Given

2d If the jury believe from the evidence that Lamb in his life time and previous to his death, had a conversation with the witness Charles N. Gilman & in such such conversation acknowledged the Kindness & Love of Harris & his wife to him & that he intended to recompense Harris for such Labor & attention then such admission & promise by Lamb, would render him liable to Harris, even though the jury believe that they had a Settlement of other matters

Given as qualified by Defts 4th Instruction

of account between them & if the jury so believe they will find for Harris such an amount as they believe he is entitled to under all the circumstances in evidence, not exceeding three Hundred & twenty dollars. —"

To the giving of said instruction the said defendant by his counsel then and there excepted.

Upon the same evidence the court gave to the jury the following instructions viz;

1st If they believe from the evidence that Lamb dec'd, in his lifetime settled with the Plaintiff on the 25th of April A.D. 1857, or at any other time for all business transactions and dealings between him and the Plaintiff then the jury should not find in favor of the Plaintiff for any services rendered prior to said Settlement, and if the jury find from the evidence that a Settlement was had on said 25th of April or at any other time between the Plaintiff and said Lamb, dec'd, and that at the time of such Settlement no objections was raised by the Plaintiff to the State of the account as rendered by said deceased such fact would be strong presumptive evidence that all the dealings between the parties were settled at that time and would preclude the Plaintiff from selling up any claim for such dealings that existed prior to the

Verdict

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date of such settlement, unless some mistake is shown by the plaintiff to have been made in such Settlement or some item of account was omitted in said Settlement through inadvertance.

2nd If the jury find from the evidence that a Settlement was had between said plff and said deceased, on the 25th of April 1857, that purported to be a Settlement of all the dealings of said parties prior to that time, and that the subject matter of this suit was as well known to the plaintiff then as now, and that no objection was raised by him to such settlement then the jury have a right to take all these things into consideration in determining whether or not such settlement was a full, complete and final Settlement of all accounts and dealings between the parties of any kind and nature up to that date.

Given

3d If the jury believe from the evidence that the plaintiff is seeking to recover separate and distinct charges for services rendered at intervals of several months, that are having no immediate connection with the others and not forming the subject matter of a book account, then the jury are instructed that (even if they find that the same has not been previously settled for)

Refused

the Plaintiff is not Entitled to recover for any Such Services that were rendered more than five years before the Commencement of this suit—

4th If the jury believe from the evidence that Said deceased settled with Said Plaintiff and paid him for his board at that time, for which the Plaintiff is [illegible], and that at the time, there was no intention on the part of the Plaintiff to make any extra charge for care during Sickness, but hoped and relied on being made a legatee of said Lamb, and at the same time said hope he made no charge and intended to make none for such Care during Sickness and upon that reliance and hope made a Settlement with deced, then the Jury are instructed that said Plaintiff is now precluded from setting up charges for such services.

And the jury thereupon found the issues in favor of the Plff and assessed his damages at the Sum of Two hundred and Eighty three dollars. And the defendant then and there enterd a motion for a new trial which motion was then and there overruled by the Court, to which said ruling of the Court the defendant then and there excepted, and prays that this his bill of exceptions may be Signed and sealed and made a part of the record of said Court in said Cause which is accordingly done

Exd

Judge 2d J.D. Ills

We Hereby agree that the above is a correct Bill of exceptions of the testimony and instructions and rulings of the Court given to the jury and received in the above cause on the trial thereof and that the same may be filed as of the proper day and taken and considered as a part of the records in said cause.

Gray & Bushnell
Attys for Pltff Jno. Harris
E. F. Bull admr &c Deft.

State of Illinois }
La Salle [illegible] } ss I Absalom B. Moore
Clerk of the Circuit Court
in and for said County do hereby certify that
the foregoing is a true full and complete
copy of the files in the foregoing entitled Cause,
and of the record of proceedings therein had,
together with the bill of exceptions filed in
said Cause.

Witness my hand and the
Seal of said Court at Ottawa
this 21st day of April A.D. 1863

Absalom B. Moore Clerk
C. H. Hook Deputy

State of Illinois } ss. Third Grand Division in April
Supreme Court } Term A.D. 1863

E. Follett Bull, administrator of the estate of Isaac H. Lamb. Deceased

vs.

John Hann.

Error to LaSalle Co. Cir. Court

And now comes said Plaintiff in error and assigns the following causes for error on the above and foregoing record and for such errors prays that said judgment may be reversed viz:

1st. The verdict is against the law and the evidence

2nd. The court erred in awarding execution against the Plff. in error.

3rd. The court erred in overruling motion for new trial and in rendering judgment for Plff. below -

4th. The court erred in giving improper instructions to the jury for Plff. below and in refusing to give proper instructions for Defdt. below -

5th. The court erred in awarding execution against Plff. in error for costs at June Term 1861

E. F. Bull
Counsel for Plff. in error

And now comes defendant in Error and says that there is no Error nor manner of Error in said Record or Proceeding.

Gray Avery & Bushnell
for Deft in Error

111 213
E. Follett Bull. admr[e]c. Pltff. in Error
vs:
John Harris. Deft. in Error

Record and Assignment of Error

Filed April 23d 1863
L. Lil
Cl.

G. S. Eldridge for Pltff in Error
E. F. Bull In Person

Fees $7.00
Paid by E. F. Bull