

14299

No. _____

Supreme Court of Illinois

Fouke

vs.

Berger^N, Admr.

At a Supreme Court, begun and held at Mount
Vernon, on Monday the Eleventh day of November,
in the year of Our Lord One thousand eight hundred
and fifty, to wit: On Thursday the fourteenth
day of November, in the year of Our Lord One
thousand eight hundred and fifty.

Present, the Honorable James C. Deas, Chief Justice
" " John D. Catron Associate "
" " Symon Bramhall " "

William G. Goforth, Adm^r
of Curtis Hale, deceased

vs

Syman Adams

Errors to St. Clair County.

And now on this day comes into Court
William Martin, Attorney for Plaintiff, and suggests to
the Court the death of William G. Goforth, Administrator
of Curtis Hale, deceased, the Plaintiff in the above
certified Cause and further suggests that Philip
B. Truitt of St. Clair County Illinois has been duly
Appointed Administrator of the said Curtis Hale
deceased, in the place and stead of the said
William G. Goforth, deceased, and that the said
Philip B. Truitt has duly entered into bond as such
Administrator, as required by Law: And moves
the Court to substitute Philip B. Truitt Administrator
of Curtis Hale, deceased, as the plaintiff in this
Cause in the place & stead of the said William G.
Goforth, deceased, and that all the subsequent
proceedings herein may be had and done, in the
name of Philip B. Truitt, Administrator of Curtis
Hale, deceased, plaintiff in error against Syman
Adams defendant in error.

It is therefore ordered by the Court that Philip
B. Truitt, Administrator of Curtis Hale, deceased

be and he is hereby substituted plaintiff in the above
entitled cause in the place and stead of ~~Hill~~
The said William G. Goforth, deceased, and that
all subsequent proceedings herein be conducted
in the name of Philip B. Howles, Administrator of
Curtis Hale deceased, Plaintiff vs. Snyman Adams
Defendant.

At a Supreme Court, begun and held at
New Haven, on Monday the tenth day of
November, in the year of our Lord one
thousand eight hundred and fifty one, to wit:
On Tuesday the Eleventh day of November, in the
year of our Lord one thousand eight hundred
and fifty one.

Present, the Honorable Samuel A. East, Chief Justice
" " John D. Cotton Associate "
" " Snyman Trumbull " "

William G. Goforth
Administrator of
Curtis Hale
vs

Snyman Adams

vs Snyman Adams

And now on this day came the
Plaintiff by William Martin, and suggested the death
of Snyman Adams, and moves the Court that
Stephen Berger, Administrator must be substituted
in error in this cause.

At a Supreme Court, begun and held at
Monticello, on Monday the eighth day of
November, in the year of our Lord one thousand
eight hundred and fifty-two, to-wit: On Thursday
the Eleventh day of November, in the year of
our Lord one thousand eight hundred
and fifty-two -

Present, the Honorable Samuel A. Hunt, Chief Justice
" " John D. Eaton Associate " "
" " Simeon Hubbard " "

Philip B. Younk, Pub. Adm.,
of William G. Goforth, Deced.

Adolphus Berger, Adm. of
Simeon A. Hunt, Deced.

Emil. St. Clair.

And now on this day Cometh Adjourned to
error by David J. Baker his attorney, to whom this
Cause is continued till the next term of this
Court.

At a Supreme Court, begun and held at Monticello,
on Monday the fourteenth day of November, in the year
of our Lord one thousand eight hundred and fifty
three, to-wit: On Wednesday the sixteenth day of
November, in the year of our Lord one thousand
eight hundred and fifty three

Present, the Honorable Samuel A. Hunt, Chief Justice
" " John D. Eaton, Associate " "
" " Walter B. Hunt

Here there should be an order of
continuance, but no such order
appears of record. cks

At a Supreme Court, begun and held at
Mount Vernon, on Sunday the twentieth day
of November, in the year of our Lord one
thousand eight hundred and fifty-four
to-wit: On Thursday the sixteenth day of
November, in the year of our Lord one
thousand eight hundred and fifty-four.

Present, the Honorable Samuel S. May, Chief Justice

" " John Eaton Associate "

" " Walter B. Scott " "

P. B. Hooper, Pub. Adv. & C.

vs

Adolphus Berger Adm
of Syracuse Adams Ins.

} Errits Saint Clair

And now on this day, it is ordered by the
Court, that this cause be and the same is
hereby continued to the next term of this Court.

J. Noah Johnson, Clerk of the Supreme Court of the State of
Illinois, do hereby certify that the foregoing is a true copy of the
several orders of said Supreme Court, (as far as I have
been able to find) in the above entitled cause, of record in
my office.

In testimony whereof, I have hereunto set my hand
and affixed the seal of the said Supreme Court, at
Mount Vernon, this 26th day of December, in the
year of our Lord one thousand eight hundred and
fifty-four. Noah Johnson C. S. C.

Supreme Court, of Illinois

Philip B. Foulke Public administrator
of St Clair County, & Administrator
of Curtis Hale, deceased

vs

Adolphus Bergen, Administrator
of Lyman Adams, deceased

Error to
St Clair

Argument of Counsel for plaintiff.

To correct a slight mistake, on the first & second pages of the printed brief, I state that there were six issues tried in this cause, the brief showing but five.

1. Issue was on the first plea of non tunc Record
in first issue to the jury

2^d Issue was on the third plea, which plea sets forth that at the time of the institution of the suit in the declaration mentioned, he the defendant was not an inhabitant or resident of the State of Connecticut, and not within the jurisdiction of the Court which rendered said judgment; nor had he any notice of the said suit, nor did he appear thereto by himself or his Counsel concluding with a verification, to which the plaintiff replied that at the time of the commencement of said suit in the said Court ~~the defendant~~ mentioned had due and legal notice of the commencement and pendency of said suit according to the laws of ~~the State~~ of the State of Connecticut then in force & concluding to the Country &c.

in second issue to the jury

3^d Issue was on the fourth plea, which plea alleges that the defendant was not served with

process in the suit, in which the said judgment was rendered, that he had no notice of said suits, nor of the subsequent proceedings therein, nor did he by himself or Counsel appear thereto, & therefore avers that the judgment is void of no force, or effect whatever & concludes with a verification. To which the plaintiff replies that defendant's usual place of abode was in the County of Litchfield, ~~State~~ of Connecticut, at the time of the commencement of said suit in said Court mentioned, and that said defendant on the 30th day of July 1802 then & there had notice of the institution of said suit & concludes to the Country &c.

4th Issue ^{or third issue to the jury} is on the fifth plea, which alleges that the Court of Common Pleas, in the said Court mentioned had no jurisdiction over the person of said defendant, wherefore he avers the judgment to be null and void, and of no force and effect whatever, & concludes with a verification &c. To which plaintiff replies that said Court had jurisdiction over the person of the defendant & concludes to the Country &c.

5th Issue ^{or fourth issue before the jury} is on the sixth amended plea, which alleges that the defendant was not an inhabitant of Connecticut when said suit was commenced concluding with a verification &c. To which plaintiff replied that when said suit was commenced defendant was an Inhabitant of the State of Connecticut & concludes to the Country &c.

or fifth issue before the jury
6th Issue, is on the Eighth plea, wherein
defendant alleges that after the rendition of
said judgment, in the ^{said} County mentioned he the
defendant, paid & satisfied the same & concludes
~~to the County~~ with a verification &c. To which
plaintiff replied that said judgment had
not been paid & concluded to the County &c.

The jury found these issues for
the defendant; and then the jury found especially
that the defendant was not an Inhabitant, nor
a resident of the State of Connecticut on the 30th
day of July A. D. 1802. This being the day on
which the writ was constructively served
upon the defendant.

Motion for a New Trial, for reasons
which appear in the brief, motion, denial,
and Exceptions taken, & Errors assigned
to.

Argument to support the first Error assigned
is, that the defendant having moved to Exclude
a part of a deposition taken in this cause,
was obliged to present to the Court, what part
thereof was objectionable, and the Court in
deciding upon the motion should specify what
part was to be rejected; this not being
done the jury were in doubt what part of
the deposition to receive, or what to reject.
Hence they would naturally discredit the
whole, & the plaintiff lose the benefit of that
part of his deposition, which was well
taken, & material, see the deposition
on pg 18 of the record.

The Second Error is well assigned, The Court upon looking into the record will find that the plaintiff took several exceptions, or Objections to the deposition of Andrew Adams. The Second objection taken to said deposition was, that it did not appear that Adams had been sworn to testify in the Cause, or that he was sworn to testify ^{to the matter in controversy} in the Cause. This was a fatal objection to the deposition, & should have been so decided. See the ~~former~~ Commissioners Certificate in Record pg 20, 21. & 22. See also Laws of Illinois 1845. Sec 12. They being the same, as the law was on that point when the deposition was taken. The answer of ^{Adams} ~~Adams~~ to the 2^d Interrogatory put to him, should have been excluded, as his answers proceed to give facts contained in letters, as to the whereabouts of Symon Adams, without producing the letters, or accounting for their absence, the ^{facts} established by ^{these letters} being also the mere declarations of the defendant & not evidence. That the answer to the fifth question put to Andrew Adams, was all hearsay testimony and rumor, & was altogether inadmissible, while it had great weight with the jury in leading them to believe that Symon Adams had left Connecticut, at least one or two months before Curtis Hale had succeeded him. The fact whether defendant was, or was ^{a resident of} ~~not~~ Connecticut at the time the suit was commenced was the material issue made on all the pleas, except that of payment. The exceptions taken by plaintiff to this deposition will be found on pg 22 of the Record.

The argument to sustain the third Error, is that. The defendants made Oliver Hill a

a witness in Chief & Cross examined her on all points material to the defence, as will be seen by looking at her deposition after such Examination, the defendant could not exclude her testimony on the ground of interest. The defendant might have put such questions as would have shown her interest, & then stop. & then might have left himself in a position to object to her testimony. But did Chloe Hill have such an interest as to disqualify her as a witness. There is no evidence that she had any interest in this judgment, it not appearing that by the Laws of Connecticut she was entitled to a distributive share thereof; & that the whole of this judgment was not required to pay the debts of her ancestor. At most the interest was so remote & contingent that she could not be legally excluded from testifying. Again, if she had an interest, the release signed by her & her brother, passed it all to Elisha Hale of Newburgh, & to this release no objection was made as part of the deposition & marked Exhibit (A) Chloe Hills testimony was very material & showed that defendant, was an inhabitant of Harwinton County of Litchfield Connecticut when the suit was commenced against Symon Adams.

On further review of the case I believe that the 4, 5 & 6, ~~7~~ the Errors assigned are embraced in the 1, 2, & 3, ~~Errors assigned~~ therefore the argument submitted will apply to the first ~~seven~~ ^{six} Errors assigned.

The Argument to sustain the 7 & 8th Errors which are included in each other

both embracing the same proposition, there were
13 instructions asked for by defendant & the 1, 5, 6
8, 9, 10, 11, 12 & 13 were given. The first
instruction we say was a statement of abstract
propositions of law, and could not ~~be~~ ~~applied~~
to any evidence be given legally, without connecting
them with the evidence offered. "The Court had a
right to say" "that if the jury believed from
the evidence that the judgment sued on, had
been rendered for more than 20 years, & they
were not satisfied from the evidence, that
~~that~~ the judgment had not been paid, ~~in that~~
the debt was still due, that then they should
find for the defendant. The Court had no
no right, ^{however} first to tell the jury, that the lapse
of time, had operated to bar the judgment.
on the presumption of payment
and then to tell them what kind of proof
they must have in order to destroy ~~the~~
that presumption of payment. The 13th instruction
is also, ^{certainly} abstract propositions of law, not
applicable to any issue, not to any evidence:
is calculated to mis-lead the jury and did
mislead ^{them} the jury. That the 13th instruction
might be stated by the Counsel, as law
upon which to argue that the evidence of
the case gave him the benefit of those
propositions of law, but the Court certainly
had no legal right to give said 13th
instruction, the 5, 6, & 8 instructions, ^{are} not
objected to. The 9th instruction should
not have been given. It says the plaintiff
is bound to show under the 4th plea and
second issue, that the defendant had personal

notice in fact, in the original Suit
against him. This was an erroneous instruction
The fourth plea ~~was~~ ^{alleged} that the defendant was not
served with ~~notice~~ process; that he had no
notice of the said Suit & of the subsequent
proceedings & that he did not appear; Reply
Replication that defendant's place of abode was
in the County of Litchfield, State of Connecticut
when the Suit was commenced & that the defendant
on the 30th day of July 1802 then & there had
notice of the institution of said Suit. &c. It will
be seen by this replication that the point put
in issue was not whether he had been served
with process, but it was whether he had legal
notice of said Suit, either by actual or constructive
notice; He did not reply that he had been
personally served with process; therefore we
were not bound to prove actual service
& the Court was altogether wrong in giving such
an instruction. If our replication did not
cover the plea it was for the defendant to
demur, not to have an issue ^{on} one material
fact; and then require us to offer proof to
establish another not ~~put~~ in issue. The Court
will see that the 8th & 9th instructions were
given in reference to this ^{plea} fourth, that the 8th
^{instruction} was, a legal instruction ~~one~~ covering the
whole issue of the fourth plea; & the 9th was
erroneous, In the Case of Bimeler (vs) Dawson 4
Scammon 538 This same point was before the Court
There the defendant plead that he was not personally
served with notice, & had no notice of the
pendency of the Suit in which the judgment was
recovered; replication that the defendant had notice

of the pendency of the suit. Proof the record of a
judgment, ^{from the file} showing a copy of notice left with
defendant. This was all the proof. This
Court say, that proof sustained the issue,
so we say, that the record of the judgment
from Connecticut sustained our issue on
the fourth plea, & that the ninth instruction
was against positive law, & against the
decision of this Court in the 4th of Scammon.
~~The 10th instruction~~ That the record showed a
constructive notice on defendant, "that the
presumption from the record is that the Court had
jurisdiction and proceeded in conformity to the laws
of the State where the judgment was rendered;
that until that presumption is rebutted by the
defendant ~~that~~ judgment is conclusive"
See 4 Scammon 536

The 10th Instruction ^{was also given on the 4th plea &} was against law
and the decision of this Court, as aforesaid; because
the record of the judgment from Connecticut
which was in evidence before the Court & was
dispensed with the necessity of pleading & proving
what the laws of Connecticut were; or averring
that notice according to the laws of Connecticut
The laws of Congress gives the same force & effect to
the judgment of the Court of Connecticut in this State
as it had in Connecticut, & it was incumbent
on the defendant to plead & prove, that according
to the laws of that State, the Court had no jurisdiction
of his person, or the subject matter of the suit,
or that the judgment had been obtained by
fraud. It was also erroneous to say, that
constructive notice was not sufficient to sustain

the issue on the fourth plea. The Court also qualify the 9 & 10 ^{or rather added to them} instructions by telling the jury that although they found for the plaintiff on the third plea, that they must find a verdict for defendant unless they found the ~~plea~~ issue on the plea of payment in his favour.

This was Error, because the jury were bound by law & their oaths to find each issue according to the proof. & if all the issues had been found for the plaintiff except; that of non-payment of the judgment; it would be for the Court to render a Judgment on the whole record for the defendant, according to the right of the Case. It was in fact telling the jury that if they found the issue of judgment in favour of the defendant; they were bound to find all the other issues in favour of the defendant, whether the proof would or would not justify such a finding.

The 11th & 12 instructions are not objected to.

The 9 & 10 Errors assigned will be considered together. The Court Error also in not granting a new trial. The Evidence was sufficient to sustain the issues. & hence the verdict was against the Evidence. We will first examine the testimony to show that Lyman Adams, lived in Connecticut when the Suit was commenced. First the return of the Constable, & the showing that he could not find Adams at his usual place of abode, is worth something as testimony. It is to be presumed the the Constable, or deputy Sheriff, had some knowledge of those who lived in the Town with himself. His returning the

line I have a place of abode for a year or more when he Adams left the State. On Cross Examination says she had worked in the family of Hale, & visited them during the time said Adams resided there, she knew Adams to be at Harwinton as much as two years. Saw Adams in Connecticut in 1802, but how late in that year cannot tell.

Major Graves, testifies, that he knew Szymon Adams that about the year 1801. he moved to Harwinton Connecticut where he resided about a year or more about the first of July 1802 there was some trouble in the families of Adams & Hale, and Adams left the Country & was never seen afterwards should think Adams left Harwinton about July not later in 1802. That after his marriage he had no other place of abode than in said Harwinton. On Cross Examination, says ~~that~~ that he does not believe Adams left Harwinton until after Hale commenced suits against him.

This testimony the plaintiff affirms, established the fact, beyond a doubt, that Szymon Adams did reside in Connecticut when Hale sued him & that Harwinton was his place of abode, or residence, & that he ran away from that State on account of suits being commenced by Hale against him, & that he left Connecticut, about the time, or a few days after the time; or a few days before the time of the commencement of the suits; and that Harwinton was his place of residence when the suits were commenced although he had run away from it. This testimony having established all our issues made ~~it~~ except on the plea of payment the jury gave their verdict, on those issues against

the Evidence, & the Court should have granted
a new trial

He will examine the Evidence on
the other side on this point, which consists of two
Witnesses, both brothers of Symon Adams.

Chester Adams testifies, that he knew Symon Adams
fifty years is his brother, that in 1798. or 1799 Symon
went on ^a trading town to Massachusetts, that in 1799
Witness went to Dedham where he found Symon, that
Witness was not absent from Dedham from 1799 to 1807, only
about 3 Weeks at a time except in 1802, Says that
Symon Adams left Dedham, Massachusetts, in the
Spring of 1802, to visit his father in Bristol, & that he
Witness also left, to visit his father, & that Witness
returned from that visit in October of that Year, & that
Symon also returned within four Weeks after him,
that from 16th July 1799 until 1805, or 1806, Symon
Adams resided a Dedham, Massachusetts, on Cross
examination he admits that in the Summer of
1802 after hay time he heard of suits against
Symon Adams, commenced by Hall, & that from
July 1799 until Symon went ^{to} Philadelphia
Witness boarded with Symon, or near him.

Andrew Adams testified that Symon
Adams. left Connecticut in February 1800, where
he continued to reside until December 1801,
or January 1802 when Symon Adams returned
to his Father's house where he remained till the
Spring of 1802, He then left Bristol, Says that
Symon did not reside in Harwinton, in July 1802
Says that Symon Adams was reported to have
left the State of Connecticut previous to the latter

part of July 1802. That in 1802 it was reported that there was a difficulty ^{between} between Synner Adams & Hale & that Hale had taken Writs out against him, but that Synner had left Connecticut one or two months before he heard of the Writs having been taken out. & never returned again. All the knowledge he has that Synner resided at Dedham was, ~~that~~ from letters & declarations of Synner.

These two Witnesses, disagree, as to a material fact. Chester Adams says Synner Adams went to reside in Dedham, in 1798, or 1799, & resided there until 1805, or 1806.

While Andrew Adams swears that Synner did not go to Dedham until February 1800, or a two years after; that in December 1801, or January 1802 Synner returned again to Connecticut & remained there until the Spring of that year, when he went away saying he was going to Vermont & would then return to Dedham. Andrew Adams, also swears that he heard of Hale taking out Writs against Synner Adams & that Synner had left one or two months before he heard of the Writs being taken out, that it was reported Synner had left before the latter part of July 1802.

Now in this testimony of the two Adamses the Jury found the issue of residence for defendant. This was a finding against Evidence as these two Witnesses first disagree on material facts of which they have the same means of knowledge. Andrew Adams says it was reported that Synner had left Connecticut, before the latter part of July 1802. How could it be so reported; if it were a fact that

he had left in the Spring of that year. Again
can the testimony of these two brothers overcome the
testimony, of four Witnesses who all swear they
knew Adams, well, that they attended his wedding
& that after he was married to his Wife in
Harrington, he lived there long enough to
have a Child by her, ^{and also that Adams worked the Hold farm near the Harrow} as it will be seen
by Anson Smith's testimony, ~~he~~ says that when
Adams left he took all his property with
him leaving his Wife & Child destitute
Here also in Harrington, was the place
where he committed the offense with his
Wife's Mother & it is still contended
that he lived in Bedham in another
State. Add to this the testimony of John
Stewart who swears that he had frequent
conversations with Lyman Adams, who
often told him that he lived ⁱⁿ Connecticut
& that he had left that State upwards of
Forty Years; that after he left Connecticut he
settled in Baltimore. Afterward he removed
to Louisville, and from thence to Illinois
~~It~~ ~~sees~~ but Adams never pretended that he
had resided in Massachusetts. It seems
this is conclusive, & if this verdict was not
rendered against ^{the} Evidence, there certainly there
never was a verdict rendered against evidence

The testimony to ~~show~~ the issue of non
payment of the judgment. A judgment of more
than 20 Years standing is presumed to be paid,
but any Evidence may be offered to rebut that
presumption; the strongest evidence to rebut the

presumption of payment is to show that the defendant, against whom the judgment was rendered has been absent from the State for the period of 20 years. See the Law

1 Phillips on Evidence page 160 - note 307

2 Phillips on Evidence page 317 note 307

5 Connecticut R. pg. 1.

8 Connecticut R. pg 168+9+175+178

1 Starkie R. 101

2 Common Law R. 314

2 Bibb's R. 387+8 Strong case

7 Munroe's R. 449

3 Marsh R. 544.

See Matthews on presumptive Evidence Chap. 19.

The testimony of Silas Bradley shows Adams ran away from Connecticut in 1802. & then

Amson Smith, testifies that Adams left the State of Connecticut in 1802, & that nothing was ever heard of him, ^{until} a year before the deposition was taken which was in 1845.

Charlott Hart, testifies to his being absent from the State 20 years. & more.

Graves also testifies that Symon Adams left the State of Connecticut about 1802 & has never been seen there since

John Stewart testifies that Adams told him that he Adams had left the State of Connecticut for upward of forty years

Andrew Adams testifies that after 1806, he has had no knowledge of Symon until, a year before giving his testimony when he found he was in Illinois, the deposition was taken in the fall of 1845. Hence from the testimony

As aforesaid, ^{the} Jury should have found the issue on the plea of payment for the plaintiff, not having done so the Court should have granted a New trial.

The follow authorities are ^{also} referred to to show that Instructions founded upon the hypotheses, that the Jury believe certain facts when there is no evidence to support them, ought not to be given nor instructions likely to mislead the Jury

see 2. Gilman 285

— 3. ditto 336

This presentation of facts is made without having the record before me, hence I ~~will~~ rely on the opposite Counsel ^{will} correct me if I have made mis-statements, & the Court to excuse me if they do not find the ~~facts of the case as stated above.~~

C^o Martin
Atty for ptiff in
Error.

Fouke Administrator
of Curtis Hall

. w

Adolphus Bergen
Administrator of
Lynn, Adams
deceased.

Agreement of
plff in Error

Supreme Court of the
State of Illinois, Mount Vernon
Jefferson County, Nov Term A.D. 1852

Philip B. Fouke, Public
Administrator of St Clair
County & Administrator of
Curtis Hale, deceased
plaintiff In Error

vs

Adolphus Berger
Administrator of Lyman
Adams deceased, defendant
In Error

Error To
St Clair.

And now at this day November
the 10th A.D. 1852 comes the said
plaintiff in Error Philip B. Fouke
Administrator as aforesaid, by William
Martin his attorney and says that in
the proceedings & the judgment rendered
in this cause in the Court below, by the
St Clair Circuit Court the said cause
being in that Court. "Entitled William G.
Goforth Administrator of Curtis Hale deceased
(vs) Lyman Adams, there is Error in
this

1st That the Court erred in excluding
from the jury a part of plaintiffs deposition
without designating with certainty the part
thus excluded.

2^d The Court Erred in not Excluding from the jury the deposition of Andrew Adams on the second objection made thereto by the Plaintiff; and also in not excluding the answers of said Adams to the second and fifth interrogatories put by defendant, on the Sixth & Eighth objection made to said deposition by Plaintiff's Counsel.

3^d The Court Erred in excluding from the jury the deposition of Chloe Hill.

4th The Court Erred in ~~Excluding from the jury~~ overruling exceptions, and objections made by the plaintiff to depositions and proofs offered, on the part of the defendant.

5th The Court Erred in Sustaining exceptions and objections made by the defendants to depositions and proofs offered on the trial by the plaintiff.

6th That the Court erred in refusing to allow depositions & proofs offered on the part of the plaintiff to be read to the jury on the trial of the Cause.

7th The Court Erred in giving to the jury the instructions asked for by the defendant.

8th. The Court Erred in refusing to
grant a New trial in the cause

9th. The Court erred in rendering
Judgment against the plaintiff;

Therefore for the Errors assigned as aforesaid
and for other Errors Apparrant on the record &
proceedings of the Court below, in the rendition
of the Judgment aforesaid in the Cause
aforesaid by the Court below, the plaintiff
in Error prays that said Judgment may
be reversed & for nothing esteemed, & that said
Cause may be remanded to the Court
below for further proceedings in the
premisses &c.

C. W. Martin

Attorney for
Plff in Error

~~See~~

Supreme Court.

Philip B. Fournier
Public Administrator
of St. Clair County, &
Administrator, of Curtis
Hale, deceased,

vs

Adolphus Berger
Administrator of
Lynnan Adams
deceased, defendant

Assignment of
Errors

STATE OF ILLINOIS, ST. CLAIR COUNTY, SS.

TO THE PEOPLE OF THE STATE OF ILLINOIS.

To all to whom these presents shall come, Greeting:

KNOW YE THAT, Whereas, *Burtis Hale* of the county of ^{*Grand*}~~St. Clair~~ and State of ^{*Illinois*}~~Illinois~~; died intestate, as it is said, on or about the ^{*Grand*}~~14th~~ day of ^{*November*}~~November~~, A. D. 18*40*, having at the time of ~~his~~ ^{*his*} decease, personal property in this State, which may be lost, destroyed, or diminished in value, if speedy care be not taken of the same.—To the end, therefore, that said property may be collected and preserved for those who shall appear to have a legal right or interest therein, We do hereby appoint *Philip B. Houke* Public administrator

of the county of St. Clair, State of Illinois, Administrator of all and singular the goods and chattels, rights and credits, which were of the said *Burtis Hale* at the time of ~~his~~ ^{*his*} decease, with full power and authority to secure and collect the said property and debts, wheresoever the same may be found in this State; and, in general, to do and perform all other acts, which now are, or hereafter may be required of ~~him~~ ^{*him*} by law.



Witness, JOHN D. HUGHES, Probate Justice of the Peace, in and for the said county of St. Clair, at his office in Belleville, this *14th* day of *November* A. D., eighteen hundred *and forty* ^{*and*} *fourteen*.

John D. Hughes P. J. P.

I, JOHN D. HUGHES, Probate Justice of the Peace of the county of St. Clair, and State of Illinois, do hereby certify that the foregoing is recorded in my office according to law.

John D. Hughes P. J. P.

Letters of
Administration to
Philip B. Fouke

STATE OF ILLINOIS, } ss.
SUPREME COURT. }

THE PEOPLE OF THE STATE OF ILLINOIS,

To the Sheriff of *St. Clair* County,

Because in the record and proceedings, and also in the rendition of the judgment, of a plea which was in the Circuit Court of *St. Clair*

County, before the judge thereof, between *William G. Gosforth, Administrator of Curtis Hale deceased* plaintiff & *Symon Adams* defendant & which record & proceedings now stand & remain in this our Supreme Court in the name of *Philipp B. Pinke* public Administrator of *St. Clair* County and Administrator of *Curtis Hale deceased*, plaintiff against *Adolphus Berger* Administrator of *Symon Adams* deceased defendant in error & ~~defendant~~, it is said that manifest error hath intervened to the injury of said *Philipp B. Pinke* Administrator of the said *Curtis Hale* deceased

as we are informed by his complaint, the record and proceedings of which said judgment, we have caused to be brought into our Supreme Court of the State of Illinois, at Mt. Vernon, before the Justices thereof, to correct the errors in the same, in due form and manner, according to law; therefore we command you, that by good and lawful men of your county, you give notice to the said *Adolphus Berger*

Administrator of Symon Adams deceased the said *Adolphus Berger* having been suggested by an order of this Court as party defendant in error —

that he do and appear before the Justices of our said Supreme Court, on the first day of the next term of said Court, to be holden at Mount Vernon, in said State, on the Second Monday in November next, to hear the records and proceedings aforesaid, and the errors assigned, if he shall think fit; and further

to do and receive what the said Court shall order in this behalf; and have you then there the names of those by whom you shall give the said *Adolphus Berger, Administrator &c.* notice, together with this writ.

Witness, the Hon. SAMUEL H. TREAT, Chief Justice of our said Court, and the seal thereof, at Mount Vernon, this *24th* day *November* in the year of our Lord, one thousand eight hundred and fifty-*two*

Pinney D. Putton Clerk of Supreme Court

Supreme Court

Phillip B. Finkle
Post. Adm^r &c.

v.

Adolphus Berger
Administrator &c.

Executed December 22nd
1852 by reading the
within to the within
named Adolphus Berger

The Challenger
Shiff & Co

Fee Perry Post	60
12 miles travel	60
	<hr/>
	120

November term. 1853

Supreme Court. Mount Vernon.

Philip B. Fouke, admr. of Justice Hale deceased
vs
Adolphus Berger, sued by the name of Adolphus
Berger
adm. of Lyman Adams. decd.

And now comes the said Adolphus Berger, by
G. Hoerner his attorney, and says the said
plaintiff's action was because he says that the
said action was not commenced and the said
writ of error brought in this ~~Supreme~~ Court
within five years from the passing of the
Judgment complained of by the said
plaintiff in error, and that he is ready to verify

Gottlieb Hoerner
for Defendant in
Error. —

Ph. B. Southerland

Adolphus Berger

comr. of Lyman

Adams decr.

pleas.

Filed Nov. 13, 1855

St. Sebastian 116

State of Illinois }
County of St. Clair } 3 St.

In the Circuit Court within
and for the County of St. Clair and State of
Illinois.

Be it remembered, that heretofore, on the sixth
day of April A.D. 1844., William G. Goforth, admi-
nistrator of Curtis Hale deceased, filed in the Clerk's
office of said Court his declaration in words and fi-
gures following, to wit:

Declaration.

State of Illinois— Circuit Court in and for
the County of St. Clair, of the term of May in
the year of our Lord one thousand eight hundred and
forty four.

St. Clair County } 3 St.

William G. Goforth, adminis-
trator of all and singular the goods and chattels and
estate of Curtis Hale deceased, Plaintiff in this
Suit, complains of Lyman Adams, Defendant,
of a plea, that the said Defendant tender unto the said
Plaintiff the sum of one thousand two hundred and
seventy four Dollars, and ninety seven Cents, which the
said Defendant owes to and unjustly detains from the
said Plaintiff.

For that whereas Curtis Hale, the said
Plaintiff's intestate in his lifetime, heretofore, to wit:
on the second Tuesday in the month of December

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in the year one thousand eight hundred and two (1802)
in the term of the Court of Common Pleas within
and for the County of Litchfield in the State of Con-
necticut, holden at Litchfield on the day and in
the year last aforesaid, before the Judges of said
Court, by the Judgment and consideration of said
Court, recovered against the said Defendant the
sum of two hundred and seventy four Dollars,
and ninety seven Cents, and costs of Suit allow-
ed to the sum of nine Dollars and twenty eight
Cents, part and parcel of the said sum above
demanded, which sum of two hundred and seventy
four Dollars and ninety seven Cents, & Costs of
Suit aforesaid, then and there at the said term of
said Court, and in the year aforesaid, by the said
Court was adjudged to the said Curtis Hale in
his lifetime for damages, which he before that
had sustained for the nonperformance of certain
promises and undertakings and for a book debt of said
Defendant, and the Costs and charges by the said Curtis
Hale in his lifetime about said Suit expended, whereof
the said Defendant was convicted, as by the Record and
proceedings thereof still remaining in the said Court,
more fully appears, which said Judgment still re-
mains in full force and effect, not vacated or satis-
fied, or otherwise reversed. And the said Curtis Hale
in his lifetime did not obtain satisfaction of or upon
said Judgment, nor hath the said Plaintiff since the
death of said Curtis Hale, obtained any satisfaction
of said Judgment so recovered as aforesaid.

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And also for that whereas Curtis Hale, the
said Plaintiffs intestate, in his lifetime, heretofore

to wit on the second Tuesday in the month of December in the year one thousand eight hundred and two (1802) in the term of the Court of Common Pleas within and for the County of Litchfield in the State of Connecticut, holden at Litchfield in said County on the day and in the year last aforesaid before the Judges of said Court, by the Judgment & consideration of said Court, recovered against the said Defendant a certain other sum of money, amounting to one thousand Dollars and Costs of Suit allowed to the sum of eleven Dollars and one Cent, part and parcel of the said sum above demanded, which sum of one thousand Dollars and Costs of Suit aforesaid then and there at the said term of said Court last aforesaid, in the year last aforesaid, by the said Court was adjudged to the said Curtis Hale in his lifetime for damages, which he before that had sustained, and Costs and charges by the said Curtis Hale in his lifetime about said suit expended - whereof the said Defendant was convicted, as by the Record and proceedings thereof, still remaining in the said Court more fully appears, which last mentioned Judgment still remains in full force and effect, not vacated or satisfied or otherwise reversed, and the said Curtis Hale in his lifetime did not obtain satisfaction of or upon said Judgment, nor hath the said Plaintiff since the decease of the said Curtis Hale obtained any satisfaction of or upon said last mentioned Judgment so recovered as aforesaid: Whereby an action hath accrued to the said Plaintiff to demand and have of and from the said Defendant the said sum of money above demanded. Nevertheless the said

4 Defendant (though often requested &c) hath not yet paid the said sum of money above demanded or any part thereof, either to the said Curtis Hale in his lifetime, nor to the said Plaintiff since the decease of the said Curtis Hale, but to pay the same or any part thereof, the said Defendant hath hitherto wholly neglected and refused, and still doth refuse, to the damage of the said Plaintiff of five thousand Dollars. And the said Plaintiff brings here into Court his letters of administration of the goods, chattles and estate of the said Curtis Hale deceased, whereby it fully appears to the Court, that the said Plaintiff is such administrator of the estate of the said Curtis Hale, and hath execution thereof.

John M. Korum
Atty for Plff.

and that at the May term of the said Court A. D. 1844. on the second friday of said term, this case is continued to the next term of the Court; and that thereupon afterwards in vacation, to wit on the eleventh day of August A. D. 1844. the said Defendant filed his pleas in words and figures following:

Read. Lyman Adams

and

3
3
3
Read.

William G. Goforth, administrator of Curtis Hale

1) And the said Defendant, by Trumbull and Korum his attorneys, comes and defends the wrong and injury, whereto and says, that there is not any record of the said supposed recoveries in the said several Counts of the said declaration mentioned, remaining in the said Court of Common pleas in manner and form as the said Plaintiff hath above in his said declaration.

alleged, and this the said Defendant is ready to verify, wherefore he prays Judgment; &c.

2. And for further plea in this behalf as to the first count in plaintiffs declaration, the said Defendant by leave & says, that after the rendition of the said Judgment in the said first Court mentioned, and before the commencement of this suit the said Plaintiff sued out a writ commonly called a fieri facias, commanding the Sheriff of the County of Litchfield or any Constable of the town of Harwinton to levy the sum of two hundred and eighty four Dollars and twenty five Cents and the Costs of said writ amounting to Seventeen Cents of the goods, chattels or lands of said Defendant, and which said writ was delivered to one Cyprian Webster, jun, Constable, who before the return thereof seized and took in execution goods of the Defendant to the value of eight Dollars and twenty five Cents, which said writ was returned by the said Constable, and this the said Defendant is ready to verify, wherefore he prays Judgment &c.

2. 3. And for further plea in this behalf the said Defendant by leave & says, that at the time of the institution of the said several suits, and from thence until after the rendition of the said several Judgments in said suits, mentioned in Plaintiffs declaration, he the said Defendant was not an inhabitant or resident of the said State of Connecticut, and not within the Jurisdiction of the said Court of Common Pleas, nor had he any notice whatever of the commencement of said suits, or the subsequent proceedings therein up to the rendition of the said Judgments; nor did he by himself or counsel appear in the said several suits, wherefore this Defendant says, that the said Judgments are

nul and void, and of no force or effect whatever; and this he is ready to verify, wherefore &c.

4. And for further plea in this behalf the said Defendant by leave &c. says, that he was not served with any process in the said suits, upon which the said several judgments in the Plaintiffs declaration mentioned, were rendered, and that he had no notice whatever of the commencement of said suits or the subsequent proceedings therein up to the rendition of said several judgments; nor did he by himself or counsel appear in the said suits. Wherefore this Defendant says, that the said judgments are nul and void and of no force or effect whatever, & this he is ready to verify, wherefore &c.

5. And for further plea in this behalf the said Defendant by leave &c. says, that the said Court of Common Pleas in the said Plaintiffs declaration mentioned, had no jurisdiction over the person of the said Defendant in the said several suits, upon which the said several judgments were rendered against this Defendant, wherefore the said judgments are nul and void and of no force and effect whatever, and this he is ready to verify, wherefore &c.

6. And for further plea in this behalf the said Defendant by leave &c. says, that the said judgments in the said declaration to have been recovered against the said Defendant by the said Curtis Heale in his lifetime, were had and obtained by the fraud and covin of said Curtis Heale, and with intent to defraud this Defendant, and this he is ready to verify, wherefore &c.

7. And for further plea in this behalf the said

7 Defendant by leave &c. Says, that the said several supposed causes of action in the said declaration mentioned did not nor did either of them accrue to the said Curtis Hale at any time within twenty years next before the commencement of this suit, in manner and form as the said Plaintiff hath above thereof complained against him, & this he is ready to verify, wherefore &c.

6 8. And for further plea in this behalf the said Defendant by leave says, that after the recovery of the said several judgments in said declaration mentioned, and before the commencement of this suit, he the said Defendant paid and satisfied to the said Curtis Hale in his lifetime the said several sums of money recovered by him in form aforesaid, and this he is ready to verify.

9 And for further plea in this behalf as to the first Count in the said declaration mentioned, the said Defendant by leave says, that the said judgment mentioned in said first Count to have been recovered against the said Defendant was recovered in a suit at Common Law, where the value in controversy exceeded twenty Dollars, and that the said suit was not tried by a Jury of the Country, but by the said Court of Common Pleas in said Count mentioned, and that the said Defendant did not consent to the said mode of trial by Court, nor did he appear at all in the said suit, wherefore this Defendant says, that the said Judgment is nul and void, and of no effect whatever; & this he is ready to verify.

7 10. And for further plea in this behalf the said Defendant by leave &c. Says, as to the second Count in the said declaration mentioned, that the said

8
Judgment mentioned in the said second Count to have been recovered against the said Defendant, was recovered in a suit at Common-law, wherein the value in controversy exceeded twenty Dollars & that the said suit upon which the said Judgment was rendered, was not tried by a Jury of the County, but by the said Court of Common Pleas in said Count mentioned, and that the said Defendant did not consent to the said mode of trial by Court, nor did he appear at all in the said suit, wherefore he says, that the said Judgment is nul and void and of no force and effect whatsoever, and this he is ready to verify, wherefore &c.

Trumbull, Breese & Hoerner for
Defendant.

and the Plaintiff on the second day of October A.D. 1844. filed his replication to the Defendants 1.st 3.rd 4.th 5.th & 8.th pleas and his demurrer to the 2.nd 6.th 7.th 9.th and 10.th pleas in words &c:

Repl. to
1st plea. } And the said Plaintiff as to the said plea by the said Defendant firstly above pleaded, says, that he ought not to be barred or precluded from having and maintaining the said action by reason of any thing contained in said plea, because he says, that there are such Records remaining in said Court of Common Pleas in manner and form as he the said Plaintiff in his said declaration hath declared, and this the said Plaintiff is ready to verify by the said Record of said Court of Common Pleas, and prays, that the said Record may be seen and inspected by the Court, &c.

Repl. to 13th plea

9

And the said Plaintiff as to the plea of said Defendant by him thirdly above pleaded, says, that by reason of any thing contained in said third plea, he the said Plaintiff ought not to be barred or precluded from having and maintaining his said action, because he says that at the time of the institution of the said Suits described in the said Records in said Plaintiffs declaration mentioned, the said Defendants usual place of abode was in the County of Litchfield in the State of Connecticut; and the said Plaintiff says, that the said Defendant then and there, to wit on the 30th day of July 1802, at the County and State last aforesaid had notice of the institution and commencement of the said Suits, and this the said Plaintiff prays may be inquired of by the Country, &c.

Repl. to 14th plea

And the said Plaintiff as to the said plea of said Defendant by him fourthly above pleaded, says, that by reason of any thing in said fourth plea contained, he the said Plaintiff ought not to be barred or precluded from having or maintaining the said action, because the said Plaintiff says, that the said Defendant's usual place of abode was in the County of Litchfield and State of Connecticut at the time of the institution and commencement of said Suits described in the said Records in said Plaintiffs declaration mentioned, and that said Defendant then and there, to wit on the 30th day of July 1802, at the County and State last aforesaid had notice of the institution of said Suits, and this the said Plaintiff prays, may be inquired of by the Country, &c.

Repl to }
15th plea }

And the said Plaintiff as to the said plea by the said Defendant by him fifthly above pleaded, says that by reason of any thing in said fifth plea contained, he ought not to be barred or precluded from having or maintaining said action, because the said Plaintiff says, that the said Court of Common Pleas in his declaration mentioned, had jurisdiction over the person of the said Defendant in the said several suits upon which the said several judgments were rendered against the said Defendant, and this the said Plaintiff prays may be inquired of by the Country &c.

Repl to }
18th plea }

And as to the said Plea of said Defendant by him eighthly above pleaded, the said Plaintiff says, he ought not to be barred or precluded from having or maintaining his said action by reason of any thing in said eighth plea contained, because he says, that the said Defendant did not pay and satisfy the said Judgments in the Plaintiffs declaration mentioned in manner and form as the said Defendant in his said eighth plea hath alleged, &c; and this the said Plaintiff prays may be inquired of by the Country &c.

Demr. to }
2, 5, 7, 9 }
& 10. pleas }

And as to the said Pleas of said Defendant by him secondly, sixthly, seventhly, ninthly and tenthly (2^d 6th 7th 9th & 10th) above pleaded, the said Plaintiff says, that by reason of any thing in said second, sixth, seventh, ninth & tenth (2^d 6th 7th 9th & 10th) pleas contained to said Plaintiff ought not to be barred or precluded from having or maintaining his said action, because he says, that the said second, sixth

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seventh, ninth and tenth pleas are not sufficient, in law to bar or preclude the said Plaintiff from having and maintaining said action, wherefore the said Plaintiff prays Judgment whether

John M. Krum,

Atty for Plaintiff

and the Defendant comes and joins in ^{the said} demurrer,

Koerner & Trumbull for deft.

and files his special demurrer to the Plaintiffs Replication to his said Defendants, third and fourth pleas in words:

Spec. demur
to Repl. to
3rd & 4th pleas.

And the said Defendant as to the said Plaintiffs Replication to the Defendants third plea comes and says, that the said Replication and the matters therein ~~being~~ contained are not sufficient in law for him the said Plaintiff to maintain his aforesaid action, and this Deft. is ready to, and for cause of this demurrer says: that the said Replication is double, that it is a departure from the declaration that it is wholly insufficient in other respects,

And the said Defendant as to the said Plaintiffs Replication to the Defendants fourth plea comes and says, that the said Replication and the matters therein contained are not sufficient in law for him the said Plaintiff to maintain his aforesaid action and this Defendant is ready to verify, and affirms for cause, that the said Replication is double

that the Replication departs from declaration, is insufficient in other respects.

Trumbull & Koerner

And the said Plaintiff by his atty comes and joins in the said demurrer.

John M. Krum,
atty for Plaintiff.

12 Whereupon at the October term of the said
St. Clair Circuit Court A. D. 1844. before the
Hon. James Shields, on the first Friday of said
term the following proceedings were had:

Orders:
on Decr.
to 2, 6, 7
9 & 10 pl.
Ent - do

At this day came the said parties by their
attornies, and issue being joined on the Plaintiffs de-
murrer to the Defendants second, sixth, seventh, ninth
and tenth pleas, and issue being joined also upon
the special demurrer of the Defendant to the Plain-
tiffs Replication to the third and fourth pleas of the
defendant, the demurrers are argued, and after
hearing the argument and being fully advised
of and concerning the Premises, the Court doth
sustain the demurrer to the Defendants second,
sixth, seventh, ninth and tenth pleas, and also
sustains the special demurrer to the Plaintiffs repli-
cation to the third plea as to said plea, and overrules
the special demurrer to the Plaintiffs Replication
to the Defendants fourth plea. Thereupon the Plain-
tiff moves the Court for leave to file an amended
replication to the third plea of the Defendant, which
leave is granted by the Court, and the Plaintiff
files his amendment accordingly, in words &:

Amended
Repl. to 3rd
plea.

And as to the said plea of said Defendant by
him thirdly above pleaded, the said Plaintiff says,
that he ought not to be barred or precluded from
having or maintaining his said action by reason of
any thing in said plea contained, because he says, that
at the time of the institation and commencement
of the said suits described in the said Records in
the Plaintiffs declaration mentioned, and from that
time until the rendition of the said judgments

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there was a Public Statute law in full force and virtue in the State of Connecticut entitled "an act for the directing and regulating of Civil actions" the second section of which Statute is in the words and figures following: "And that no person shall be required to make answer in any civil action, real, personal or mixed, except the writ or process if returnable to the Superior or County Court hath been served upon him at least twelve days inclusive before the day of the Court sitting; or if returnable to an Assistant or Justice, the same has been served six days inclusive as aforesaid; which service shall be, if a summons, by reading the same in the hearing of the Defendant or Defendants or leaving an attested copy thereof at the place or places of his or their usual abode; but if an attachment the service shall be the attaching the Defendant or Defendants estate or person, and giving him notice by reading the writ to him or within his hearing, or by leaving an attested copy thereof at the place of his usual abode, if that be within this State; and that all such writs as are made returnable to the County Courts shall be returned to the Clerks of said Courts on the day before the sitting of such County Courts and not afterwards. That in case any process be duly served on any Defendant or Defendants and return thereof made to the Court to which the same is made returnable, then if such Defendant or Defendants do not appear, his or their default shall be recorded and judgement entered up against him or them thereupon,

unless he or they shall come into Court on or before the second day of the sitting of said Court and move for a trial, in which case he or they shall be admitted thereto upon paying down to the adverse party the Costs to that time, and the Plaintiff shall pay for entering the action anew." And the said Plaintiff says, that at the time of the institution and commencement of the said Suits described in said Records in the said Plaintiffs declaration mentioned, the said Defendant was an inhabitant of Harwinton in the County of Litchfield and State of Connecticut and within the Jurisdiction of said Court, and that said Defendants place of usual abode at the said time of the commencement of said Suits was in said Harwinton, County of Litchfield, State of Connecticut and within the Jurisdiction of said Court, and that the said Defendant then and there at said Harwinton, County and State last aforesaid on the 30th day of July in the year 1852 had notice of the institution and commencement of the said Suits, mentioned and described in said Records in said plea mentioned, in manner and form as provided in the said second Section of the said Public Statute Law entitled as aforesaid in this plea, and this the said Plaintiff prays may be enquired of by the Country, &c.

John M. Krum,
atty for Plff.

And the Defendant moves the Court for leave to amend his second and sixth pleas, which leave is granted by the Court, and the Defendant files his amended second and sixth pleas instantes,

15 in words to.

2nd amend
plea.

And for further plea in this behalf as to the sum of \$8,25 part of the sum in the Plaintiffs first Count mentioned, by leave says, that after the rendition of the said Judgment in the said first Count mentioned, the said Plaintiff sued out a writ, commonly called a fi. fa. commanding the Sheriff of the County of Litchfield or any constable of the town of Harwinton, to levy the sum of \$284,25 and the Costs of said writ, amounting to Seventeen Cents of the goods and chattels of said Defendant, and which said writ was delivered to one Cypran Webster jun. Constable, who before the return thereof seized and took in Execution goods of the Defendant to the value of \$8,25. which said writ was returned by the said Constable. And this Defendant is ready to verify.

6th amend
plea.

And for further plea in this behalf the said Defendant by leave, and says, that at the time of the institution of the said several Suits, and from thence and until after the rendition of the said several judgments in said Suits mentioned in Plaintiffs declaration, he the said Defendant was not an inhabitant or resident of the said State of Connecticut, and not within the Jurisdiction of the said Court of Common Pleas; and this Defendant is ready to verify.

Trumbull & Hoerner for Defendant

16 whereupon the Plaintiff files his Replications to the second and sixth amended pleas of the Defendant in words and figures following:

Rep. to }
2nd & 6th }
pleas. }
And as to said second plea of said Defendant as amended, filed by leave of Court, the said Plaintiff says, that he can not deny, but that the said second plea as amended, filed by said Defendant by leave of Court, is true in manner and form; as the same is above pleaded, and the said Plaintiff as to said second plea as amended, in mercy do.

And as to said sixth plea as amended, filed by said Defendant by leave of Court, the said Plaintiff says, that by reason of any thing in said sixth plea as amended, contained, ought not to bar or preclude the Plaintiff from having or maintaining his said action, because the said Plaintiff says, that at the time of the institution of the said suits described in the Records in said Plaintiffs declaration mentioned, he the said Defendant was an inhabitant of the said State of Connecticut, and was then and there within the jurisdiction of the said Court of Common pleas, and this said Plaintiff prays may be inquired of by the Country, &c.

John M. Crom,
Atty for Plaintiff

and by consent of parties this case is continued to the next term of the Court.

And afterwards at the May term of the said St. Clair Circuit Court N. D.

12

17 1845, before the Hon. Walter B. Bates, on the first Saturday of said term;

At this day comes the Plaintiff by Hall and Gillespie his attorneys, and the Defendant by Turnbull and Baker his attorneys, and the Defendant having filed his demurred to the Plaintiff's amended Replication to the Defendant's third plea, in words &c.

Demurred to amend, repl. to 3^d plea.

And the said Defendant Lyman Adams says, that the said Replication to the said plea of the said Defendant thirdly by him above hereof pleaded, and the matters therein contained, in manner and form as they are above pleaded and set forth, are not sufficient in law for the said Plaintiff to have or maintain his aforesaid action thereof against him the said Defendant, and that the said Defendant is not bound by the law of the land to answer the same, and that the said Defendant is ready to verify, wherefore for want of a sufficient replication in this behalf, he the said Defendant prays Judgment, if the said Plaintiff ought to have or maintain his aforesaid action thereof against him, &c.

For that the said Replication of the said Plaintiff attempts to put in issue, to be tried by the Country more inference and matter of law, viz: whether the Defendant in the Judgment mentioned in the said Plaintiff's declaration, was or was not notified of the pendency of the suits, wherein these Judgments were rendered, in manner and form as is provided in the Statute of the State of Connecticut, copied into and made part of said Replication. Also for that said replication copying the Statute of the State of Connecticut

does not show, that in said suits, being commenced by process of attachment, the writs of attachment were levied upon property of the Defendant, so as to authorize a service of notice of the pendency of these suits by leaving copies of the process issued at the place of Defendants residence; and also for that the said replication is argumentative and no certain sufficient issue can be taken thereon; and also for that it is in other respects defective, &c.

Baker & Trumbull for Plffs and also his exceptions to the Plaintiffs depositions in words &c. &c. as well the said demurred as the exceptions to said depositions are argued, and after hearing the argument and not being sufficiently advised of and concerning the premises, the Court takes time to consider.

And on the second Monday of the term last aforesaid. At this day the Court being sufficiently advised of and concerning the premises, sustains the demurrer to the Plaintiffs amended Replication to Defendants third plea, with costs, and partially allows the Defendants exceptions to the Plaintiffs depositions, as marked on the said depositions. And on motion leave is given to the Plaintiff to amend his said Replication by tomorrow noon 20th inst.

And the Plaintiff then filed his amended Replication to Defendants third plea in words &c.

Said Plaintiff by reason of any thing contained in said Defendants third plea, says, preclude non, because he says, that at the time of the institution of said suits, the said Defendant had due and legal notice of the commencement and pendency

By caption to Plffs & Deft. & a copy served on each of them

amend. repl. to 3^d plea

19. of the said suits, according to the laws of the State of Connecticut, then in force, and this he prays may be inquired of by the Country &c;

Hall for Plff.

and the Defendant filed his demurrer to such amended Replication in words &c.

Demurrer
to am. Plea.
to 3^d plea.

And the said Defendant Lyman Adam, saith, that the said Replication of the said Plaintiff to the said plea of the said Defendant, thirdly by him above hereof pleaded, and the matters therein contained in manner and form as the same are above pleaded and set forth, are not sufficient in law for the said Plaintiff to have or maintain his aforesaid action there of against him the said Defendant, and that the said Defendant is not bound by the laws of the land to answer the same, and this he the said Defendant is ready to verify, wherefore for want of a sufficient replication in this behalf, the said Defendant prays Judgment if the said Plaintiff ought to have or maintain his aforesaid action thereof against him, &c.

For that the said Replication of the said Plaintiff attempts to put in issue to be tried by the Country mere inference and matter of law, viz: Whether the said Defendant at the time of the institution of the said Suits had due and legal notice of the commencement and pendency of these Suits, according to the laws of the State of Connecticut; also for that the said Replication doth not show and set forth, what acts the laws of the State of Connecticut prescribe as due and legal notice of the pendency of Suits in that State, and for that the said Replication doth not show, that the said Defendant at the time

of the institution of these Suits was an inhabitant or resident in the State of Connecticut, or in any wise within the Jurisdiction of the said Court of Common Pleas for said County of Litchfield in said State of Connecticut at the time of the institution of those suits; and also for that the said Replication is argumentative and containing conclusions of law, and no certain sufficient issue can be taken thereon, and also for that it is in other respects defective.

Paker & Trumbull,

attys for Defendant.

whereupon on the second Wednesday of the term aforesaid.

At this day, the Plaintiff having amended his amended Replication to Defendants third plea, and the Defendant having demurred to such replication, come the said parties and join in demurred on said replication, and the demurred is argued, and after argument is overruled by the Court. Whereupon the Plaintiff asks a continuance of this cause to the next term of the Court, which is allowed at the Costs of the said Plaintiff, and this case is continued.

And now here the Plaintiff files his bill of exceptions in words & figures following, to wit:

Bill of
Exceptions.

Be it remembered, that previous to the trial of this Cause, to wit on the 16th day of May A. D. 1845, the Defendants filed herein the following deposition and which deposition is inserted in our Records on page 60 below (here insert the deposition of Andrew Adams) and afterwards to wit on the 17th day of May A. D. 1845 the said Plaintiff by his attorney filed the following exceptions to said Deposition, to wit:

21

The said Plaintiff comes and excepts to the deposition of the said Defendant filed herein on the sixteenth day of May A. D. 1845, for the reasons following, to wit:

1. Because it nowhere appears in said certificate or caption, that the answers to the interrogatories were the answers of the witness;

X 2. That it does not appear, that the said witness was sworn or affirmed according to law;

3. That it does not appear, that the Commissioners in said deposition mentioned, examined said witness upon all the interrogatories attached to the Commission, and directed to be put to the witness;

4. It does not appear, that the said Commissioners caused the answers of the said witness, ^{to be} reduced to writing in the order day were answered;

5. That it does not appear certainly when or where the said depositions were taken;

X 6. The answer to the second interrogatory, contains the statements of Defendant, and professes to give the contents of letters written by Defendant, without excusing the nonproduction of the letters themselves, and is argument instead of evidence;

7. The fourth interrogatory and the answer thereto are objectionable because they ask and give matters of reputation instead of proper evidence;

X 8. The fifth interrogatory and the answer thereto ask and give matters of reputation and hearsay;

9. That said depositions are in other respects insufficient and informal.

Gillespie & Hall for Plaintiff.

and after hearing argument of counsel thereon the Court disallowed all of said exceptions, save the seventh, which

And also at the terms aforesaid, the Defendant by his atty files his objection to the Deposition of Chloe Hill and to the reading thereof in evidence, which exception is as follows:

Wm G. Gaffette, ad. i. 4

vs

Lyman Adams

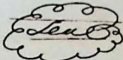
}
}
}

The Deft. in this case comes and excepts to the Deposition of Chloe Hill for the reason that it appears by the Deposition, that she is interested in the event of said Suit.

Which objection of said Defendant the Court sustained and excluded said Deposition.

The said Deposition of Chloe Hill so excluded is inserted in this Record below, beginning on page 72.

22 the Court allowed; and thereupon the Plaintiff by his
attornies excepts to the decision of said Court in dis-
allowing the second, sixth and eighth (2^d 6th & 8th) of
said exceptions, and prays, that this his Bill of
exceptions may be signed and sealed; done

Walter B. Scates 

tenued at the October and at the November Special term
of said Court, A. D. 1845, by the consent and agree-
ment of the parties thereto, without further steps, at
the May term of said Court A. D. 1846, before
the Hon. John D. Caton, to wit on the second
Wednesday of said term, the following proceedings
were had, to wit:

Trial.

At this day comes the Plaintiff by
A. P. Field his attorney and the Defendant by L.
Turnbull and J. J. Baker his attorneys, and issue
being joined on the plea of nul tel Record to the first
and second Count of the Plaintiffs declaration, the
issue is tried by the Court. And the Court having
inspected the Records in the said first and second counts
of the declaration mentioned and set forth, and heard
argument of counsel as well on behalf of the
Plaintiff as on behalf of the Defendant, the Plaintiff
says, that he will not further prosecute his said action
on the first Count of his declaration. Whereupon it
is ordered by the Court, that this suit as to the
first Count of Plaintiffs declaration be dismissed,
and that the Defendant recover of the Plaintiff his
proper Costs about his defence of the first Count of
Plaintiffs declaration expended. And the Court being
fully advised of and concerning the premises as to

23 the said second Court finds the issue on the same for the Plaintiff. And thereupon the Plaintiff moved the Court for leave to amend the conclusion of his Replication to the Defendants third plea, which motion is resisted by the Defendant and overruled by the Court. And issues being joined to the Country on the third, fourth, fifth, sixth and seventh pleas, thereupon come the jurors of a Jury, to wit: Robt. Lyons, Franklin Beede, John Mc'jerron, Another Badgley, Alfred Wood, Henry Chenot, W^m H. Mitchell, David Mc'Donald, Saml. Shepherd, Asa Parker, James Doran & Tho^s Show, who are duly selected, chosen and sworn, well and truly to try the issues joined and a true verdict to render according to the evidence. And after part of the evidence on behalf of the Defendant is heard, the Defendant moves the Court on affidavit filed to discharge the jury and to continue this case until the Statutes of the State of Connecticut could be procured, which motion is denied by the Court, and the Defendant excepts to the opinion of the Court in denying said motion.

And after the evidence on behalf of the Plaintiff is heard and the jury addressed by S. J. Baker on behalf of the Defendant, and before A. P. Field has concluded his remarks to the jury on behalf of the Plaintiff, it is ordered by the Court, that Court be adjourned to to-morrow morning eight o'clock.

And on the second Thursday of the term A. P. Field Esq. continues his Remarks to the jury on behalf of the Plaintiff, and is followed by L. Trumbull Esq. who has the conclusion of

24
the argument on behalf of the Defendant, and the
Jury being instructed by the Court as to the law
retire to consider upon their verdict. And when
they return into Court, they publish the following
verdict: We the Jury find the issues for the Defendant;
and we specially find, that the Defendant was not
a resident or inhabitant of the State of Connecticut
on the 3rd day of July A. D. 1802.

And now here the Plaintiff enters his motion
to set aside the verdict and to grant a new trial,
and files his reasons for such motion in words
following, to wit:

- 1st. The verdict of the jury is against evidence;
- 2^d. against law and evidence;
- 3^d. against the weight of evidence;
- 4th. the Court erred in the instructions they gave
to the Jury as asked for by the Defendant;
- 5th. The Court erred in excluding the deposition
of Chlo^e Hall;
- 6th. The Court erred in permitting portions of the
Depositions of ~~Dr. Andrews~~ ^{Dr. Andrews} to be read to the Jury;
- 7th. The verdict is informal, uncertain and
insufficient, and no Judgment can be pro-
nounced on it.

John M. Krum

atly for Plaintiff.

And afterwards, on the second Saturday of the term
last aforesaid, the Court being fully advised of
and concerning the premises, denies the motion for
a new trial. It is therefore considered by the Court,
that the Plaintiff take nothing by his suit, and
that the Defendant recover of the Plaintiff his

proper writs and charges to be taxed, and that he have execution therefor against the assets in the hands of the administrator, &c. -

And now here the Plaintiff filed his Bills of exceptions in words and figures following to wit:

I. Bill of exceptions

Be it remembered, that at the trial of this cause, after the Defendant had closed his proofs, the Plaintiff offered in evidence the following Record, which had been previously used, ^{and read} in evidence by the Defendant, from the State of Connecticut:

Record:

There being no proper officer to serve this writ without great cost and inconvenience, the same is therefore directed to Oscar Symour of the town and County of Litchfield, an indifferent person to serve and return. Greeting:

By authority of the State of Connecticut You are hereby commanded to attach the goods or estate of Lyman Adams of Harwinton in said County, to the value of one thousand Dollars, and for want thereof to attach his body, and him cause to appear before the Court of Common Pleas to be holden at Litchfield within and for the County of Litchfield on the third Tuesday of September next, then and there to answer unto Curtis Hale of said Harwinton in a plea of the case, wherein the Plaintiff declares and says, that he and his wife Rhoda have peaceably cohabited together for a great number of years, enjoying all that domestic tranquility and ardor of affection which so happily constitutes the endearing relation of husband and wife until, ^{within} about a year last past, when the Defendant hath in a most wanton, cruel and

26 diabolical manner frequented the Plaintiffs house,
particularly in the absence of the Plaintiff; that he
hath from the basest motives invidiously enticed away
the Plaintiffs ^{said} wife from his the Plaintiffs service
and society, and hath caused her a number of times
within the last year, to forsake and live apart from
the Plaintiff and their family of children; and the
Plaintiff says, that the Defendant hath in a variety
of instances within the period last aforesaid been
guilty of criminal conversation and intercourse with
the Plaintiffs said wife, whereby he hath lost the com-
fort and society of his wife and the advantages he
was entitled to by a faithful adherence on her part
of the domestic concerns of life in upholding and suppor-
ting himself and family; and also he hath been de-
prived of all those comforts and consolations in life,
which unsullied reputation of himself and family so
eminently promise; all of which doings of the Defen-
dant were premeditated and calculated to ruin and
totally destroy all further relation of husband and
wife between the Plaintiff and his said wife, which
he knew had subsisted for a long time between them,
by reason of which conduct of the Defendant a right
of action hath accrued to the Plaintiff to have and
recover of the Defendant his just damages, which he
says are one thousand dollars, to recover which with
legal costs he brings this Suit. Bond to prosecute is
given. Hereof fail not, but due service and return
make. Dated at Litchfield this 26th day of July A.
D. 1802. Roger Shinn Esq. recognized \$1000 in form
to prosecute. Thirty four Cents duty is paid hereon.
Moses Seymour Justice of Peace.

27
 Harwinton July 30th 1802.

Then I repaired to the usual place of abode of the within named Defendant, but could find neither property nor the body, whereupon to levy this attachment, therefore I left a true and attested Copy of this writ at the Defendants usual place of abode.

Attest Oscar Seymour.

Expes travel 13 miles \$0, 65.
 Copy \$1, 32.
 an indifferent Person.

State of Connecticut. ss.

At a Court of Common Pleas holden at Litchfield, in and for the County of Litchfield, by adjournment on the second Tuesday of Decr. A. D. 1802. Present Hon. Joshua Porter, Judge, Aaron Austin, Nathan Hale, David Smith and Daniel N. Brinsmade Esquires, Justices of quorum.

Curtis Hale of Harwinton in the County of Litchfield, Plff, vs Lyman Adams of said Harwinton Defendant in an action or plea of the case set forth at large in the writ and declaration of the Plaintiff, demanding the sum of one thousand dollars damages with costs of suit, as per writ on file dated the 26th day of July A. D. 1802. This action was brought at the Court of Common Pleas holden at Litchfield in and for the County of Litchfield on the third Tuesday of September A. D. 1802. and by a legal adjournment came to this Court; and now the Plaintiff appeared to prosecute the action, and the Defendant was three times publicly called in Court, but made default of appearance.

Whereupon it is considered by this Court that

in this case the Plaintiff shall recover of the Defendant the sum of one thousand Dollars damages, and his costs of suit allowed to the sum of \$11,01, and that execution issue accordingly.

Execution granted the 21st day of December A.D. 1802.
To the Sheriff of the County of Litchfield, or his deputy, or either of the Constables of the town of Harwinton within said County, Greeting:

Whereas Curtis Hale of said Harwinton recovered Judgment against Lyman Adams of said Harwinton, before the adjourned County Court holden at Litchfield, within the County of Litchfield aforesaid, on the second Tuesday of December A. D. one thousand, eight hundred and two for the sum of 1000 Dollars damages, and for the sum of 11 Dollars one Cent costs of suit, as appears of Record, whereof execution remains to be done:

These are therefore by authority of the State of Connecticut to command You, that of the moneys, goods, chattels or lands of the said Lyman within Your precincts You cause to be levied, and the same being disposed of or appraised as the law directs, paid and satisfied unto the said Curtis the aforesaid sums, being one thousand and eleven Dollars one Cent in the whole, with seventeen Cents more for this writ, and thereof also to satisfy Yourself for your own fees. And for want of such goods, chattels or lands of the said Lyman to be by him shewn unto you, or found within Your precincts to the acceptance of the said Curtis for satisfying the aforesaid sums, You are hereby commanded to take the body of the said Lyman, and him commit to the keeper of the Goal in Litchfield, in the County of Litchfield aforesaid, within the said prison, who is likewise hereby commanded to receive

29 the said Lyman and him safely keep until he pay the said Curtis the full sums above mentioned, and be by him released, and also to satisfy your fees. Hereof fail not and make due return of this writ with your doings thereon according to law, within sixty days next coming.

Dated at Litchfield this 21st day of Decem: Anno Domini one thousand eight hundred and two.
 Frederick Wolcott, Clerk.

Returned without endorsement thereon July 25th 1843.

O. S. Seymour Clerk.

State of Connecticut, County of Litchfield.

July 25th 1843.

Orogen S. Seymour, Clerk of the County Court for said County (said Court being the same Court, which was formerly called the Court of Common Pleas for said County) do hereby certify, that the foregoing and annexed written Sheets contain a full and complete transcript from the files and Records of said Court in the case of Curtis Hale, Plaintiff against Lyman Adams, Defendant, heretofore pending in said Court, and of all the proceedings had in the same by me this day truly and correctly copied from said files and Records in as full and complete a manner as the same remains of Record in my office.



In testimony whereof I have hereunto set my hand and the seal of said County Court and also the seal of said Court of Common Pleas this 25th day of July A. D. 1843.

Orogen S. Seymour, Clerk.

State of Connecticut, Litchfield County.

I William M. Burrall presiding Judge of

the County Court of the County and State aforesaid, do certify, that Origen S. Seymour, whose name appears to the foregoing certificate, is and was at the date thereof, Clerk of said Court, duly commissioned and qualified; that the signature to said certificate is the handwriting of said Clerk, and that his attestation is in due form of law. Given under my hand this 25th day of July 1843.

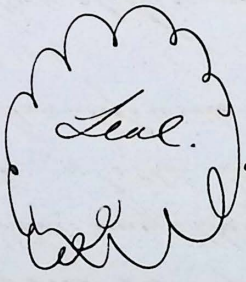
Wm. M. Burrall

State of Connecticut, Ct.

Office of Secretary of State.

I hereby certify, that William M. Burrall, whose signature is attached to the foregoing instrument, is, and on the 25th day of July inst. was Judge of the County Court in and for the County of Litchfield in the State of Connecticut, he having been duly appointed, commissioned and sworn as Judge aforesaid in conformity with the laws of this State. And I do further certify, that the foregoing signature, purporting to be his is genuine.

In testimony whereof I have hereunto set my hand and the seal of said State this 28th day of July, A. D. 1843.



Noah A. Phelps
Secretary of State.

And also the following depositions were read in evidence:

the depositions of Silas Gridley. }
St. Clair Circuit Court.
William G. Goforth, administrator
of Curtis Hale decd.
vs
Lyman Adams.

31.
 in and for the County of St. Clair, State of Illinois
 wherein William G. Goforth, administrator of Curtis
 Hale deceased, is Plaintiff and Lyman Adams is
 Defendant, upon the interrogatories annexed to
 said Commission; the said witness Charles Gridley
 having been by me first duly sworn according to
 law:

Interrogatory 1st on part of the Plaintiff:
 State, whether You were acquainted with Curtis Hale
 in his lifetime and where You knew him.
 answer: I was acquainted with said Curtis Hale
 in his life time, and in the town of Harwinton
 in the County of Litchfield in Connecticut.

Interrogatory 2^d on the part of Plaintiff:
 State whether You are acquainted with Lyman
 Adams the above named Defendant, and where and
 how long a time it is since You first knew him.
 Answer: I am acquainted with the Defendant
 Lyman Adams; first became acquainted with
 him in Bristol, Connecticut in 1800 or 1801; then
 was acquainted with him while he lived in said
 Harwinton in 1801 & 1802. until he left the
 State of Connecticut.

Interrogatory 3^d on part of Plaintiff
 Where was the usual place of abode of said
 Lyman Adams before and on the 30th day of July
 in the year eighteen hundred and two?
 Answer: in Harwinton aforesaid I should
 think and am confident.

Interrogatory 4th on part of Plaintiff:

State all You know in regard to the usual place of abode of the said Lyman Adams in the County of Litchfield in the State of Connecticut.

Answer: Lyman Adams married Rhoda Hale about the year 1801. and from and after the marriage he and his wife resided at Harwinton afore said until he run away, I can not tell precisely the day or month he left, but he continued to reside in said Harwinton till late in the year 1802. & I am confident until after 30th July of that year; during that period Harwinton was the only known place of residence of said Lyman, and it was regarded as his home. I have served as Constable in said Connecticut many years and should regard said Harwinton as said Adams' usual place of abode for the service of process on the 30th July 1802; in 1802 & 1803 I resided at my father near said Adams' place of residence, and saw him a number of times on the Sabbath to & from church from and to the Halehouse in said Harwinton, where he and his wife lived; and saw him also on other occasions.

Silas Gridley.

Interrogatory 2^d. on the part of Defendant:

Did You not understand, that the said Lyman Adams was a resident of Sethem, Massachusetts and considered so, while he was temporarily in said County of Litchfield. (Plaintiff objects to this interrogatory)

Answer: I did not.

Interrogatory 1st on the Part of Defendant:

How long did You know Lyman Adams in Litchfield County?

Answer. About one year

Interrogatory 3rd on the part of Defendant.

Did he while in the last mentioned County keep house, or did he not live in the family of Curtis Hale?

Answer. My impression is, he and his wife did live with the family of Curtis Hale most of the time, but that after Curtis Hale moved to the wooden house, that Adams & his wife kept house at the Hale place.

Interrogatory 4th on the part of the Defendant:

Did You not understand, that some difficulty occurred in the family of Curtis Hale, that said Hale commenced suits against said Adams for debt and crim. con. and that said Adams had left the State of Massachusetts before this suits were commenced. (The Plaintiff objects to this interrogatory)

Answer. I did understand, that some difficulty occurred in the family of Curtis Hale, and that said Hale commenced suits of debt and crim. con. against said Adams, but did not understand nor believe, that said Adams left the State of Connecticut before said suits were commenced, as to Adams leaving the State of Massachusetts I do not know and did not understand any thing about it any way.

Interrogatory 5th on the part of Defendant.

Don't You know, that in July 1802. the report was, that said Lyman Adams had run off?

Answer: I think and believe, that the Report of said Adams having run off was not circulated until some time in the fall of that year.

Interrogatory 6th on the part of Defendant.

Did You ever see him in the town of Harvinton, Litchfield County, Connecticut since the beginning of July 1802.

Answer: I can not say, when the last time was, when I saw him in Harvinton. Silas Gridley.

Deposition of Anson Smith of Harwinton

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County of Litchfield, State of Connecticut taken before the undersigned
Tracy Beck in pursuance of the annexed Commission at my office in
Hartford County & State on the 30th day of September A. D. 1845 in a cer-
tain case now pending in the St. Clair Circuit Court of the State of
Illinois, wherein William F. Griffith admo. of Curtis Kealed. is Plaintiff
and Lyman Adams is Defendant, upon the interrogatories annexed to said
Commission, the said Witness Anson Smith, having been by me first duly
sworn according to law.

Interrogatory 1st on the Part of the Plaintiff:

State whether you know Lyman Adams the above named Defendant;
and where was his usual place of abode in the year 1802, and all you
know in relation to his residing in the State of Connecticut in the year
1802, and of his pecuniary condition while residing in said State during
said year?

Answer. I know Lyman Adams the above named Def^t. and I first
became acquainted with him in the said town of Harwinton at the time
that he was visiting Rhoda Hale, who he afterwards married, and
this was during the year 1800 & 1801. I was present at his marriage
to said Rhoda during the year 1801, the wedding took place in the
episcopal church in the East part of Plymouth; after his marriage
he resided within about half a mile of where I lived with his
wife at the house of Curtis Hale, his wife's father, and I believe
that to be his usual place of residence, and the place, where
he made his home for one year at least, and I think
more; at the end of this period of time he left the State
in the latter part of the Summer or fall, as near as I
can recollect. The cause of his leaving as I understood
was in consequence of a difficulty with Curtis Hale's
wife; we heard nothing concerning him until about
a year since, when I heard, that he was in the State
of Illinois. At the time of his marriage I

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 supposed, that he was a man of property; when he left he took all his property and effects with him; his wife and child were left destitute and unprovided for. If he had left any property, I think that I must have known it.

Anson Smith.

Cross interrogatories propounded to Anson Smith on the part of the Defendant in the above entitled cause.

Question 1. Where did You reside in 1802. and where have You since resided?

Answer. I then resided and ever since have resided in the South east part of said Harwinton.

Question 2^d. What means had You of knowing where Lyman Adams resided in eighteen hundred and two; were You intimate with him and with his father's family?

Answer. I was not very intimate with Lyman Adams and was not at all acquainted with the other members of his father's family, but was intimate with the family of his wife's father; as to my means of knowing where he resided, I usually attended the same Church which he attended and frequently saw him and his wife at Church on Sundays. After their marriage, I was also frequently visited at the house where he resided, and usual saw Lyman Adams there; I recollect, that he worked on the Hale farm at least one Summer.

Question 3^d. Have You no knowledge that Lyman Adams resided at Southam or elsewhere in Mass.

316 chusetts, both before, after and during the year 1802 and that he never had his place of abode or was in Connecticut, except temporarily, after the year 1800?

Answer. I have no knowledge, that Lyman Adams resided in Sudham or elsewhere in Massachusetts either before, after or during the year 1802, but know, that he was frequently from home a pedling, and I understood at the East; as to his place of abode after 1800, I have already stated what I know and believe regarding that.

Quest. 4th. How long did you know Lyman Adams in Connecticut, at what town did you know him, did he keep house or was he boarding at the time and with whom?

Answer. I know him at said Harwinton between two and three years, I do not think, that he kept house but boarded with his father in law after his marriage until he quit, except when out a pedling as aforesaid.

Question 5th. Did you ever have any knowledge of a difficulty in the family of Curtis Hale decd. and of suits being commenced by said Hale against said Adams, and of Adams leaving Connecticut for Massachusetts or elsewhere before process was laid out against him?

Answer. I did know of a difficulty in the family of Curtis Hale decd. and heard, that said Hale commenced suits against said Adams, and know that Adams absconded about the time that

the suits were commenced, but whether before or after proof was sued out against him, I do not know.

Question 6th. Did You see Lyman Adams, in Connecticut during the year 1802 or 1803, after the first or middle of July 1802?

Answer. I saw him in Connecticut in 1802, and my impression is as late as July or August 1802, but have particular circumstance to remember the time of the year by:

Question 7th. State particularly whether in your answer to the interrogatories on the part of Plaintiff You speak from facts within your own knowledge or from knowledge and information derived from others?

Answer. I speak from facts within my own knowledge.

Question 8. State Your age and the place where you were raised and brought up.

Answer. My age is about sixty three years, being in my sixty fourth year; I was raised and brought in said town of Harwinton.

Anson Smith.

Deposition of Charlotte Hart of Bristol County of Hartford, State of Connecticut taken before the undersigned Tracy Peck in pursuance of the annexed Commission, at my office in said County and State on the (30th) thirtieth

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day of September A. D. 1845. in a certain case now pending in the Circuit Court in and for the County of St. Clair, State of Illinois, called the St. Clair Circuit Court of said State of Illinois, wherein William G. Goforth, administrator of Curtis Hale decd. is Plaintiff, and Lyman Adams is Defendant upon the interrogatories annexed to said Commission the said witness Charlotte Hart having been by me first duly sworn according to law.

Interrogatory 1st on the part of Plaintiff.
State whether you know Lyman Adams, the above named Defendant, and where was his usual place of abode in the year 1802, and all you know in relation to his residing in the State of Connecticut in the year 1802. and of his pecuniary condition while residing in said State during said year.

Answer. I am the Sister of Anson Smith, who has given his deposition, and I am acquainted with the same facts deposed to by the said Anson Smith; I knew Lyman Adams, the above named Defendant about the year 1800. 1801 & 1802, and knew him well at the time of his marriage with Rhoda Hale, which took place in the Episcopal Church in East Plymouth, and according to my best recollection the marriage took place in the course of the year eighteen hundred and one; I was present at the wedding; after the marriage he and his wife resided my nearest neighbors in the town of Harwinton in Connecticut and at the house of her father where they continued to live and have the place of their usual abode a year or more, when he left

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 the State in consequence of a difficulty, he being accused of adultery with Curtis Keales wife; he was supposed for many years to be dead, we heard not a word from him or about him, or what became of him until within about a year, when I heard that he was in the State of Illinois. I suppose he was a young man of property, when he was married, but when he left the State of Connecticut as herein stated, he left no property in this State to my knowledge

Charlotte ^{her} Hart
 mark.

Crossinterrogatories propounded to Charlotte Hart on the part of the Defendant in the above entitled cause.

Question 1st Where did You reside in 1802 and where have You since resided?

Answer. From my birth until my marriage in 1814 I resided in Harwinton in the State of Connecticut, and after my marriage with Mr. Davis, which took place in the thirty fourth year of my age I resided with my husband in Farmington in Connecticut until his death; I am now the wife of Seth Hart and reside with him in Bristol, Connecticut.

Question 2^d What means have You of knowing where Lyman Adams resided in eighteen hundred and two, were You intimate with him and with his fathers family?

Answer. I was not acquainted with Lyman Adams family; I was not intimate with Lyman Adams but saw him frequently before and after

40
his marriage; I used to see him and his wife at Church on Sundays in East Plymouth; I worked in the family of Curtis Hale and often visited them during the time that said Adams resided there.

Question 3^d. Have you no knowledge, that Lyman Adams resided at Sedham or elsewhere in Mass. both before, after and during the year 1802; and that he never had his place of abode or was Conn. except temporarily after the year 1800?

Answer. I have no such knowledge.

Question 4th. How long did you Lyman Adams in Conn.; at what town did you know him; did he keep house or was he boarding at the time and with whom.

Answer. He did not keep house but boarded with his father in law. I knew him at said Harwinton as much as two years.

Question 5th. Did you ever have any knowledge of a difficulty in the family of Curtis Hale dec. and of suits being commenced by said Hale against said Adams, and of Adams leaving Conn. for Mass. or elsewhere before process was served against him.

Answer. There was a good deal of difficulty in Curtis Hales family, which I heard of; I do not remember or know any thing about suits.

Question 6th. Did you see Lyman Adams in Connecticut during the year 1802 or 1803 after the first or middle of July 1802?

41
Answer. I saw him in C^t in 1802. but how late in that year I have no means of determining.

Question 7. State particularly whether from your answer to the interrogatory on the part of the Plaintiff you speak from facts within your own knowledge or from knowledge and information derived from others.

Answer: I speak from my own knowledge.

Question 8. State your age and the place where you were raised and brought up.

Answer: I was raised and brought up in the town of Harwinton, and am in my sixty fifth year of my age.

Charlotte Hart
mark.

Appointer of }
Superior Court. 42

State of New York
Orange County, 23rd Decr

Deputation of Mayor
Graves of Orange in the County of Orange
and State of New York, taken before me
Orange Co., the undersigned, in pursuance of
the above Commission of my office in and for
in said County and State on the twenty fourth
day of December A. D. 1844 in a certain
case now pending in the Circuit Court
in and for the County of St. Louis
and State of Missouri, wherein William
L. Griffith administrator of Estate
of Griffith deceased is Compt. & Defendant

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Adams is Defendant upon the interrogatories annexed to said Commission; the said witness Major Graves having been by me first duly sworn according to law.

On the Part of the Plaintiff.
Interrogatory 1st. State whether you are or have been acquainted with Lyman Adams the above named Defendant; when and where you knew him and where was his usual place of abode, when you knew him?

Answer. I was well acquainted with Lyman Adams herein named first knew him while he was living in the town of Bristol in Hartford County, Connecticut about the year A.D. 1801 he moved into the town of Harwinton, Litchfield County and State aforesaid, & his usual place of abode while in Harwinton was in the family of Curtis Hale, and abode there about a year or more; about two months of the latter part of the time Adams and Hales family was domiciled with a Mr. Wooden in Harwinton Litchfield County, Connecticut; and during this two months or a part of it said Hale was gone to lake Champlain or in that section.

Interrogatory 2^d. State all the facts & circumstances within your knowledge, that are material to the parties in this above entitled cause or either of them.

Answer. About the first of July 1802 or thereabouts Hale returned from his journey to lake Champlain and there was some trouble arose

4.4

in the families of Adams and Hale, or between them, and Adams left the County, and I never saw him again afterwards. I should think Adams left Harwinton about July, not later than that time in the year 1802. So not know that Adams had any other place of abode after he married Hales daughter, than in the family of said Hale in Harwinton, in Litchfield County Connecticut, and farther saith not.

Major Graves.

Cross-interrogatories put to Major Graves on the part of Lyman Adams, Defendant in the case referred to in the Plaintiffs interrogatories mentioned.

Question 1st. How long did You know Lyman Adams in Litchfield County, Connecticut.

Answer. About one year.

(objected to)

Question 2^a. Did You not understand, that the said Lyman Adams was a resident of Dedham Massachusetts, and considered so while he was temporarily in Litchfield County.

Answer. I never heard of any such thing, or even knew, that Lyman Adams lived in the State of Massachusetts.

(objected to)

Question 3^a. Did he while in the last mentioned County keep house, or did he not live in the family of Curtis Hale.

Answer. Lyman Adams did not keep house, but lived in the family of Curtis Hale.

45
Question 4th Did You not understand, that some difficulty had occurred in the family of said Courtis Hale; that said Hale commenced suits against said Adams for debt and for crim. con. and that said Adams left the State of Massachusetts before the suits were commenced.

Answer: I did; and Hale commenced suits against Adams; the suits arose out of the difficulties in the families; could not state the particular charges made; think Adams did not leave until after the suits were commenced. Do not know that Adams ever had his abode in Massachusetts or ever left Massachusetts.

Question 5th Do not You know, that in July 1802.

47 11
 And also the Plaintiff read in evidence a public law of the State of Connecticut from a book purporting to have been published by the authority of the said State, being, "an act for the directing and regulating Civil actions" as follows:

It. Be it enacted by the Governor and Council, and House of Representatives in General Court assembled that the ordinary process in Civil actions in this State shall be a summons or an attachment, fairly written, signed by a magistrate, Justice of the Peace or Clerk of the Court, mentioning the Court, the time and place of appearance, therein also containing a declaration of the substance of the action; which attachment may be granted against the goods or chattels of the Defendants and for want of them, the lands or person of the Defendant may be attached; provided the Plaintiff, when he prays out an attachment, gives sufficient security to prosecute his action to effect, and answer all damages in case he make not his plea good. And like security shall be given by some substantial inhabitants of this State on granting a summons, when the Plaintiff is not an inhabitant of this State; or if it shall appear to the authority signing the same, that the Plaintiff is unable to pay the costs of prosecution if recovered against him. And all writs and process shall be directed to the Sheriff, his Deputy or some Constable, if such officer can be had without great charge or inconvenience. And in every case, where in the authority signing the writ, shall find it necessary to direct the same to an indifferent person, such authority shall insert the name of the indifferent person in the direction of the writ, &c.

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the reason of such direction; and if any writ be otherwise directed, it shall abate. Provided nevertheless that nothing herein shall extend to affect summonses for witnesses, warrants to collectors of rates, or warrants granted by military officers.

The Plaintiff also read in evidence a certified copy of the second section of a law of Connecticut, being, an act for the directing and regulating of Civil actions:

Be it enacted by the Governor and Council and house of Representatives in General Court assembled:

Section 2. And that no person shall be required to make answer in any civil action, real, personal or mixed, except the writ or process, if returnable to the Superior or County Court, has been served upon him at least twelve days inclusive before the day of the Courts sitting; or if returnable to an Assistant or Justice, the same has been served six days inclusive as aforesaid; which service shall be, if a summons, by reading the same in the hearing of the Defendant or Defendants or leaving an attested copy thereof at the place or places of his or their usual abode; but if an attachment, the service shall be the attaching the Defendant or Defendants estate or person, and giving him notice by reading the writ to him or within his hearing, or by leaving an attested copy thereof at the place of his usual abode, if that be within this State; and that all such writs as are made returnable to the County-Courts shall be returned to the Clerk of said Courts on the day before the sitting of such Courts, and not afterwards that in case any process be duly served on any Defendant or Defendants and return thereof made

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to the Court to which the same is made returnable, then if such Defendant or Defendants do not appear his or their default shall be recorded and Judgment entered up against him or them thereupon, unless he or they shall come into Court on or before the second day of the sitting of said Court and move for a new trial, in which case he or they shall be admitted thereto upon paying down to the adverse party the costs to that time; and the Plaintiff shall pay for entering the action anew.!!

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State of Connecticut
Office of Secretary of State. } I Noah A. Phelps
Secretary of said State and by law Keeper of the Seal and Public Records thereof, do hereby certify, that the foregoing is a true Copy of the second Section of a public act of the Legislature of this State, entitled "an act for the directing and regulating of civil actions" which said act was passed in the year 1750 and continued to be and was in full force during the whole of the year eighteen hundred and two.

Seal of
State.

In testimony whereof I have hereunto set my hand and affixed the seal of the said State at the City of Hartford this ninth day of March 1844.

Noah A. Phelps
Secretary of State.

On the part of the Plaintiff he proved by one John C. [unclear] a witness, that he had had frequent conversations with the said Defendant Lyman Adams since 1835, and he frequently heard said Adams say, he lived in Connecticut

50
that he had left that State some forty years ago and upwards, and he did not understand from said Adams in any conversation he had with him, that he ever resided in Massachusetts. He heard said Adams say, that after he left the said State of Connecticut he settled in Baltimore, afterwards removed to Louisville & from thence to Illinois.

On the part of the Defendant before the Plaintiff introduced the above evidence, they introduced and read to the jury the above recited Record, the deposition of Chester Adams, in words following to wit

Answers to the several questions and interrogatories propounded to Chester Adams of Naticks of the County of Middlesex and Commonwealth of Massachusetts in the action of William G. Gifford administrator of Curtis Heale deceased against Lyman Adams, now pending in the Circuit Court of St. Clair County, State of Illinois:

Answer to the first interrogatory. I know Lyman Adams named in the above Suit and have been acquainted with him for the last fifty five years. Said Lyman Adams is my brother, older than myself, but I have not seen him since 1805 or 1806.

Answer to the second interrogatory. The father of the said Lyman and of myself resided in the town of Bristol, County of Hartford and State of Connecticut about two miles north westerly of the Central meetinghouse in said Bristol all the time while the said Lyman Adams remained at home. Early in the Spring of the year either of 1798 or 1799 said Lyman left my fathers

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house on a trading tour to the State of Massachusetts. A few weeks after said Lyman left home, as I have stated, at his request sent from Cambridge Massachusetts three persons besides myself to wit Eli Parsons of Bristol, Waterman Bishop of Southington and Samuel Sweet of Farmington came to Massachusetts; in compliance with the advise and request of my brother Lyman we started from said Bristol on the twelfth day of July A. D. 1799. and arrived at Dedham in the County

of Norfolk and State of Massachusetts on the sixteenth
day of the same July; and on my arrival I found
my brother Lyman Adams at the same Dedham
I resided and made my home at the said Dedham
from my arrival in 1799 till the twenty fourth
day of September A. D. 1807 and I was not out
of the said town of Dedham during the whole of
that period, three weeks in succession, with one exception
only, and that exception was in the year 1802, in the Spring
of the last named year my brother made arrangement for going to
Granddilla

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Lake Champlain and Skensborough, now called
 I think Whitehall in the State of New York; and
 something was said about going to Canada for further
 do. Lyman left Dedham in the Spring of 1802. and
 as he was going to be gone sometime, he offered me the
 use of his horse and waggon during his absence, to
 visit our father at said Bristol. Said Lyman started
 from said Dedham, a few weeks I think before I did,
 but I can not tell precisely how long before. I left
 Dedham the latter part of June 1802, about the
 20th day of June, with Lyman's horse and waggon,
 and arrived home at my father's in said Bristol in
 three or four days. I tarried at my father's on a
 visit until the month of October next following; I
 left about the middle of October and returned to
 Dedham on my brother's horse on horseback, leaving
 the waggon at my father's. Soon after my return,
 within a fortnight I should think, certainly within
 four weeks my brother returned to said Dedham and
 continued to reside as usual at said Dedham for the
 residue of the year, and said Lyman continued to
 reside and make his home at said Dedham till
 the spring ^(I think) of the year 1805 or 1806. when he left
 Dedham for Philadelphia. From my arrival
 in Dedham on the 16th of July 1799. to the time my
 brother Lyman left for Philadelphia, as I have above
 said, said Lyman was engaged in buying & selling
 various articles of merchandise, and in the prosecu-
 tion of his business made frequent expeditions to
 Vermont, New-Hampshire, Maine, I think Rhode
 Island and New-York and perhaps some other States
 of the Union, but from the 16th day of July till

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1805 or 1806, when he left Massachusetts as I have stated, said Lyman's home was during all the time at said Dedham, and this was the place to which he always returned from his tours. I was well acquainted with my brother's trading business and he communicated freely on the subject of his trading concerns from the time I first went to Dedham to the time he left for Philadelphia. While he was absent at Grandisole and Steensborough in 1802. as I mentioned above, and while I was at my father's house, we received letters from him, said Lyman, purporting to come from one of said places, I can not say positively which, but I think from Steensborough.

Answer to the third Interrogatory. The residence of the father of said Lyman Adams in 1802. was distant from the meetinghouse in the town of Harwinton, Litchfield County, Connecticut, about five or six miles. I was at my father's house on a visit in the year one thousand eight hundred and two from about the twentieth day of June till about the middle of the next October, and while I was at home, during a portion of the summer I attended meetings at the Episcopal Church in the corner of Plymouth I think, a town adjoining said Bristol. This church was about two miles of my father's, on the road to Harwinton, and from one to two miles from said Curtis Hoales' deed. During the time I was at home in 1802, I did not see said Lyman and I was so constantly at home during this visit, that had said Lyman been at our father's house, I must have known it. If he had been residing

55 in the town of Harwinton during any portion of this period I think I must have known it, as my parents and I were quite anxious to see him; if he had been residing so near my father, I should have heard of it. I was a boy about eighteen years old at the time, and I now retain a vivid recollection of the facts and circumstances that took place at that period.

Answer to the fourth interrogatory. He did not have his usual place of abode or residence in Connecticut at any time after he left his father in 1798. or 1799 till 1805, but his home was during that period from July the sixteenth 1799 to 1805 at said Dedham.

Answer to the fifth interrogatory. I do not know at what time the suits in favor of said Curtis Hoale against said Lyman Adams were commenced; I first heard of the suits in favor of said Hoale as aforesaid after hay time in the summer of 1802 but before I left Bristol for said Dedham, but the precise time I heard of them, I can not fix; according to my best recollection I should say I first heard of them in August of that year, and the rest of this question I have answered above.

Answer to the sixth interrogatory. From the sixteenth day of July 1799 to the time said Lyman Adams left for Philadelphia, as I have stated above, I boarded with said Lyman or in his immediate vicinity except as above stated, when on a visit to my father in 1802. He was often absent on his trading tours, as I have mentioned above.

Chester Adams.

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Commonwealth of Massachusetts
 Middlesex County. ss. I Edward Mellen
 authorized and appointed by virtue of the foregoing aedimus
 protestatum or Commission to take the deposition of Chester
 Adams of Natick in the County of Middlesex aforesaid,
 to be read in evidence upon the trial of a cause pending
 in the Circuit Court of St. Clair County in the State
 of Illinois, wherein William G. Goforth, administrator
 of Curtis Hale is Plaintiff and Lyman Adams Defendant
 do hereby certify, that the said Chester Adams was by
 me duly sworn to testify the truth in the above named
 cause, in relation to the matter in controversy so far as
 he might be interrogated thereto previous to his examination,
 that the foregoing deposition was taken and reduced to
 writing by me and sworn to and signed by the said
 Chester Adams before me at Cambridge in the County
 of Middlesex in the State of Massachusetts on the
 thirteenth day of October A. D. eighteen hundred and
 forty five between the hours of nine o'clock in the mor-
 ning and five o'clock in the evening of that day.

Given under my hand and seal the thirteenth day of
 October A. D. 1845. Edward Mellen
 Commissioner

and the deposition of Andrew Adams in words following

St. Clair Circuit Court ss.

William G. Goforth administrator
 of Curtis Hale decd.

vs
 Lyman Adams

} Action of Debt.

To Wm G. Goforth Esq.

Sir, take notice that on the 12th day of April A. D. 1845 between the hours of nine o'clock A. M. and

Depos. of
 Andrew
 Adams

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five o'clock P.M. of that day I shall apply to the Clerk of the St. Clair Circuit Court at his office in Belleville in said County for a Commission in the above entitled case, to be directed to the Hon. Phineas L. Tracy of Genesee County, State of New York as Commissioner to take the deposition of Andrew Adams, a resident of said County, to be read as evidence upon the trial of the above mentioned cause, upon the following interrogatories, to wit:

- Interrogatories proposed to the said Andrew Adams the above named witness:
- 1st State whether you have known and have been acquainted with one Curtis Hale, and with Lyman Adams, the Defendant in the above entitled case.
 - 2^d Where did Lyman Adams reside in the years 1801 & 1802 and where was his usual place of abode in the year 1802.
 - 3^d Where did Lyman Adams reside the latter part of July 1802, and if he did not reside in Harwinton, Connecticut, at the last mentioned time, state, where he did reside.
 - 4th Was he or was he not reported to have left the State of Connecticut previous to the latter part of July 1802?
 - 5th Did you ever hear of any lawsuits commenced by Curtis Hale in Litchfield County, Connecticut, against said Adams in the year 1802, and if you recollect any thing about said lawsuits, state whether Mr. Adams had left the State of Connecticut before or after these suits were commenced.
 - 6th State whether Lyman Adams ever resided permanently in Connecticut.

58 /th If You know the place, where Mr. Adams
resided after he left Connecticut, State it.
Ith State all the facts and circumstances within
Your own knowledge that are material to the parties
in the above entitled cause.

Koerner & Turnbull for
Defendant.

Received a Copy of above notice and interrogatories.
this first day of April 1845.

W. G. Goforth.

Interrogatories propounded to Andrew Adams
on the part of the Plaintiff in the above entitled cause.

1st. Are You a relation of Lyman Adams the
said Defendant; if ay - how related?

2^d. Where did You reside in July in the year 1802.
and where have You since resided?

3^d. State what means You have of knowing where
Lyman Adams had his usual place of abode in
the latter part of July 1802.

4th. State whether in Your answers to the interroga-
tories on the part of the Defendant You speak from
facts within Your own knowledge, or from knowledge
and information derived from others; please state parti-
cularly.

John M. Krum for
Plaintiff

State of Illinois }
County of St. Clair. } dt

The People of the State of Illinois to
The new S. Tracy of Genesee County, State
of New-York, Greeting.

Know Ye, that we in
consideration of the confidence in Your prudence and

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fidelity have appointed You, and by these presents
 do give unto You full power and authority, and do
 hereby authorize and require You, that at a certain
 time and place to be designated and appointed by
 You for that purpose, You caused the witness, whose
 name is mentioned in the Caption of the attached
 interrogatories to come before You, and then and
 there diligently and faithfully take his deposition upon
 all such interrogatories as are attached to this Commis-
 sion, both on the part of William J. Coforth,
 administrator of Curtis Hale decd. Plaintiff
 and Lyman Adams Defendant, and none others;
 and that previous to the examination of said witness,
 You do swear or affirm him to testify the truth in
 relation to the matter in controversy as far as he may
 be interrogated. Whereupon You shall proceed to examine
 said witness upon all the interrogatories attached to
 this Commission as aforesaid, and which are direc-
 ted to be put to said witness, and shall cause the
 said interrogatories as they are propounded together
 with the answers of the said witness thereto to be
 reduced to writing, in the order in which they shall
 be proposed and answered. And when You shall
 have so taken them, You shall cause the said witness
 to sign his name to the same in its proper place.
 After which You will annex at the foot thereof
 a certificate subscribed by Yourself, stating, that it
 was sworn to and signed by the deponent, and the
 time and place when and where the same was taken.
 And the Deposition when thus taken and subscribed
 and all Exhibits produced to You, or which shall be
 proved or referred to by said witness together with

260 this Commission and the said interrogatories shall be carefully enclosed and sealed up by You, and directed to the Clerk of the Circuit Court within & for the County of St. Clair and State of Illinois at Bellville with the names of the parties litigant endorsed thereon. And this You shall in no wise omit.

Witness Theodore Engelmann Clerk of the Circuit Court within & for the County of St. Clair and State of Illinois & the seal of said Court hereto affixed this 12th day of April A. D. 1845.

Theodore Engelmann

Depositions of Andrew Adams, a resident of the County of Genesee, State of New-York, taken on behalf of the Defendant in a certain cause now pending in the Circuit Court of St. Clair County, State of Illinois, wherein William J. Goforth administrator of Curtis Hale is Plaintiff and Lyman Adams Defendant, by Phineas L. Tracy Commissioner appointed for that purpose under the laws of Illinois.

First Interrogatory. State whether You have known and have been acquainted with one Curtis Hale, and with Lyman Adams, the Defendant in the above entitled action?

Answer. I have known and have been acquainted with both Curtis Hale and Lyman Adams.

Second Interrogatory. Where did Lyman Adams reside in the years 1801 and 1802, and where was his usual place of abode in the year 1802.

1) Answer. In the month of February 1800 the said Lyman became of the age of 21 years, and left

61 his father's house in the town of Bristol in the State of Connecticut, and went to reside at Dedham in the State of Massachusetts, where to the best of this deponent's recollection said Lyman continued to reside till the month of December 1801. or the month of January 1802. at one of which periods he returned to his father's house in Bristol aforesaid, where he remained till the Spring of 1802. In the said Spring he left Bristol, stating that he was going to Vermont, and then should return to said Dedham. During the ensuing Summer of 1802. a letter was received by the said Lyman's father from him the said Lyman, dated as this deponent believes, at Whitehall in the State of New-York, which letter stated, that the said Lyman after he had completed his business at the North should return to Dedham to reside again. This deponent further says, that in the month of November or December 1802. his said father received a letter from said Lyman dated at said Dedham, from which circumstance said deponent believed and still believes that said Lyman was then residing in said Dedham.

Third Interrogatory. Where did Lyman & Adams reside in the latter part of July 1802 and if he did not reside at Harwinton, Connecticut at the last mentioned time, state, where he did reside.

Answer. In the month of July 1802. this deponent says that to the best of his knowledge and belief said Lyman did not reside at Harwinton Connecticut, but was a resident of Dedham Massachusetts, though during that particular month absent in the North part of New York or Vermont on business as he believes.

Fourth Interrogatory. Was he or was he not reported

82 to have left the State of Connecticut previous to the latter part of July 1802.

Answer. Said Lyman was reported to have left the State of Connecticut previous to the latter part of July 1802.

Fifth Interrogatory. Did You ever hear of any law-suits commenced by Curtis Hale in Litchfield of Connecticut, against said Adams in the year 1802, and if You recollect any thing about said law-suits, state whether Mr. Adams had left the State of Connecticut before or after these suits were commenced.

Answer. In the year 1802. it was commonly reported at Bristol aforesaid, that there was a matter of difficulty existing between said Lyman and said Curtis Hale. It was also commonly reported, that the said Curtis had taken out a writ or writs against said Lyman, and was watching his said father's house at Bristol to arrest him or cause him to be arrested. That previous to the taking out of said writ or writs as this deponent heard of them, said Lyman had left at least one or two months, and never did return again to Connecticut, as this deponent ever heard of and believed, as this deponent had no relatives or business transactions to call him back there as this deponent believed - as his father's family soon removed from the State of Connecticut.

Sixth Interrogatory. State whether said Lyman Adams ever resided permanently in the State of Connecticut.

Answer. Said Lyman was born in the State of Connecticut, and permanently resided there until the

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 month of February 1800, when he became of age.
 Seventh Interrogatory. If you know the place, where Mr. Adams resided after he left Connecticut, state it.

Answer. This deponent states, from 1800 to 1806, said Lyman resided at Sedham aforesaid; that since 1806 he has had no particular knowledge of his place of residence until last winter, when he received a letter from him, dated in the State of Illinois.

Eighth Interrogatory. State all the facts and circumstances within your own knowledge, that are material to the parties in the above entitled cause.

Answer. This deponent says in answer to the last interrogatory, that he hath stated all the facts and circumstances within his knowledge, that are material to the parties in the above entitled cause, except he says, that his knowledge of the residence of said Lyman at Sedham aforesaid was derived from his own declarations, from letters received from him and because in the latter part of 1804 or the beginning of 1805, this deponent went to Sedham and resided with him a number of months.

subscribed and sworn this 5th day of May 1845. before me

Thomas L. Tracy, Commissioner.

Interrogatories proposed to Andrew Adams on the part of the Plaintiff in the above entitled cause.

First Interrogatory. Are you a relative to Lyman Adams, the said Defendant; if ay, how related?

Answer. This deponent says, that he is a brother of the said Defendant.

Second Interrogatory. Where did you reside in July

64 1802, and where have you since resided?

Answer. This deponent resided in July 1802 at Bristol in the State of Connecticut. And this deponent further says, that in the year 1804 he left Connecticut, and had not resided there since; that he first removed to the State of Massachusetts where he resided until 1809, since which time he has resided in the State of New York, and for the last 29 years has been a resident of the County of Genesee in said State where he now resides.

Third Interrogatory. State what means you have of knowing where Lyman Adams had his usual place of residence in the latter part of July 1802.

Answer. In the month of July 1802 this deponent saith, that he was in the Hayfield to work with his father in Bristol aforesaid, and a man came into the field and brought directed to his father, a letter of introduction in the handwriting of and signed by said Lyman, and dated as this deponent believed at Whitehall in the State of New-York, in which letter said Lyman referred to the place, where he then was and where he was going. It is possible, that Mr. Boardman, the bearer of the letter, might have been the source from which he learned, that his brother was going down lake Champlain. This deponent further says, that it is his best impression, this was the latter part of July 1802. That the letter was dated but three or four days before received - also that he is more particular about the time in his recollection about the time of the receipt of said letter and its contents as the writing was so obscure and this deponent was called upon by his father to read the same for him.

65
 Fourth Interrogatory. State, whether in your answers to the interrogatories on the part of the Defendant you speak from facts within your own knowledge, or from knowledge and information derived from others; please state particularly.

Answer. This deponent says, that in his answers to the several interrogatories on the part of said Defendant he has endeavored to state particularly and clearly the facts within his own personal knowledge, and he can give no further information in reference to this interrogatory, but would refer to his several answers to the Defendants interrogatories.

Subscribed and sworn this 2 Andrew Adams.

5th day of May 1845 before me

Phineas L. Tracy, Commissioner.

State of New-York 2

Genesee County. 3

I Phineas L. Tracy Commissioner appointed by the annexed Commission do hereby certify that Andrew Adams, the Deponent, whose name is subscribed to the respective depositions on the part of said Defendant and said Plaintiff marked A. & B. was sworn by me previous to his examination and that he signed the aforesaid depositions on the fifth day of May 1845 at Batavia in the County of Genesee and State of New York.

Phineas L. Tracy,
 Commissioner.

This was all the testimony in the case. And the jury after hearing said testimony and evidence afterwards to wit on this 21st day of May 1846. during the said term, return the following verdict:

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" We the Jury find the issues for the Defendant, and we Specially find, that the Defendant was not a resident or inhabitant of the State of Connecticut on the 30th day of July A. D. 1802." and the Plaintiff files his motion to set aside said verdict and for a new trial in the following words:

And now on this day comes the said Plaintiff and moves the Court to set aside the verdict and grant a new trial in said Cause for the following reasons, to wit:

- 1st The verdict of the jury is against the evidence;
- 2^a against law and evidence;
- 3^a against the weight of evidence;
- 4th the Court erred in the instructions they gave to the jury, as asked for by the Defendant;
- 5th the Court erred in excluding the deposition of Oliver Hoill;
- 6th the Court erred in permitting portions of the depositions of the Adams to be read to the jury.
- 7th the verdict is informal, uncertain and insufficient, and no Judgment can be pronounced on it.

John M. Krum

atly for Plaintiff

which motion the Court overrules; to the overruling of which motion the Plaintiff by his counsel excepts, and prays, that this his bill of exceptions may be signed, sealed and made a part of the Record.

John S. Caton

And the Plaintiff at the time last aforesaid filed his other Bill of exceptions in words and figures following to wit:

11. Bill
of exceptions
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1.
William G. Goforth adm^r & c.
of Curtis Hale
vs.
Lyman Adams.

Saint Clair Circuit Court
May Term 1846.

It is remembered that on the trial of this cause and before the argument thereof commenced, the plaintiff claimed the right under the pleadings to open and conclude the argument which the Court refused and permitted the defendant to open and conclude the same to which opinion of the Court the plaintiff by his counsel excepts. And also afterwards to wit on the said trial the plaintiff offered to read in evidence to the jury the deposition of Chloe Hill and also a release accompanying said deposition releasing the interest of said Witness in said judgment, which deposition & release are in words and figures following to wit:

Saint Clair Circuit Court.
William G. Goforth adm.
of Curtis Hale dec^r.
vs.
Lyman Adams.

To Messrs Trumbull, Preese & Koerner, Attorneys for Lyman Adams the above named defendant. —

Take notice that on Monday the 9th day of September next between the hours of Nine O'clock A.M. & five O'clock P.M. of the day, I shall apply before the Clerk of the Saint Clair Circuit Court at his office in Belleville in said County, for a commission in the above entitled cause to be directed to

Amos H. Winkley Esq. of Camden, Oneida County, State of New York, to take the testimony of Chloe Hill a witness in the above entitled cause upon the following interrogatories - to wit:

Interrogatories propounded to Chloe Hill the above named witness on the part of the Plaintiff in the said cause -

1st State the usual place of abode of Lyman Adams the above named Defendant in the year 1802, & on or about the 30th day of July of that year -

2^d State all the facts & circumstances within your own knowledge, that are material to the parties in the above entitled cause or to either of them -

John McKeown
City for Wm. J. Popham
adm^r of Curtis Hale dec^d

We admit due service of the within & foregoing notice & interrogations this 29th day of August 1844

Frederic & Harner Attys
for Lyman Adams

Cross-interrogatories, ^{to be} put to Chloe Hill, on the part of Lyman Adams, defendant in the case in the Caption of the Plaintiffs interrogatories mentioned -

Question 1st Are you not the daughter of Curtis Hale deceased, and if so will you please to state, when & where the said Curtis Hale died?

Question 2^d Is your mother still living, or is she dead & when & where did she die.

Question 3^d Have you any recollection of suits being commenced in the State of Connecticut by said Curtis Hale against the said Lyman Adams, and also of

69 proceedings on the part of said Lyman Adams' wife for a divorce from her husband.

Objected to Question 4th If You recollect the nature of these suits commenced by said Curtis, please state it.

Question 5th Did or did not Mr. Lyman Adams reside in Dedham in the State of Massachusetts before he came to Litchfield County Connecticut, & when he married in said County was he not published as a resident of Massachusetts.

Question 6th How long was Mr. Adams in Connecticut from the time of his marriage until the time these suits were commenced?

Question 7th Don't You recollect that these suits & proceedings were commenced within the last two days of July 1802. —

Question 8th Please state whether or not shortly before the commencement of the proceedings or before the 30th of July 1802, said Curtis Hale & his wife visited the State of Massachusetts, and whether or not they or either of them had an interview with Lyman Adams in the said State of Connecticut?

Question 9th Don't You know now that the said Lyman Adams had left Litchfield County & the State of Connecticut some time before the visit above referred to, or sometime before the commencement of these proceedings.

Objected to Question 10th Don't You know that the general report in Litchfield County, in the month of July 1802 was, that said Lyman Adams had run away, & gone out of the State.

Question 11th Did you not understand so by Mr. Curtis Hale himself.

Question 12th. From the time these proceedings were commenced, or from the said month of July 1802, where did said Lyman Adams reside, & if you do not know where he resided, state whether it was not understood and the general report that he was out of the state of Conn. cut ever since said month of July?

Question 13th. Don't you know that on or about the 30th of July 1802, or about the time all these proceedings were instituted against the said Lyman Adams, the same resided at Friendsborough, now called Whitehall, N.Y. or if you understood that he resided any where else, perhaps Vermont, please to state it?

Question 14th. While the said Lyman Adams was in Harrington, Litchfield Co. Ct. did he keep house or did he not live with the family of said Curtis Hale?

State of Illinois }
St. Clair County } Lt.

The People of the State of Illinois
To Amos H. Winkley Esq. of Camden, Oneida
County, State of New York, Greeting:

Know Ye that we, in confidence of Your prudence & fidelity have appointed You, and by these presents do give unto You full power & authority, & do hereby authorize & require You, that at a certain time & place to be designated & appointed by You for that purpose, You cause the witness, whose name is mentioned in the caption of the attached interrogatories, to come before You, & then & there diligently & faithfully take his deposition upon all such interrogatories as are attached to this commission, both on the part of William G. Goforth administrator of Curtis Hale dec'd

Plaintiff, and Lyman Adams, Defendant, and none other; & that previous to the examination of said Witness You do swear or affirm him, to testify the truth in relation to the matter in controversy as far as he may be interrogated. Whereupon You shall proceed to examine said witness upon all the interrogatories attached to this commission as aforesaid, & which are directed to be put to said witness, and shall cause the said interrogatories as they ^{are} propounded, together with the answers of the said witness thereto, to be reduced to writing in the order in which they shall be proposed & answered, and when You shall have so taken them, You shall cause said witness to sign his name to the same in its proper place. After which You will annex at the foot thereof a certificate subscribed by You, self, stating that it was sworn to & signed by the deponent, and the time & place when & where the same was taken. And the depositions when thus taken & subscribed, and all exhibits produced to You or which shall be proved or referred to by said witness, together with this commission & the said interrogatories shall be carefully enclosed & sealed up by You & directed to the Clerk of the Circuit Court within & for the County of St. Clair & State of Illinois, with the name of the parties litigant endorsed thereon.

And this You shall in nowise omit.

Witness William C. Kinney Clerk
of the Circuit Court within & for the County
of St. Clair & State of Illinois, and
the seal of said Court hereto affixed
at Office in Belleville this ninth
day of September A. D. 1844.
Wm C. Kinney

Seal

Deposition of Chloe Hill of Camden in the County of Oneida State of New York - taken before the undersigned Amos H. Finkley Esqr. in pursuance of the annexed commission at my office in Camden aforesaid on the twenty sixth day of September in the year of our Lord One thousand Eight hundred & Forty four in a certain cause now pending in the Circuit Court in & for the County of St. Clair - in the State of Illinois wherein William G. Goforth adm^r of Curtis Hale deceased is plaintiff & Lyman Adams is defendant upon the interrogations annexed to said commission; the said Witness Chloe Hill having been by me first duly sworn according to law.

Interrogatory first on the Part of the Plaintiff.

State the usual

place of abode of Lyman Adams the above named defendant in the year Eighteen hundred & two & on or about the thirtieth day of July of that year.

Answer. Lyman Adams lived in Harwinton Litchfield Co. Connecticut in the year 1802, and on or about the 30th of July 1802.

Interrogatory second on the part of the Plaintiff:

State all the cir-

cumstances within your own knowledge that are material to the parties in the above entitled cause or to either of them -

Answer I resided in Harwinton in the County of Litchfield State of Connecticut ^{during all of} the year 1802, and ^{for some time} before & after that year. Lyman Adams the defendant in this suit married a daughter of Curtis Hale in the year Eighteen hundred and one. Curtis Hale then & for some years thereafter lived in said town of Harwinton County of Litchfield and state of Connecticut aforesaid. From

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the time of the marriage of the said defendant, Lyman Adams, with the daughter of Curtis Hale, He (the said Adams) was domicilled with the family of said Curtis Hale, and had his usual ^{place of} abode at the house & with the family of the said Curtis Hale, & that said Lyman Adams continued his domicile & usual place of abode at the house of the said Curtis Hale in the town of Harwinton County of Litchfield & state of Connecticut from the time of the marriage of said Adams to the month of August of the year Eighteen hundred & two. In the early part of the month of August 1802 the said Lyman Adams left his said usual place of abode & went to parts unknown to this deponent, this deponent has never seen him since. The annexed Release marked "A" was signed & sealed by me on the day it bears date and at the same time was signed & sealed by Uri Hill in my presence.

Chloe Hill.

Cross Interrogatory first on the part of the defendant

Are you not

the Daughter of Curtis Hale & if so will you please to state when & where the said Curtis Hale died

Answer: I am the daughter of Curtis Hale. I am not able to state when or where the said Curtis Hale died.

Cross Interrogatory 2^d on the part of the defendant.

Is your mother

still living, or is she dead, & when & where did she die,

Answer: I am not able to state whether my mother is still living; I have been informed that she is dead.

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Cross interrogatory 3^d on the part of the defendant

Have you any recollection of suits being commenced in the state of Connecticut by said Curtis Hale against the said Lyman Adams & also of proceedings on the part of the said Lyman Adams' wife for a divorce from her husband?

Answer: I have an indistinct recollection of suits brought against Lyman Adams by Curtis Hale - I do not recollect & cannot state that any proceedings were commenced by Lyman Adams' wife for a divorce from her husband.

Cross interrogatory 4th on the part of the Defendant. (Objected to by Plaintiff.) If you recollect the nature of those suits commenced by said Curtis, please state it.

Answer: I donot recollect the nature of the suits commenced by said Curtis Hale.

Cross interrogatory 5th on the part of Defendant.
Did or did not Mr. Lyman Adams reside in Dedham in the state of Massachusetts before he came to Litchfield County, Connecticut & when he married in said County was he not published as a resident of Massachusetts?

Answer: I donot and cannot state as to either of the points in this interrogatory.

Cross interrogatory 6th on the part of the defendant.
How long was Mr. Adams in Connecticut from the time of his

75 Marriage until the time these suits were commenced
 Answer. About one year - more or less. I cannot state
 with certainty.

Cross interrogatory 7th on the part of Defendant

Don't you
 recollect that these suits & proceedings were commen-
 ced within the last two days of July 1802.

Answer. I do not recollect & cannot state.

Cross interrogatory 8th on part of Defendant.

Please state whether

or not shortly before the commencement of these pro-
 ceedings or before the 30th of July 1802 said Curtis
 Hale & his wife visited the state of Massachusetts & whether
 or not they or either of them had an interview with
 Lyman Adams in the said state of Connecticut

Answer. I do not know & cannot state Mr. Hale & his
 wife visited Massachusetts that year - or whether they
 or either of them had an interview with Mr. Adams.

Cross interrogatory 9th on the part of Defendant.

Don't you

know now that the said Lyman Adams had left
 Litchfield County & the state of Connecticut sometime before
 the suit above referred to & sometime before the commence-
 ment of those proceedings.

Answer. I do not know & cannot state.

Cross interrogatory 10th on the part of the Defendant.

Don't you

know that the general report in Litchfield County in

the month of July 1802 was that said Lyman Adams had run away & gone out of the state.

(The Plaintiff objects to this interrogatory.)

Answer. I do not.

Cross interrogatory 11th on the part of Defendant.

Did you not

understand so by Mr. Curtis Hale himself.

Answer. I have no recollection of it.

Cross interrogatory 12th on the part of Defendant.

From the time

these proceedings were commenced or from the said month of July 1802 where did said Lyman Adams reside and if you do not know where he resided state whether it was not understood & the general report that he was out of the state of Connecticut ever since said month of July.

(The Plaintiff objects to so much of this question as enquires into general report & understanding.)

Answer. I do not know where Lyman Adams resided after he left Harwinton, & cannot state as to the general report that he was out of the state. I do not remember.

Interrogatory 13th on the part of Defendant.

Don't you know

that on or about the 30th of July 1802 or about the time all these proceedings were instituted against the said Lyman Adams the same resided at Greensborough now called Whitehall N. Y. or if you understood that

78 he resided anywhere else perhaps Vermont, please to state it.
 Answer: I do not know & cannot state.

Cross interrogatory 14th on the part of Defendant
 While the said Lyman Adams was in Harwinton Litchfield Co. Connecticut did he keep house or did he not live in the family of said Curtis Hale
 Answer: He resided in the House of said Curtis Hale and lived in the family of the said Hale.

Chloe Hill

State of New York }
 County of Oneida }
 I, Ann H. Hinckley a Justice of the Peace in & for the County of Oneida & State of New York do hereby certify that in pursuance of the commission hereto annexed, I did on the twenty sixth day of September A. D. 1864 cause to appear before me at my office in the town of Camden in said County Chloe Hill of said town & County, who was by me first duly sworn according to law to testify in a certain cause mentioned in said Commission wherein William G. Goforth administrator of Curtis Hale deceased is Plaintiff & Lyman Adams is defendant now pending in the St. Clair Circuit Court in the State of Illinois, and I did then & there propound to said Witness the several interrogations annexed to said Commission in the order in which said interrogations were proposed, and the answers of the said Witness thereto were by me reduced to writing in the presence of said witness and her said deposition & Exhibit marked, "A" were signed by her & acknowledged in

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my presence. And I do further certify that I have caused the said Deposition of said Witness & said Exhibit marked "A" to be annexed to the said Commission & interrogatories. Given under my hand & seal at Camden in the County of Oneida & state aforesaid this twenty sixth day of September in the year Eighteen Hundred and forty four.

A. H. Hinkley, Esq.
Justice of the Peace.

State of New York

Clerk's Office }
Oneida County }
30th

I, Delos Dewolf, Clerk of the said County certify, that A. H. Hinkley Esquire was on the 26th day of September A. D. 1844 a Justice of the Peace in and for the said County, duly elected & qualified to act as such: and that the signature above written purporting to be that of the said Justice is genuine. —

Seal

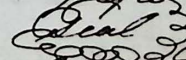
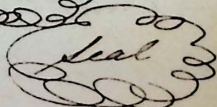
In testimony whereof I have hereunto affixed the seal of the Court of Common Pleas of the said County & subscribed my name this 30th day of September 1844.
Delos Dewolf Clerk,
per James Edgar Dep. Clk.

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"A"
State of New York.

For and in consideration of two Dollars to each of us in hand paid by Elisha Hale of Newburgh N. York, the receipt whereof is hereby confessed - & the undersigned inhabitants of the town of Camden in the County of Oneida and State aforesaid do each for ourselves, & by virtue of these presents hereby release & forever discharge unto the said Elisha Hale all & any interest or right which we now have or may have either in Law or Equity of us or to any Judgment or Judgments, decree or decrees in Law or Chancery ever or at any time hereto, fore obtained or procured by Curtis Hale, deceased, who formerly lived in Litchfield County Connecticut against Lyman Adams who formerly resided in the said County of Litchfield.

The intention of the undersigned is to release & forever discharge to the said Elisha Hale of Newburgh all or any claim or proveable right or interest which they may or can have as heirs at law of said Curtis Hale deceased & to forever bar their interest in said claim if any ever did or does now exist.

In witness whereof we have hereunto set our hands & seals this twenty fifth day of September in the year Eighteen hundred and forty four.

Uri Hill 
Chloe Hill 

And made a part of this bill of exceptions to the reading of which said deposition the defendants object which objection is sustained, ^{by the Court,} it appearing to the

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Court by the records & files of this Court, that the said deposition had been excluded by the Court at a former term, & the said deposition excluded.

To the opinion of the court in refusing to permit said deposition to be read the plaintiff by his counsel except, & also after the testimony had been given to the jury in the case, the defendant moves the court to instruct the jury as follows:

Wm. G. Goforth admr. of

Curtis's Heir decd.

vs.

Lyman Adams.

} The court is requested to instruct
} the jury in this case on the part of Defd.

1. That as the copy of the judgment in this case read in evidence by the plaintiff to establish his right to recover, shews that judgment to have been rendered upwards of 20 years before the commencement of this suit, the law regards it as having been paid & satisfied, & this presumption of payment thus arising can be removed only by the plaintiffs shewing that it is not paid, or by the proof of facts inconsistent with the truth of such presumption or that the defendant has within 20 years acknowledged it to be still due & unpaid & that if the Plff. has not shewn sufficient to destroy such presumption of payment the jury will find a verdict in favour of the defendant.

5. That if they believe from the evidence that the said Court of Common pleas had no jurisdiction over the person of the defendant in said suit in which the judgment, mentioned in the plaintiffs' declaration, was rendered, they must find for the defendant.

6. That this suit is brought upon a judgment rendered against the Defd. in the state of Connecticut in the year 1802, & that if they believe from the evidence, that said Defd. did not have notice in said original suit according

- 82 to the laws of Connecticut, they are bound to find for the Def^t. under the 3^d plea ^{or} first issue before them.
8. That if they believe from the evidence that the Def^t. usual place of abode on the 30th of July 1802 was not in the state of Ct. they are bound to find for Def^t. under the 4th plea or second issue.
9. That under the fourth plea ^{or} second issue to the country ^{it} is incumbent upon the plaintiff to show, that the Def^t. had personal notice in fact in the original suit against him.
10. That the laws of Connecticut are foreign laws ~~It~~ cannot be noticed by the jury unless they have been pleaded, and ~~it~~ proved, that the replication to the 4th plea does not aver notice according to the laws of Connecticut or what the laws of that state are; ~~it~~ should the jury even believe from the evidence, that constructive notice was given according to the laws of Connecticut, but that there was no actual notice or appearance by the Def^t. still they must find for the Def^t. upon said 4th plea ^{or} 2^d issue to the Country.

The two foregoing instructions were given, but the Court also stated to the jury that if they found the issue joined on the third plea, in favour of the plaintiff, that would show jurisdiction of the person of the defendant in the Court in Connecticut, and they must consequently find a verdict

12th instruction to come in after the 11th on two pages. Draft of the jury believe from the evidence that the debt was not an inhabitant of the State of Connecticut at the time of the institution of the said debt against him in that State, nor until after its rendition, and did not appear, they are bound to find for the defendant upon the 5th & 6th, 9th & 10th & 11th & 12th.

for the defendant unless they found the issue on the plea of payment in his favour.

11. That ignorance of the said Curtis Hall in his life, of the place of residence of the defendant, is not, of itself, sufficient to rebut the presumption of payment, arising from the lapse of time, since the rendition of the judgment, sued on in this case. Which was given by the court who said he meant to be understood thereby that such facts would not necessarily constrain them to find against the presumption, but, that it was a circumstance, entitled to their consideration on that question. F

13. F That although the judgments in a sister state are binding & conclusive when rendered on personal notice given; yet those judgments which are rendered, without notice actual or constructive, are void & cannot be enforced in the courts of this State, & the defendant is not precluded in this case from shewing that the judgment now sued on, was fraudulently obtained, or rendered by a court in Connecticut which had no jurisdiction of the cause of action or over the defendant's person. -

To the giving of which said instructions the plaintiff by his counsel excepts & prays that this his bill of exceptions may be signed, sealed & made a part of the record.

And the same is accordingly done.

J. D. Eaton Seal

State of Illinois

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County of St. Clair 3rd Sub

I Theodore Engelmann Clerk
of the Circuit Court within and for the County of
St. Clair and State of Illinois do hereby certify the
foregoing to be a correct and complete transcripts
of the pleas and proceedings, and of the orders of the
Court in the above and within ~~ent~~ named case, as
they appear on file and of Record in my office.

In testimony whereof I have
herewith signed my name and
affixed the seal of said Court
this 24th day of June A. D.
1846.

Theodore Engelmann

No 37

Wm G. Gofforth
Saddl. of
Curtis Hale del.

Filed Oct 13th

May, November
1854

J. D. Preston Clk

vs
Lyman Adams.

Transcript

\$ 5. Paid by

Judge Elliott

~~Wm Adams~~
~~Att. General~~
~~By J. D. Preston~~
~~Rec. 2439~~

Records

29,390 words \$ 51.00
arithmetic 0.50
\$ 51.50.

29 24390 records \$ 42.50
with 0.50

Rec'd my fee for the record
amounting to \$ 42.50 - which
were paid by the J. P. - Thos. Conner

IN THE SUPREME COURT OF ILLINOIS.

~~Philip B. ...~~
~~St. Clair ...~~
~~Wm. G. Goforth, Administrator of Curtis Hale, deceased,~~

vs.

LYMAN ADAMS.

ABSTRACT OF RECORD.

This was an action of debt, brought in the St. Clair Circuit Court, at the May Term, 1844—by William G. Goforth, Public Administrator, having charge of the estate of Curtis Hale, deceased, against Lyman Adams. The declaration is on a judgment recovered by the Plaintiff's intestate against the Defendant, in the State of Connecticut, in the year 1802. The Plaintiff's declaration contains the usual averments. A *nolle prosequi* having been entered as to the first count, issue was joined and trial was had under the second.

The Defendant filed several pleas, to-wit:

1st. *Nul tiel* Record.

2d. That at the time of the institution of the said suit, in the Plaintiff's declaration mentioned, he, the Defendant, was not an inhabitant or resident of the State of Connecticut, and not within the jurisdiction of the Court which rendered said judgment—nor had he any notice of the said suits, nor did he appear thereto by himself or his counsel, &c.; wherefore he alleges that the said judgment is of no force or effect whatever, &c., and concludes with a verification.

3d. That he was not served with process upon which the said judgment was rendered; that he had no notice of the said suits, nor of the subsequent proceedings therein, nor did by himself or counsel, appear thereto, &c.; wherefore he avers that said judgment is void, and of no force or effect whatever, &c., and concludes with a verification.

4th. That the said Court of Common Pleas, in the said Court mentioned, had no jurisdiction over the person of the said Defendant, &c., wherefore he avers said judgment is null and void, and of no force and effect whatever, &c., and concludes with a verification.

5th. That after the rendition of the said judgment, in the said count mentioned, he, the Defendant, paid and satisfied the same, &c.

The following issues were made, to-wit:

1st. On the first plea of *nul tiel* record, the Plaintiff took issue.

2d. To the plea of the Defendant to the said count, wherein he alleges that he, the Defendant, at the time, &c., was not an inhabitant or resident of the state of Connecticut, and not within the jurisdiction of said Court, and that he did not appear to said suit, &c., the Plaintiff replied, that, at the time of the institution of the said suit in said Court mentioned, the Defendant had due and legal notice of the commencement and pendency of said suit, according to the laws of the State of Connecticut then in force, &c., and concludes to the country, &c.

3d. To the plea of the Defendant to said count, wherein he alleges that he was not served with process in said suit—that he had no notice of the said suit, nor of the subsequent proceedings therein, and that he did not appear, &c., the Plaintiff replied, that the Defendant's usual place of abode was in the county of Litchfield, State of Connecticut, at the time of the commencement of said suit in said count mentioned, and that said Defendant, on the 30th July, 1802; then and there had notice of the institution of the said suit, &c., and concludes to the country, &c.

4th. To the plea of the Defendant to said count, wherein he alleges that the said Court of Common Pleas had no jurisdiction over the person of said Defendant, &c., the Plaintiff replied that said Court had jurisdiction over the person of the Defendant, &c., and concludes to the country, &c.

5th. To the plea of the Defendant to said count, wherein he alleges payment, &c., the Plaintiff traversed said plea, and concluded to the country, &c.

Before the trial of said cause, objections were taken and filed by the Plaintiff, to the deposition of *Andrew Adams*, taken on the part of the Defendant, and subsequently read to the jury, at the trial of said cause, which objections were overruled by the Court, and the Plaintiff excepted, and which objections, as preserved in the bill of exceptions, are as follows:

1st. That it does not appear that the said witness was sworn or affirmed, according to law.

2d. The answer to the second interrogatory contains the statements of the Defendant, and professes to give the contents of letters written by the Defendant, without excusing the non-production of the letters themselves, and is argument instead of evidence.

3d. The fifth interrogatory and the answer thereto, ask and give matters of representation and hearsay.

So much and such parts of the said deposition so objected to, are as follows, viz:

1st. "I, Phineas L. Tracy, Commissioner, appointed by the annexed "commission, do hereby certify that Andrew Adams, the deponent, whose

“ name is subscribed to the respective depositions on the part of said De-
 “ fendant and said Plaintiff, marked A and B, was sworn by me, previous
 “ to his examination, and that he signed the aforesaid depositions, on the
 “ fifth day of May, 1845, at Batavia, in the county of Genessee, and State
 “ of New York.

“ PHINEAS L. TRACY, *Commissioner*.

2d. “ *Answer*.—In the month of February, 1800, the said Lyman became
 “ of the age of 21 years, and left his father’s house in the town of Bristol,
 “ in the State of Connecticut, and went to reside at Dedham, in the State of
 “ Massachusetts, where, to the best of this deponent’s recollection, said
 “ Lyman continued to reside till the month of December, 1801, or the
 “ month of January, 1802, at one of which periods he returned to his fa-
 “ ther’s house in Bristol aforesaid, where he remained till the spring of
 “ 1802. In the said spring he left Bristol, stating that he was going to
 “ Vermont, and then, should return to said Dedham. During the ensuing
 “ summer of 1802, a letter was received by the said Lyman’s father, from
 “ him the said Lyman, dated, as this deponent believes, at White Hall, in
 “ the State of New York, which letter stated that the said Lyman, after he
 “ had completed his business at the north, should return to Dedham to re-
 “ side again. This deponent further says, that in the month of November
 “ or December, 1802, his said father received a letter from said Lyman,
 “ dated at such Dedham, from which circumstance said deponent believed,
 “ and still believes, that said Lyman was then residing in said Dedham.”

3d. “ *Fifth Interrogatory*.—Did you ever hear of any law suits com-
 “ menced by Curtis Hale, in Litchfield, State of Connecticut, against said
 “ Adams, in the year 1802? and if you recollect anything about said law
 “ suits, state whether Mr. Adams had left the State of Connecticut before
 “ or after these suits were commenced.”

“ *Answer*.—In the year 1802, it was commonly reported at Bristol afore-
 “ said, that there was a matter of difficulty existing between said Lyman,
 “ and said Curtis Hale. It was also commonly reported that the said Curtis
 “ had taken out a writ or writs against said Lyman, and was watching his
 “ said father’s house at Bristol to arrest him, or cause him to be arrested.
 “ That previous to the taking out of said writ or writs, as this deponent
 “ heard of them, said Lyman had left, at least one or two months, and never
 “ did return again to Connecticut, as this deponent ever heard of, and be-
 “ lieves, as this deponent had no relative or business transactions to call
 “ him back there, as this deponent believes—as his father’s family soon re-
 “ moved from the State of Connecticut.”

Also, before the trial of the said cause, objections were taken and filed
 by the Defendant to the Depositions of Chloe Hill, on the ground that said
 witness was interested in the said suit—which objections were sustained

by the Court, and said deposition was not allowed to be read; to which opinion the Plaintiff excepted. Said Deposition, or so much and such parts thereof as disclose the interest of said witness, are as follows:

“ Interrogatory first on the part of the Plaintiff.

“ State the usual place of abode of Lyman Adams, the above named Defendant, in the year 1802, and in or about the 30th day of July of that year.”

“ *Answer.*—Lyman Adams lived in Harwinton, Litchfield County, Connecticut, in the year 1802, and on or about the 30th of July, 1802.”

“ Interrogatory second on the part of the Plaintiff.

“ State all the circumstances within your own knowledge that are material to the parties in the above entitled cause, or to either of them.”

“ *Answer.*—I resided in Harwinton, in the County of Litchfield, State of Connecticut, during all of the year 1802, and for some time before and after that year. Lyman Adams, the Defendant in this suit, married a daughter of Curtis Hale, in the year 1801. Curtis Hale then, and for some years thereafter, lived in said town of Harwinton, County of Litchfield and State of Connecticut aforesaid. From the time of the marriage of the Defendant, Lyman Adams, with the daughter of Curtis Hale, he (the said Adams,) was domiciled with the family of the said Curtis Hale; and that said Lyman Adams continued his domicile and usual place of abode at the house of the said Curtis Hale, in the town of Harwinton, County of Litchfield and State of Connecticut, from the time of the marriage of said Adams, to the month of August of the year 1802. In the early part of the month of August, 1802, the said Lyman left his said usual place of abode and went to parts unknown to this deponent; this deponent has never seen him since. The annexed “Release” marked “A” was signed and sealed by me on the day it bears date, and at the same time was signed and sealed by *Uri Hill* in my presence.

“ CHLOE HILL.”

“ Cross interrogatory first, on the part of the Defendant.

“ Are you not the daughter of Curtis Hale, and if so, will you please to state when and where said Curtis Hale died?”

“ *Answer.*—I am the daughter of Curtis Hale—I am not able to state when or where the said Curtis Hale died.”

“ Cross Interrogatory second, on the part of the Defendant.

“ Is your mother still living, or is she dead? and when and where did she die?”

“ *Answer.*—I am not able to state whether my mother is still living; I have been informed that she is dead.”

“ Cross Interrogatory third, on the part of the Defendant.

“ Have you any recollection of suits being commenced in the State

"of Connecticut, by said Curtis Hale, against the said Lyman Adams, and also of proceedings on the part of the said Lyman Adams' wife for a divorce from her husband?"

"Answer.—I have an indistinct recollection of suits brought against Lyman Adams by Curtis Hale. I do not recollect and cannot state that any proceedings were commenced by Lyman Adams' wife for a divorce from her husband."

"Cross Interrogatory fourth, on the part of Defendant—(Objected to by Plaintiff.)"

"If you recollect the nature of those suits commenced by Curtis, please state."

"Answer.—I do not recollect the nature of the suits commenced by said Curtis Hale."

"Cross Interrogatory fifth, on the part of the Defendant."

"Did or did not Mr. Lyman Adams reside in Dedham, in the State of Massachusetts, before he came to Litchfield County, Connecticut; and when he married in said county was he not published as a resident of Massachusetts?"

"Answer.—I do not and cannot state as to either of the points in this interrogatory."

"Cross Interrogatory sixth, on the part of the Defendant."

"How long was Mr. Adams in Connecticut, from the time of his marriage, until the time these suits were commenced?"

"Answer.—About one year—more or less—I cannot state with certainty."

"Cross Interrogatory seventh, on the part of the Defendant."

"Don't you recollect that these suits and proceedings were commenced within the last two days of July, 1802?"

"Answer.—I do not recollect and cannot state."

"Cross Interrogatory eighth, on the part of the Defendant."

"Please state whether or not, shortly before the commencement of these proceedings, or before the 30th of July, 1802, said Curtis Hale and his wife visited the State of Massachusetts, and whether or not, they, or either of them, had an interview with Lyman Adams in the said State of Connecticut?"

"Answer.—I do not know and cannot state whether Mr. Hale and his wife visited Massachusetts that year, or whether they or either of them had an interview with Mr. Adams."

"Cross Interrogatory ninth, on the part of the Defendant."

"Don't you know now, that the said Lyman Adams had left Litchfield county, and the State of Connecticut, some time before the suit above referred to, and some time before the commencement of those proceedings?"

"*Answer.*—I do not know and cannot state."

"*Cross Interrogatory tenth, on the part of the Defendant.*

"Don't you know that the general report in Litchfield county, in the month of July, 1802, was, that said Lyman Adams had run away, and gone out of the State?" (The Plaintiff objects to this interrogatory.)

"*Answer.*—I do not."

"*Cross Interrogatory eleventh, on the part of Defendant.*

"From the time these proceedings were commenced, or, the said month of July 1802, where did said Lyman Adams reside; and if you do not know where he resided, state whether it was not understood, and the general report, that he was out of the State of Connecticut, ever since said month of July?" (The Plaintiff objects to so much of this question as enquires into general report and understanding.)

"*Interrogatory thirteenth, on the part of Defendant.*

"Don't you know that on or about the 30th of July, 1802, or about the time all these proceedings were instituted against the said Lyman Adams, the same resided at Skeensborough, now called Whitehall, New York; or if you understood he resided any where else—perhaps Vermont—please state?"

"*Answer.*—I do not know and cannot state."

"*Cross Interrogatory fourteenth, on the part of Defendant.*

"While the said Lyman Adams was in Harwinton, Litchfield County, Connecticut, did he keep house, or did he live in the family of Curtis Hale?"

"*Answer.*—He resided in the house of said Curtis Hale, and lived in the family of said Hale.

CHLOE HILL."

["A."]

"*State of New York.*

"For and in consideration of two dollars, to each of us in hand paid, by Elisha Hale, of Newburgh, New York, the receipt whereof is hereby confessed—and the undersigned, inhabitants of the town of Camden, in the county of Oneida, and State aforesaid, do, each for ourselves, in and by virtue of these presents, hereby release and forever discharge unto the said Elisha Hale, all and every interest or right which we now have, or may have, either in law or equity, of, in or to any judgment or judgments, decree or decrees, in law or chancery, ever or at any time heretofore obtained or procured by Curtis Hale, deceased, who formerly lived in Litchfield county, Connecticut, against Lyman Adams, who formerly resided in the said county of Litchfield.

"The intention of the undersigned is to release and forever discharge, to the said Elisha Hale of Newburgh, all or any claim or proveable right or interest, which they may, or can have as heirs-at-law of said Curtis Hale,

“deceased, and to forever bar their interest in said claim, if any ever did,
“or does now exist.

“In witness whereof, we have hereunto set our hands and seals, this
“twenty-fifth day of September, in the year eighteen hundred and forty-
“four.

URI HILL, [SEAL.]”

“CHLOE HILL, [SEAL.]”

The issue of *nul tiel* record was tried by the Court and found for the Plaintiff, and the other issues, made by the pleadings as above stated, were tried by a jury. And upon the trial of the said issues the following evidence, on the part of the Plaintiff, was produced, and offered to the jury, to-wit:

Silas Gridley testified that he “was acquainted with said Curtis Hale in his life time, and in the town of Harwinton, in the County of Litchfield, in Connecticut—was acquainted with the Defendant Lyman Adams; first became acquainted with him in Bristol, Connecticut, in 1800, or 1801; then, was acquainted with him while he lived in said Harwinton, in 1801 and 1802, until he left the State of Connecticut. Should think, and is confident, that the *usual place of abode* of said Lyman Adams, before, and on the 30th day of July, in the year 1802, was in Harwinton aforesaid. Lyman Adams married Rhoda Hale, about the year 1801, and from and after the marriage, he and his wife resided at Harwinton aforesaid, until he ran away. Could not tell precisely the day or month he left, but he, (said Adams,) continued to reside in said Harwinton till late in the year 1802, and, (as witness was confident,) until after 30th July of that year: during that period Harwinton was the only known residence of said Lyman Adams, and it was regarded as his home. Witness served as Constable in said Connecticut for many years, and should regard said Harwinton as said Adams’ usual place of residence, for the service of process on the 30th July, 1802. In 1802 and 1803 resided at his father’s, near said Adams’ place of residence—saw him (said Adams) a number of times on the Sabbath to and from church, from and to the Hale-house in said Harwinton, where he (said Adams) and his wife lived; and saw him also on other occasions.”

On cross examination the witness stated: Knew Lyman Adams, in Litchfield County, one year—did not understand that said Lyman Adams was a resident of Dedham, Massachusetts, or considered so, while he was in said county of Litchfield; impression was that said Adams and wife lived with the family of Curtis Hale most of the time, but that after Curtis Hale moved to the wooden-house, that Adams and his wife kept house at the Hale-place;—understood that some difficulty occurred in the family of Curtis Hale, and that said Hale commenced suits of *debt* and *crim. con.* against said Adams, but did not understand or believe, that said Adams left the State of Connecticut before said suits were commenced; as to Adams

leaving the State of Massachusetts, did not know nor understand anything about it any way; thinks that the report of said Adams having run off was not circulated until some time in the fall of 1802; could not say when was the last time of seeing said Adams in Harwinton.

Anson Smith testified.—Knows Adams the Defendant; first knew him in the town of Harwinton, Litchfield County, Connecticut, in the years 1800 and 1801, at the time when he was visiting Rhoda Hale, whom he afterwards married; was present at the marriage which took place in 1801; marriage took place in Plymouth; after marriage said Lyman Adams and wife resided within a half a mile of where witness lived, at the house of Curtis Hale, (the wife's father,) which was said Adams' usual place of residence, and where he made his home for one year at least; thinks more. At the end of this time said Adams left the State, in the latter part of summer or fall, as near as witness recollects; the cause of leaving understood to be in consequence of a difficulty with Curtis Hales' wife; heard nothing concerning him (said Adams) until about a year since; when he was reported to be in Illinois. At the time of said Adams' marriage, he was considered a man of property; when he left he took all his property with him, leaving his wife and child destitute. If said Adams had left property, witness would have known it.

On cross-examination the witness stated—Was, in 1802, and has been ever since, a resident of the south-east part of said Harwinton; was not very intimate with said Lyman Adams, and was not at all acquainted with other members of his father's family, but was intimate with the family of his wife's father; usually attended same church which he attended and frequently saw him and wife on Sundays. After their marriage, frequently visited at the house where said Adams resided; for at least one summer said Adams worked on the Hale farm. Has no knowledge that said Adams ever, at any time, resided in Dedham, Massachusetts, but knew him frequently to be absent from home peddling—has already stated what he knows in reference to Lyman Adams' place of abode after 1800. Knew said Adams at Harwinton, between two and three years—does not think he kept house, but boarded with his father-in-law after his marriage until he quit, excepting when out peddling as aforesaid. Knew of a difficulty in the family of Curtis Hale, deceased, and heard that said Hale commenced suits against said Adams, and know that Adams absconded about the time said suits were commenced; but whether before or after process was out against him, does not know. Saw Adams in Connecticut in 1802, and is under the impression, as late as July or August, 1802; but has no particular circumstance by which to remember the time of the year—speaks from facts within his own knowledge—is about sixty-three years of age, being in his sixty-fourth year; was raised and brought up in said Harwinton.

Charlotte Hart testified.—Is sister of Anson Smith, who has given his deposition—is acquainted with same facts deposed to by said Smith. Knew said Lyman Adams about the years 1800, 1801 and 1802, and knew him well at the time of his marriage with Rhoda Hale—which took place in the course of the year 1801—was present at the wedding—after the marriage he and his wife were witness's nearest neighbors in the town of Harwinton, in Connecticut, and at the house of her father, where they continued to live and have a place of abode for a year or more, when he left the State, in consequence of being accused of adultery with Curtis Hale's wife; heard nothing from or about said Lyman Adams (who was supposed to be dead,) from the time of his departure until within about a year since, when he was said to be in Illinois; suppose he was a young man of property when married, but he left no property in Connecticut, when he left, to the knowledge of witness.

On cross-examination the witness stated: Resided in said Harwinton from birth until her marriage, in 1814, and after that, resided with Mr. Orvis, her husband, in Farmington, Connecticut, until his death; is now the wife of Seth Hart, and resides with him in Bristol, Connecticut. Was not acquainted with Lyman Adams' family; was not intimate with Lyman Adams, but saw him frequently before and after his marriage; used to see him and wife at church on Sundays, in East Plymouth; worked in the family of Curtis Hale, and often visited them during the time said Adams resided there. Has no knowledge that Lyman Adams resided at Dedham or elsewhere in Massachusetts, either before, after, or during 1802, nor that he ever had his place of abode or was in Massachusetts, excepting temporarily, after the year 1800—has no such knowledge. Said Adams did not keep house, but boarded with his father-in-law. Knew him at said Harwinton as much as two years. Knew of a good deal of difficulty in Curtis Hale's family; does not remember or know anything about suits. Saw Lyman Adams in Connecticut, in 1802, but how late in that year has no means of determining. Speaks from her own knowledge. Was raised and brought up in said Harwinton, and is in the sixty-fifth year of her age.

Major Graves testified.—Was well acquainted with Lyman Adams, the Defendant; first knew him when he resided in Bristol, Connecticut. About the year 1801, he moved to Harwinton, Litchfield county, Connecticut, and his usual place of abode, while there, was in the family of Curtis Hale, and lived there about a year or more; about two months of the latter part of the time, Adams' and Hale's families were domiciled with a Mr. Wooden, in said Harwinton, and during these two months, or a part of them, said Hale was gone to Lake Champlain, or thereabouts. About the 1st of July, 1802, or thereabouts, Hale returned from his journey to Lake Champlain, and there was some trouble in the families of Adams and Hale, or between

them, and Adams left the county, and witness never saw him afterwards. Should think Adams left Harwinton about July—not later—in 1802. Do not know that Adams had any other place of abode after he married Hale's daughter, than in the family of said Hale, in said Harwinton.

On cross-examination, witness stated that he knew said Adams in said Litchfield county, Connecticut, about one year; never heard or knew that said Adams ever resided in Dedham, Massachusetts, or in that State. Lyman Adams did not keep house, but lived in the family of Curtis Hale. Understood that some difficulty had occurred in the family of said Curtis Hale, and Hale commenced suits against Adams; the suits arose out of difficulties in the families; could not state the particular charges made; thinks Adams did not leave until after the suits were commenced. Does not know that Adams ever had his abode in Massachusetts. Does not know that the report, in July, 1802, or about that time, was that said Lyman Adams had run off. Cannot tell the exact time when he, (witness,) last saw Adams, but it was about July, 1802.

John Stewart testified that he had had frequent conversations with the said Defendant, Lyman Adams, since 1835, and has frequently heard said Adams say that he lived in Connecticut, that he had left that State upwards of forty years ago, and did not understand from said Adams, in any conversation with him, that said Adams had ever resided in Massachusetts. Heard said Adams say that after he left Connecticut he settled in Baltimore, afterwards removed to Louisville, and from thence to Illinois.

And also, the Plaintiff read in evidence a public law of the State of Connecticut, from a book purporting to have been published by the authority of the said State, being "an act for the directing and regulating civil actions," as follows:

"§ 1. *Be it enacted by the Governor, and Council and House of Representatives, in General Court assembled,* That the ordinary process in civil actions in this State, shall be a summons or an attachment, fairly written, signed by a Magistrate, Justice of the Peace, or Clerk of the Court, mentioning the Court, the time and place of appearance, therein, also, containing a declaration of the substance of the action; which attachment may be granted against the goods or chattels of the defendants; and for want of them, the lands or person of the defendant may be attached. Provided, the plaintiff, when he prays out an attachment, gives sufficient security to prosecute his action to effect, and answer all damages in case he make not his plea good. And like security shall be given by some substantial inhabitant of this State on granting a summons, when the plaintiff is not an inhabitant of this State; or if it shall appear to the authority signing the same that the plaintiff is unable to pay the costs of prosecution, if recovered against him. And all writs and process shall be directed to the sheriff, his deputy or some con-

stable, if such officer can be had without great charge or inconvenience. And in every case, wherein the authority signing the writ shall find it necessary to direct the same to an indifferent person, such authority shall insert the name of the indifferent person in the direction of the writ, and the reason of such direction; and if any writ be otherwise directed, it shall abate: Provided, nevertheless, that nothing herein shall extend to direct summons for witnesses, warrants to collectors of rates, or warrants granted by military officers."

The Plaintiff also read in evidence a certified copy of the second edition of a law of Connecticut, being "an act for the directing and regulating of civil actions," as follows:

"Be it enacted by the Governor and Council and House of Representatives in General Court assembled:

§ 2. And that no person shall be required to make answer in any civil action, real, personal or mixed, except the writ or process, if returnable to the Superior or County Court, has been served upon him, at least twelve days inclusive before the day of the Court's sitting: or if returnable to an Assistant or Justice, the same has been served six days inclusive as aforesaid: which service shall be, if a summons, by reading the same in the hearing of the Defendant or Defendants, or leaving an attested copy thereof at the place or places of his or their usual abode, but if an attachment, the service shall be the attaching the Defendant or Defendant's estate or person, and giving him notice by reading the writ to him or within his hearing, or by leaving an attested copy thereof at the place of his usual abode, if that be within this State, and that all such writs as are made returnable to the County Courts shall be returned to the Clerk of said Courts on the day before the sitting of such Courts, and not afterwards. That in case any process be duly served on any Defendant or Defendants, and return thereof made to the Court to which the same is made returnable, then if such Defendant or Defendants do not appear, his or their default shall be recorded and judgment entered up against him or them thereupon, unless he or they shall come into Court on or before the second day of the sitting of said Court, and move for a new trial; in which case he or they shall be admitted there-to upon paying down to the adverse party the costs to that time; and the Plaintiff shall pay for entering the action anew."

On the part of Defendant, Chester Adams testified—Knows Lyman Adams, the Defendant, and has been acquainted with him for the last fifty years; said Lyman is older brother of witness, but has not seen said Lyman since 1805 or 1806. The father of said Lyman and witness resided in Bristol, Hartford County, Connecticut, about two miles north-westerly of the Central Meeting House. Early in the spring of 1798 or 1799, said Lyman left his father's house on a trading tour to the State of Massachusetts; left

Bristol with three other persons, to wit: Eli Parsons of Bristol, Waterman Bishop of Southington and Samuel Sweet of Farmington; at the advice and request of my brother, on the 12th July, 1799, I went to Dedham, Mass. On arrival found Lyman Adams at Dedham—witness resided and made a home at Dedham until 1807, and was not absent from said Dedham for three weeks at a time, except in 1802. In the spring of last named year Lyman Adams made arrangements for going to Grand Isle, Lake Champlain and Skeensborough, now called White Hall, New York—something said about going to Canada. Lyman Adams left Dedham in the spring of 1802, starting a few weeks before witness, who left about the 20th June, 1802, to visit his father in Bristol, and who returned during the ensuing October. Within a fortnight—certainly within four weeks—after witness returned to said Dedham, Lyman Adams also returned and continued to reside in Dedham the residue of the year. Said Lyman continued to reside at witness's house till spring of 1805 or 1806, as witness thinks, when he left for Philadelphia. From July 16, 1799, till said Lyman's departure for Philadelphia, he was engaged in buying and selling various articles of merchandize, and made frequent expeditions to Vermont, New Hampshire, Maine, Rhode Island and New York, and perhaps other States; but from said 16th of July till 1805 or 1806, when he left Massachusetts, said Lyman's home was, during all the time, in said Dedham; and this was the place to which he always returned from his tours. While said Lyman was absent at Grand Isle and Skeensborough, letters were received at his father's house, while witness was there, from said Lyman, and purporting to come from one of said places—witness thinks from Skeensborough.

The house of said Lyman's father, in 1802, was distant from the meeting house in Harwinton, about five or six miles. From about the 20th of June to the middle of October, 1802 witness was at said house. During part of the summer, attended church at the Episcopal Church, in the corner of Plymouth, a town adjoining Bristol, and about two miles from said house of Lyman's and witness' father, and from one to two miles from the house of Curtis Hale, and on the road to Harwinton. While at home, in 1802, did not see said Lyman, and was so much at home that Lyman could not have been there without the knowledge of witness. Should have heard of said Lyman's residing so near his father's house, if said Lyman had been in Harwinton. Was about eighteen years old then, and retains a vivid recollection of the facts and circumstances that took place at that period. Said Lyman did not, at any time, from 1798 or 1799 till 1805, have his usual place of abode in Connecticut, but from July 16, 1799 till 1805, at said Dedham. Does not know when the suits against Lyman Adams in favor of Curtis Hale were commenced; first heard of them after hay-time in the summer of 1802, but before he (witness) left Bristol for Dedham; should

say he heard of them in August. From the 16th July, 1799, till said Lyman left for Philadelphia, witness boarded with said Lyman, or near him, except as above stated. Said Lyman was often absent on his trading tours.

Andrew Adams testified.—Has known and has been acquainted with both Curtis Hale and Lyman Adams. In February, 1800, said Lyman left his father's house in Bristol, Connecticut, and went to reside at Dedham, Massachusetts, where he continued to reside, to the best of witness' recollection, till December, 1801, or January, 1802, when he returned to his father's house, where he remained till the spring of 1802. In said spring, he left Bristol, stating that he was going to Vermont, and should then return to said Dedham. During the ensuing summer of 1802, said Lyman's father received a letter from said Lyman, dated at White Hall, as witness thinks, which letter stated that said Lyman would return to Dedham to reside again. In December or November, 1802, his said father received a letter from said Lyman, dated at said Dedham; believed and still believes, from this fact, that said Lyman was then residing in Dedham. To the best of witness' knowledge, said Lyman Adams did not reside in Harwinton, Connecticut, in July, 1802, but was then a resident of said Dedham, though during this particular month he was absent in the northern part of New York or Vermont, on business. Said Lyman was reputed to have left the State of Connecticut previous to the latter part of July, 1802. In 1802 it was commonly reported at Bristol aforesaid, that there was a difficulty between said Lyman and said Curtis Hale; that said Curtis had taken out a writ or writs against said Lyman, and was watching his said father's house to have him arrested; that said Lyman had left one or two months before witness heard of the taking out of said writs, and never returned again to Connecticut, as witness believes. Said Lyman was born in Connecticut and permanently resided there till February, 1800, when he became of age; from 1800 to 1806, said Lyman resided at Dedham; since 1806 has had no particular knowledge of said Lyman's place of residence until last winter, when witness received from him a letter from Illinois. Has stated all the facts, &c., known to him, and material in this cause to either party. His knowledge of Lyman Adams' residence at Dedham, arose from letters and declarations of said Lyman, and from the fact that in the latter part of 1804, or the beginning of 1805, witness resided with said Lyman at Dedham, for several months.

On cross-examination, witness stated, that he is a brother of said Defendant—resided in Bristol, Connecticut, in July, 1802; left Connecticut in 1804, and has not resided there since; removed first to Massachusetts, where he lived till 1809, since which time he has lived in New York, and for the last twenty-nine years, in Genesee county, New York. In July, 1802, was at work in his father's hay field, in Bristol, Connecticut, when a

man came into the field, bringing a letter of introduction from said Lyman, and dated, (as witness believes,) at Whitehall, New York. In which letter Lyman referred to the place where he then was, and where he was going. Possible that witness may have got his information of his brother's intended journey down Lake Champlain from Mr. Beardman, the bearer of the letter. This took place, (as witness thinks,) in the latter part of July, 1802, and the letter was dated but three or four days before received. Was called upon to decypher the writing, which was obscure, and thus, is more particular in his recollection of the time. Has endeavored to state clearly the facts which are within his own personal knowledge, and refers to his previous answers, in order to ascertain whether this has been done.

Which was all the evidence in the case.

At the instance of the Defendant, the Court instructed the jury as follows, to-wit:

1. That as the copy of the judgment in this case read in evidence by the Plaintiff, to establish his rights to recover, shews that judgment to have been rendered upwards of twenty years before the commencement of this suit, the law regards it as having been paid and satisfied, and this presumption of payment thus arising, can be removed only by the Plaintiff's showing that it is not paid, or by the proof of facts inconsistent with the truth of such presumption, or that the Defendant has within twenty years acknowledged it to be still due and unpaid, and that if the Plaintiff has not shown sufficient to destroy such presumption of payment, the jury will find a verdict in favor of the defendant.
5. That if they believe from the evidence that the said Court of Common Pleas had no jurisdiction over the person of the Defendant in said suit; in which the judgment mentioned in the Plaintiff's declaration, was rendered, they must find for the Defendant.
6. That this suit is brought upon a judgment rendered against the Defendant in the State of Connecticut, in the year 1802, and that if they believe from the evidence, that said Defendant did not have notice in said original suit, according to the laws of Connecticut, they are bound to find for the Defendant under the third plea, or first issue before them.
8. That if they believe, from the evidence, that the Defendant's usual place of abode on the 30th of July, 1802, was not in the State of Connecticut, they are bound to find for Defendant under the 4th plea or second issue.
9. That under the fourth plea or second issue to the country, it is incumbent upon the Plaintiff to show that the Defendant had personal notice, in fact, in the original suit against him.
10. That the laws of Connecticut are foreign laws, and cannot be noticed by the jury unless they have been pleaded and proved; that the replication

to the fourth plea does not aver notice according to the laws of Connecticut, or what the laws of that State are, and should the Jury even believe from the evidence, that *constructive* notice was given according to the laws of Connecticut, but that there was no actual notice or appearance by the Defendant, still they must find for the Defendant upon said fourth plea or second issue to the country.

The two foregoing instructions were given, but the Court also stated to the Jury that if they found the issue joined on the third plea, in favor of the Plaintiff, that would show jurisdiction of the person of the Defendant in the Court in Connecticut, and they must consequently find a verdict for the Defendant, unless they found the issue on the plea of payment in his favor.

11. That ignorance of the said Curtis Hale, in his life, of the place of residence of the defendant, is not, of itself, sufficient to rebut the presumption of payment, arising from the lapse of time, since the rendition of the judgment sued on in this case—which was given by the Court [the Judge] who said he meant to be understood thereby, that such facts would not necessarily constrain them to find against the presumption, but that it was a circumstance entitled to their consideration on the question.

12. That if the Jury believe, from the evidence, that the Defendant was not an inhabitant of the State of Connecticut at the time of the institution of the said suit against him in that State, nor until after its rendition, and did not appear, they are bound to find for the Defendant upon the fifth and sixth pleas, or third and fourth issues.

13. That although judgments in a sister State are binding and conclusive, when rendered on personal notice given; yet, those judgments which are rendered without notice—actual or constructive—are void, and cannot be enforced in the Courts of this State; and the Defendant is not precluded in this case from showing that the judgment now sued on, was fraudulently obtained, or rendered by a Court in Connecticut which had no jurisdiction of the cause of action, or over the Defendant's person.

To the giving of which instructions the Plaintiff excepted.

Upon the evidence and under the instructions aforesaid, the Jury returned the following verdict, to wit: "We the jury find the issues for the Defendant, and we specially find that the Defendant was not a resident or inhabitant of the State of Connecticut on the 30th day of July, A. D. 1802." And upon the publishing of the said verdict of the jury, the Plaintiff moved the Court to grant a new trial, for the reasons following—

1. The verdict of the Jury is against evidence.
2. Against law and evidence.
3. Against the weight of evidence.
4. The Court erred in the instructions given to the Jury, on the part of the Defendant.
5. The Court erred in excluding the Deposition of Chloe Hill.

6. The Court erred in permitting portions of the Deposition of Andrew Adams to be read to the Jury.

7. The verdict is informal, uncertain and insufficient, and no judgment can be rendered thereon.

Which motion was overruled by said Court, and judgment *de bonis testatoris* was rendered against the Plaintiff for costs, &c.

To all which the Plaintiff excepted, and his exceptions were allowed, signed and sealed by the Court, and made part of the record.

The following Errors are assigned to reverse the judgment of the Court below, to wit:

1. The Court erred in ~~not~~ excluding from the Jury a part of the depositions of Plaintiff, without designating with any certainty the parts of the depositions so excluded.

2. The Court erred in not excluding from the Jury the deposition of Andrew Adams, on the second objection made thereto by the Plaintiff; and also in not excluding the answers of said Adams to the second and fifth interrogatory put by Defendant, on the sixth and eighth objection made thereto by the counsel for Plaintiff.

3. The Court erred in excluding from the jury the deposition of *Chloe Hill*.

4. That the Court erred in overruling exceptions and objections made by the Plaintiff to Depositions offered and read in evidence on the part of the Defendant.

5. That the Court erred in sustaining exceptions and objections made by Defendant to Depositions and proofs offered on the part of the Plaintiff.

6. That the Court erred in refusing to allow depositions and proofs offered on the part of the Plaintiff to be read to the Jury on the trial of said cause.

7. That the Court erred in giving the instructions asked on the part of the Defendant.

8. That the Court erred in its instructions to the Jury.

9. That the Court erred in refusing to grant a new trial in said cause.

10. That the Court erred in rendering judgment against the said Plaintiff.

The following *points* will be presented in the argument of the errors assigned:

1. That parts of a deposition may be excluded by the Court, when a valid objection is taken thereto, but the parts so excluded must be referred to, so as to inform the jury what is, and what is not to go to them as evidence.

II. That depositions taken by a Commissioner must show some where on the face of them, that the witness was sworn to testify the truth in relation to the matters in controversy, so far as the witness may be interrogated; that he was examined upon the interrogatories that were enclosed with the commission, or attached to it, and directed to the witness. That a deposition not showing those facts, should be excluded from the jury, when objection is made to such deposition.

III. In answering interrogatories, a witness should not refer to the contents of letters, or conversations of the party interrogating him; unless such letters or conversations have been made the subject of enquiry by the opposite party; nor should the witness' answers be predicated upon rumor or reports, the truth or falsity of which he has no knowledge; when interrogatories are so answered, the answers should be excluded, when objected to by the party against whom such answers are to be used.

IV. The testimony of *Chloe Hill* was improperly excluded on the presumption that she had an interest in the judgment obtained in Connecticut, and the one to be obtained in this suit. There was no evidence to show that this judgment would not be required to pay the debts of the deceased, or that by the laws of distribution of Connecticut, the witness would not be deprived of any beneficial interest therein. All the presumptions are as strong to show that she had no interest in the judgment, as that she had one, and if she had an interest it was so remote and contingent, that in law she could not be regarded as incompetent to testify on the ground of interest.

V. A judgment that has stood for more than twenty years, is conclusive evidence in a suit upon that judgment, in another State, that it was properly obtained, and that all the facts did exist that were necessary to give the Court jurisdiction of the person of the Defendant, and of the subjectmatter in controversy.

VI. That the certified copy and the book of laws purporting to have been published "by authority," and read in evidence upon the trial of this cause, were competent and conclusive evidence of the laws of Connecticut which were in force at the time suit was instituted in that State against the Defendant.

VII. The service of the process, as recited in the record of the judgment read in evidence, was made in strict conformity with the laws in force at that time in the State of Connecticut, and such service is tantamount to a personal notice to the Defendant of the pendency of that suit, under the facts established in evidence in this case.

VIII. That the testimony in this cause was sufficient to give the Plaintiff a verdict and judgment on all the issues made. His four witnesses were conclusive as to the fact of the Defendants *usual place of abode* when the process was served. The two witnesses of Defendant so differ as to the principal fact about which they swear, as to destroy the effect of their testimony for the purpose for which it was introduced. If, by reason of conflicting testimony, there is doubt as to the fact whether the Defendant had his *usual place of abode* in the State of Connecticut, at the time the said suit was instituted against him in that State, such doubt should be construed in favor of the jurisdiction of the Court in which said judgment was rendered.

IX. That every presumption is in favor of the jurisdiction of the Court over the person of the Defendant, in conformity with the laws in force in the State of Connecticut at the time the said judgment was rendered, and the *onus probandi* rests upon the Defendant to show *affirmatively* that his usual place of abode was not in the State of Connecticut, at the time of the service of said writ.

X. The facts established in evidence in this case, on the part of the Plaintiff, show conclusively that the Defendant's *usual place of abode* was at Harwinton, in the county of Litchfield, State of Connecticut, *before*, and about the time the writ recited in the record of said judgment, was served; and the Defendant did not show at the trial below, either by positive proof, or circumstantial testimony, that he had changed his domicile at that time.

XI. The Plaintiff having shown affirmatively that the Defendant's *usual place of abode* was in Connecticut just *before*, or about the time of the service of the said writ, and no facts or circumstances are proved which show, or tend to show, that the Defendant had at that time changed his domicile, the presumption is, that the Defendant's *usual place of abode* was at the place where said writ was served, in the mode returned by the officer.

XII. That the presumption of payment of the said judgment, from lapse of time, was fully rebutted by the testimony in this case.

JOHN M. KRUM,
WILLIAM MARTIN,
Attorneys for Plaintiff.

IN THE SUPREME COURT OF ILLINOIS.

Philip B. Smith, Public Administrator of W. Hale
Curtis Hale
Wm. G. GOFORTH, Administrator of Curtis Hale, deceased,

vs.
Adolphus Burger
LYMAN ADAMS.

ABSTRACT OF RECORD.

This was an action of debt, brought in the St. Clair Circuit Court, at the May Term, 1844—by William G. Goforth, Public Administrator, having charge of the estate of Curtis Hale, deceased, against Lyman Adams. The declaration is on a judgment recovered by the Plaintiff's intestate against the Defendant, in the State of Connecticut, in the year 1802. The Plaintiff's declaration contains the usual averments. A *nolle prosequi* having been entered as to the first count, issue was joined and trial was had under the second.

The Defendant filed several pleas, to-wit :

1st. *Nul tiel* Record.

2d. That at the time of the institution of the said suit, in the Plaintiff's declaration mentioned, he, the Defendant, was not an inhabitant or resident of the State of Connecticut, and not within the jurisdiction of the Court which rendered said judgment—nor had he any notice of the said suits, nor did he appear thereto by himself or his counsel, &c.; wherefore he alleges that the said judgment is of no force or effect whatever, &c., and concludes with a verification.

3d. That he was not served with process upon which the said judgment was rendered; that he had no notice of the said suits, nor of the subsequent proceedings therein, nor did by himself or counsel, appear thereto, &c.; wherefore he avers that said judgment is void, and of no force or effect whatever, &c., and concludes with a verification.

4th. That the said Court of Common Pleas, in the said Court mentioned, had no jurisdiction over the person of the said Defendant, &c., wherefore he avers said judgment is null and void, and of no force and effect whatever, &c., and concludes with a verification.

5th. That after the rendition of the said judgment, in the said count mentioned, he, the Defendant, paid and satisfied the same, &c.

The following issues were made, to-wit:

1st. On the first plea of *nul tiel* record, the Plaintiff took issue.

2d. To the plea of the Defendant to the said count, wherein he alleges that he, the Defendant, at the time, &c., was not an inhabitant or resident of the state of Connecticut, and not within the jurisdiction of said Court, and that he did not appear to said suit, &c., the Plaintiff replied, that, at the time of the institution of the said suit in said Court mentioned, the Defendant had due and legal notice of the commencement and pendency of said suit, according to the laws of the State of Connecticut then in force, &c., and concludes to the country, &c.

3d. To the plea of the Defendant to said count, wherein he alleges that he was not served with process in said suit—that he had no notice of the said suit, nor of the subsequent proceedings therein, and that he did not appear, &c., the Plaintiff replied, that the Defendant's *usual place of abode* was in the county of Litchfield, State of Connecticut, at the time of the commencement of said suit in said count mentioned, and that said Defendant, on the 30th July, 1802; then and there had notice of the institution of the said suit, &c., and concludes to the country, &c.

4th. To the plea of the Defendant to said count, wherein he alleges that the said Court of Common Pleas had no jurisdiction over the person of said Defendant, &c., the Plaintiff replied that said Court had jurisdiction over the person of the Defendant, &c., and concludes to the country, &c.

5th. To the plea of the Defendant to said count, wherein he alleges payment, &c., the Plaintiff traversed said plea, and concluded to the country, &c.

Before the trial of said cause, objections were taken and filed by the Plaintiff, to the deposition of *Andrew Adams*, taken on the part of the Defendant, and subsequently read to the jury, at the trial of said cause, which objections were overruled by the Court, and the Plaintiff excepted, and which objections, as preserved in the bill of exceptions, are as follows:

1st. That it does not appear that the said witness was sworn or affirmed, according to law.

2d. The answer to the second interrogatory contains the statements of the Defendant, and professes to give the contents of letters written by the Defendant, without excusing the non-production of the letters themselves, and is argument instead of evidence.

3d. The fifth interrogatory and the answer thereto, ask and give matters of representation and hearsay.

So much and such parts of the said deposition so objected to, are as follows, viz:

1st. "I, Phineas L. Tracy, Commissioner, appointed by the annexed "commission, do hereby certify that Andrew Adams, the deponent, whose

" name is subscribed to the respective depositions on the part of said Defendant and said Plaintiff, marked A and B, was sworn by me, previous to his examination, and that he signed the aforesaid depositions, on the fifth day of May, 1845, at Batavia, in the county of Genessee, and State of New York.

" PHINEAS L. TRACY, *Commissioner.*

2d. "*Answer.*—In the month of February, 1800, the said Lyman became of the age of 21 years, and left his father's house in the town of Bristol, in the State of Connecticut, and went to reside at Dedham, in the State of Massachusetts, where, to the best of this deponent's recollection, said Lyman continued to reside till the month of December, 1801, or the month of January, 1802, at one of which periods he returned to his father's house in Bristol aforesaid, where he remained till the spring of 1802. In the said spring he left Bristol, stating that he was going to Vermont, and then, should return to said Dedham. During the ensuing summer of 1802, a letter was received by the said Lyman's father, from him the said Lyman, dated, as this deponent believes, at White Hall, in the State of New York, which letter stated that the said Lyman, after he had completed his business at the north, should return to Dedham, to reside again. This deponent further says, that in the month of November or December, 1802, his said father received a letter from said Lyman, dated at such Dedham, from which circumstance said deponent believed, and still believes, that said Lyman was then residing in said Dedham."

3d. "*Fifth Interrogatory.*—Did you ever hear of any law suits commenced by Curtis Hale, in Litchfield, State of Connecticut, against said Adams, in the year 1802? and if you recollect anything about said law suits, state whether Mr. Adams had left the State of Connecticut before or after these suits were commenced."

"*Answer.*—In the year 1802, it was commonly reported at Bristol aforesaid, that there was a matter of difficulty existing between said Lyman, and said Curtis Hale. It was also commonly reported that the said Curtis had taken out a writ or writs against said Lyman, and was watching his said father's house at Bristol to arrest him, or cause him to be arrested. That previous to the taking out of said writ or writs, as this deponent heard of them, said Lyman had left, at least one or two months, and never did return again to Connecticut, as this deponent ever heard of, and believes, as this deponent had no relative or business transactions to call him back there, as this deponent believes—as his father's family soon removed from the State of Connecticut."

Also, before the trial of the said cause, objections were taken and filed by the Defendant to the Depositions of Chloe Hill, on the ground that said witness was interested in the said suit—which objections were sustained

"*Answer.*—I do not know and cannot state."

"*Cross Interrogatory tenth, on the part of the Defendant.*

"Don't you know that the general report in Litchfield county, in the month of July, 1802, was, that said Lyman Adams had run away, and gone out of the State?" (The Plaintiff objects to this interrogatory.)

"*Answer.*—I do not."

"*Cross Interrogatory eleventh, on the part of Defendant.*

"From the time these proceedings were commenced, or, the said month of July 1802, where did said Lyman Adams reside; and if you do not know where he resided, state whether it was not understood, and the general report, that he was out of the State of Connecticut, ever since said month of July?" (The Plaintiff objects to so much of this question as enquires into general report and understanding.)

"*Interrogatory thirteenth, on the part of Defendant.*

"Don't you know that on or about the 30th of July, 1802, or about the time all these proceedings were instituted against the said Lyman Adams, the same resided at Skeensborough, now called Whitehall, New York; or if you understood he resided any where else—perhaps Vermont—please state?"

"*Answer.*—I do not know and cannot state."

"*Cross Interrogatory fourteenth, on the part of Defendant.*

"While the said Lyman Adams was in Harwinton, Litchfield County, Connecticut, did he keep house, or did he live in the family of Curtis Hale?"

"*Answer.*—He resided in the house of said Curtis Hale, and lived in the family of said Hale. CHLOE HILL."

["A."]

"*State of New York.*

"For and in consideration of two dollars, to each of us in hand paid, by Elisha Hale, of Newburgh, New York, the receipt whereof is hereby confessed—and the undersigned, inhabitants of the town of Camden, in the county of Oneida, and State aforesaid, do, each for ourselves, in and by virtue of these presents, hereby release and forever discharge unto the said Elisha Hale, all and every interest or right which we now have, or may have, either in law or equity, of, in or to any judgment or judgments, decree or decrees, in law or chancery, ever or at any time heretofore obtained or procured by Curtis Hale, deceased, who formerly lived in Litchfield county, Connecticut, against Lyman Adams, who formerly resided in the said county of Litchfield.

"The intention of the undersigned is to release and forever discharge, to the said Elisha Hale of Newburgh, all or any claim or proveable right or interest, which they may, or can have as heirs-at-law of said Curtis Hale,

“deceased, and to forever bar their interest in said claim, if any ever did,
“or does now exist.

“In witness whereof, we have hereunto set our hands and seals, this
“twenty-fifth day of September, in the year eighteen hundred and forty-
“four.

URI HILL, [SEAL.]”

“CHLOE HILL, [SEAL.]”

The issue of *nul tiel* record was tried by the Court and found for the Plaintiff, and the other issues, made by the pleadings as above stated, were tried by a jury. And upon the trial of the said issues the following evidence, on the part of the Plaintiff, was produced, and offered to the jury, to-wit:

Silas Gridley testified that he “was acquainted with said Curtis Hale in his life time, and in the town of Harwinton, in the County of Litchfield, in Connecticut—was acquainted with the Defendant Lyman Adams; first became acquainted with him in Bristol, Connecticut, in 1800, or 1801; then, was acquainted with him while he lived in said Harwinton, in 1801 and 1802, until he left the State of Connecticut. Should think, and is confident, that the *usual place of abode of* said Lyman Adams, before, and on the 30th day of July, in the year 1802, was in Harwinton aforesaid. Lyman Adams married Rhoda Hale, about the year 1801, and from and after the marriage, he and his wife resided at Harwinton aforesaid, until he ran away. Could not tell precisely the day or month he left, but he, (said Adams,) continued to reside in said Harwinton till late in the year 1802, and, (as witness was confident,) until after 30thth July of that year: during that period Harwinton was the only known residence of said Lyman Adams, and it was regarded as his home. Witness served as Constable in said Connecticut for many years, and should regard said Harwinton as said Adams’ usual place of residence, for the service of process on the 30th July, 1802. In 1802 and 1803 resided at his father’s, near said Adams’ place of residence—saw him (said Adams) a number of times on the Sabbath to and from church, from and to the Hale-house in said Harwinton, where he (said Adams) and his wife lived; and saw him also on other occasions.”

On cross examination the witness stated: Knew Lyman Adams, in Litchfield County, one year—did not understand that said Lyman Adams was a resident of Dedham, Massachusetts, or considered so, while he was in said county of Litchfield; impression was that said Adams and wife lived with the family of Curtis Hale most of the time, but that after Curtis Hale moved to the wooden-house, that Adams and his wife kept house at the Hale-place;—understood that some difficulty occurred in the family of Curtis Hale, and that said Hale commenced suits of *debt and crim. con.* against said Adams, but did not understand or believe, that said Adams left the State of Connecticut before said suits were commenced; as to Adams

them, and Adams left the county, and witness never saw him afterwards. Should think Adams left Harwinton about July—not later—in 1802. Do not know that Adams had any other place of abode after he married Hale's daughter, than in the family of said Hale, in said Harwinton.

On cross-examination, witness stated that he knew said Adams in said Litchfield county, Connecticut, about one year; never heard or knew that said Adams ever resided in Dedham, Massachusetts, or in that State. Lyman Adams did not keep house, but lived in the family of Curtis Hale. Understood that some difficulty had occurred in the family of said Curtis Hale, and Hale commenced suits against Adams; the suits arose out of difficulties in the families; could not state the particular charges made; thinks Adams did not leave until after the suits were commenced. Does not know that Adams ever had his abode in Massachusetts. Does not know that the report, in July, 1802, or about that time, was that said Lyman Adams had run off. Cannot tell the exact time when he, (witness,) last saw Adams, but it was about July, 1802.

John Stewart testified that he had had frequent conversations with the said Defendant, Lyman Adams, since 1835, and has frequently heard said Adams say that he lived in Connecticut, that he had left that State upwards of forty years ago, and did not understand from said Adams, in any conversation with him, that said Adams had ever resided in Massachusetts. Heard said Adams say that after he left Connecticut he settled in Baltimore, afterwards removed to Louisville, and from thence to Illinois.

And also, the Plaintiff read in evidence a public law of the State of Connecticut, from a book purporting to have been published by the authority of the said State, being "an act for the directing and regulating civil actions," as follows:

"§ 1. *Be it enacted by the Governor, and Council and House of Representatives, in General Court assembled,* That the ordinary process in civil actions in this State, shall be a summons or an attachment, fairly written, signed by a Magistrate, Justice of the Peace, or Clerk of the Court, mentioning the Court, the time and place of appearance, therein, also, containing a declaration of the substance of the action; which attachment may be granted against the goods or chattels of the defendants; and for want of them, the lands or person of the defendant may be attached. Provided, the plaintiff, when he prays out an attachment, gives sufficient security to prosecute his action to effect, and answer all damages in case he make not his plea good. And like security shall be given by some substantial inhabitant of this State on granting a summons, when the plaintiff is not an inhabitant of this State; or if it shall appear to the authority signing the same that the plaintiff is unable to pay the costs of prosecution, if recovered against him. And all writs and process shall be directed to the sheriff, his deputy or some con-

stable, if such officer can be had without great charge or inconvenience. And in every case, wherein the authority signing the writ shall find it necessary to direct the same to an indifferent person, such authority shall insert the name of the indifferent person in the direction of the writ, and the reason of such direction; and if any writ be otherwise directed, it shall abate: Provided, nevertheless, that nothing herein shall extend to direct summons for witnesses, warrants to collectors of rates, or warrants granted by military officers."

The Plaintiff also read in evidence a certified copy of the second edition of a law of Connecticut, being "an act for the directing and regulating of civil actions," as follows:

"Be it enacted by the Governor and Council and House of Representatives in General Court assembled:

§ 2. And that no person shall be required to make answer in any civil action, real, personal or mixed, except the writ or process, if returnable to the Superior or County Court, has been served upon him, at least twelve days inclusive before the day of the Court's sitting: or if returnable to an Assistant or Justice, the same has been served six days inclusive as aforesaid: which service shall be, if a summons, by reading the same in the hearing of the Defendant or Defendants, or leaving an attested copy thereof at the place or places of his or their usual abode, but if an attachment, the service shall be the attaching the Defendant or Defendant's estate or person, and giving him notice by reading the writ to him or within his hearing, or by leaving an attested copy thereof at the place of his usual abode, if that be within this State, and that all such writs as are made returnable to the County Courts shall be returned to the Clerk of said Courts on the day before the sitting of such Courts, and not afterwards. That in case any process be duly served on any Defendant or Defendants, and return thereof made to the Court to which the same is made returnable, then if such Defendant or Defendants do not appear, his or their default shall be recorded and judgment entered up against him or them thereupon, unless he or they shall come into Court on or before the second day of the sitting of said Court, and move for a new trial; in which case he or they shall be admitted thereupon paying down to the adverse party the costs to that time; and the Plaintiff shall pay for entering the action anew."

*On the part of Defendant, Chester Adams testified—*Knows Lyman Adams, the Defendant, and has been acquainted with him for the last fifty years; said Lyman is older brother of witness, but has not seen said Lyman since 1805 or 1806. The father of said Lyman and witness resided in Bristol, Hartford County, Connecticut, about two miles north-westerly of the Central Meeting House. Early in the spring of 1798 or 1799, said Lyman left his father's house on a trading tour to the State of Massachusetts; left

Bristol with three other persons, to wit: Eli Parsons of Bristol, Waterman Bishop of Southington and Samuel Sweet of Farmington; at the advice and request of my brother, on the 12th July, 1799, I went to Dedham, Mass. On arrival found Lyman Adams at Dedham—witness resided and made a home at Dedham until 1807, and was not absent from said Dedham for three weeks at a time, except in 1802. In the spring of last named year Lyman Adams made arrangements for going to Grand Isle, Lake Champlain and Skeensborough, now called White Hall, New York—something said about going to Canada. Lyman Adams left Dedham in the spring of 1802, starting a few weeks before witness, who left about the 20th June, 1802, to visit his father in Bristol, and who returned during the ensuing October. Within a fortnight—certainly within four weeks—after witness returned to said Dedham, Lyman Adams also returned and continued to reside in Dedham the residue of the year. Said Lyman continued to reside at witness's house till spring of 1805 or 1806, as witness thinks, when he left for Philadelphia. From July 16, 1799, till said Lyman's departure for Philadelphia, he was engaged in buying and selling various articles of merchandize, and made frequent expeditions to Vermont, New Hampshire, Maine, Rhode Island and New York, and perhaps other States; but from said 16th of July till 1805 or 1806, when he left Massachusetts, said Lyman's home was, during all the time, in said Dedham; and this was the place to which he always returned from his tours. While said Lyman was absent at Grand Isle and Skeensborough, letters were received at his father's house, while witness was there, from said Lyman, and purporting to come from one of said places—witness thinks from Skeensborough.

The house of said Lyman's father, in 1802, was distant from the meeting house in Harwinton, about five or six miles. From about the 20th of June to the middle of October, 1802 witness was at said house. During part of the summer, attended church at the Episcopal Church, in the corner of Plymouth, a town adjoining Bristol, and about two miles from said house of Lyman's and witness' father, and from one to two miles from the house of Curtis Hale, and on the road to Harwinton. While at home, in 1802, did not see said Lyman, and was so much at home that Lyman could not have been there without the knowledge of witness. Should have heard of said Lyman's residing so near his father's house, if said Lyman had been in Harwinton. Was about eighteen years old then, and retains a vivid recollection of the facts and circumstances that took place at that period. Said Lyman did not, at any time, from 1798 or 1799 till 1805, have his usual place of abode in Connecticut, but from July 16, 1799 till 1805, at said Dedham. Does not know when the suits against Lyman Adams in favor of Curtis Hale were commenced; first heard of them after hay-time in the summer of 1802, but before he (witness) left Bristol for Dedham; should

say he heard of them in August. From the 16th July, 1799, till said Lyman left for Philadelphia, witness boarded with said Lyman, or near him, except as above stated. Said Lyman was often absent on his trading tours.

Andrew Adams testified.—Has known and has been acquainted with both Curtis Hale and Lyman Adams. In February, 1800, said Lyman left his father's house in Bristol, Connecticut, and went to reside at Dedham, Massachusetts, where he continued to reside, to the best of witness' recollection, till December, 1801, or January, 1802, when he returned to his father's house, where he remained till the spring of 1802. In said spring, he left Bristol, stating that he was going to Vermont, and should then return to said Dedham. During the ensuing summer of 1802, said Lyman's father received a letter from said Lyman, dated at White Hall, as witness thinks, which letter stated that said Lyman would return to Dedham to reside again. In December or November, 1802, his said father received a letter from said Lyman, dated at said Dedham; believed and still believes, from this fact, that said Lyman was then residing in Dedham. To the best of witness' knowledge, said Lyman Adams did not reside in Harwinton, Connecticut, in July, 1802, but was then a resident of said Dedham, though during this particular month he was absent in the northern part of New York or Vermont, on business. Said Lyman was reputed to have left the State of Connecticut previous to the latter part of July, 1802. In 1802 it was commonly reported at Bristol aforesaid, that there was a difficulty between said Lyman and said Curtis Hale; that said Curtis had taken out a writ or writs against said Lyman, and was watching his said father's house to have him arrested; that said Lyman had left one or two months before witness heard of the taking out of said writs, and never returned again to Connecticut, as witness believes. Said Lyman was born in Connecticut and permanently resided there till February, 1800, when he became of age; from 1800 to 1806, said Lyman resided at Dedham; since 1806 has had no particular knowledge of said Lyman's place of residence until last winter, when witness received from him a letter from Illinois. Has stated all the facts, &c., known to him, and material in this cause to either party. His knowledge of Lyman Adams' residence at Dedham, arose from letters and declarations of said Lyman, and from the fact that in the latter part of 1804, or the beginning of 1805, witness resided with said Lyman at Dedham, for several months.

On cross-examination, witness stated, that he is a brother of said Defendant—resided in Bristol, Connecticut, in July, 1802; left Connecticut in 1804, and has not resided there since; removed first to Massachusetts, where he lived till 1809, since which time he has lived in New York, and for the last twenty-nine years, in Genesee county, New York. In July, 1802, was at work in his father's hay field, in Bristol, Connecticut, when a

man came into the field, bringing a letter of introduction from said Lyman, and dated, (as witness believes,) at Whitehall, New York. In which letter Lyman referred to the place where he then was, and where he was going. Possible that witness may have got his information of his brother's intended journey down Lake Champlain from Mr. Beardman, the bearer of the letter. This took place, (as witness thinks,) in the latter part of July, 1802, and the letter was dated but three or four days before received. Was called upon to decypher the writing, which was obscure, and thus, is more particular in his recollection of the time. Has endeavored to state clearly the facts which are within his own personal knowledge, and refers to his previous answers, in order to ascertain whether this has been done.

Which was all the evidence in the case.

At the instance of the Defendant, the Court instructed the jury as follows, to-wit:

1. That as the copy of the judgment in this case read in evidence by the Plaintiff, to establish his rights to recover, shews that judgment to have been rendered upwards of twenty years before the commencement of this suit, the law regards it as having been paid and satisfied, and this presumption of payment thus arising, can be removed only by the Plaintiff's showing that it is not paid, or by the proof of facts inconsistent with the truth of such presumption, or that the Defendant has within twenty years acknowledged it to be still due and unpaid, and that if the Plaintiff has not shown sufficient to destroy such presumption of payment, the jury will find a verdict in favor of the defendant.

5. That if they believe from the evidence that the said Court of Common Pleas had no jurisdiction over the person of the Defendant in said suit; in which the judgment mentioned in the Plaintiff's declaration, was rendered, they must find for the Defendant.

6. That this suit is brought upon a judgment rendered against the Defendant in the State of Connecticut, in the year 1802, and that if they believe from the evidence, that said Defendant did not have notice in said original suit, according to the laws of Connecticut, they are bound to find for the Defendant under the third plea, or first issue before them.

8. That if they believe, from the evidence, that the Defendant's usual place of abode on the 30th of July, 1802, was not in the State of Connecticut, they are bound to find for Defendant under the 4th plea or second issue.

9. That under the fourth plea or second issue to the country, it is incumbent upon the Plaintiff to show that the Defendant had personal notice, in fact, in the original suit against him.

10. That the laws of Connecticut are foreign laws, and cannot be noticed by the jury unless they have been pleaded and proved; that the replication

to the fourth plea does not aver notice according to the laws of Connecticut, or what the laws of that State are, and should the Jury even believe from the evidence, that *constructive* notice was given according to the laws of Connecticut, but that there was no actual notice or appearance by the Defendant, still they must find for the Defendant upon said fourth plea or second issue to the country.

The two foregoing instructions were given, but the Court also stated to the Jury that if they found the issue joined on the third plea, in favor of the Plaintiff, that would show jurisdiction of the person of the Defendant in the Court in Connecticut, and they must consequently find a verdict for the Defendant, unless they found the issue on the plea of payment in his favor.

11. That ignorance of the said Curtis Hale, in his life, of the place of residence of the defendant, is not, of itself, sufficient to rebut the presumption of payment, arising from the lapse of time, since the rendition of the judgment sued on in this case—which was given by the Court [the Judge] who said he meant to be understood thereby, that such facts would not necessarily constrain them to find against the presumption, but that it was a circumstance entitled to their consideration on the question.

12. That if the Jury believe, from the evidence, that the Defendant was not an inhabitant of the State of Connecticut at the time of the institution of the said suit against him in that State, nor until after its rendition, and did not appear, they are bound to find for the Defendant upon the fifth and sixth pleas, or third and fourth issues.

13. That although judgments in a sister State are binding and conclusive, when rendered on personal notice given; yet, those judgments which are rendered without notice—actual or constructive—are void, and cannot be enforced in the Courts of this State; and the Defendant is not precluded in this case from showing that the judgment now sued on, was fraudulently obtained, or rendered by a Court in Connecticut which had no jurisdiction of the cause of action, or over the Defendant's person.

To the giving of which instructions the Plaintiff excepted.

Upon the evidence and under the instructions aforesaid, the Jury returned the following verdict, to wit: "We the jury find the issues for the Defendant, and we specially find that the Defendant was not a resident or inhabitant of the State of Connecticut on the 30th day of July, A. D. 1802." And upon the publishing of the said verdict of the jury, the Plaintiff moved the Court to grant a new trial, for the reasons following—

1. The verdict of the Jury is against evidence.
2. Against law and evidence.
3. Against the weight of evidence.
4. The Court erred in the instructions given to the Jury, on the part of the Defendant.
5. The Court erred in excluding the Deposition of Chloe Hill.

6. The Court erred in permitting portions of the Deposition of Andrew Adams to be read to the Jury.

7. The verdict is informal, uncertain and insufficient, and no judgment can be rendered thereon.

Which motion was overruled by said Court, and judgment *de bonis testatoris* was rendered against the Plaintiff for costs, &c.

To all which the Plaintiff excepted, and his exceptions were allowed, signed and sealed by the Court, and made part of the record.

The following Errors are assigned to reverse the judgment of the Court below, to wit:

1. The Court erred in excluding from the Jury a part of the depositions of Plaintiff, without designating with any certainty the parts of the depositions so excluded.

2. The Court erred in not excluding from the Jury the deposition of Andrew Adams, on the second objection made thereto by the Plaintiff; and also in not excluding the answers of said Adams to the second and fifth interrogatory put by Defendant, on the sixth and eighth objection made thereto by the counsel for Plaintiff.

3. The Court erred in excluding from the jury the deposition of *Chloe Hill*.

4. That the Court erred in overruling exceptions and objections made by the Plaintiff to Depositions offered and read in evidence on the part of the Defendant.

5. That the Court erred in sustaining exceptions and objections made by Defendant to Depositions and proofs offered on the part of the Plaintiff.

6. That the Court erred in refusing to allow depositions and proofs offered on the part of the Plaintiff to be read to the Jury on the trial of said cause.

7. That the Court erred in giving the instructions asked on the part of the Defendant.

8. That the Court erred in its instructions to the Jury.

9. That the Court erred in refusing to grant a new trial in said cause.

10. That the Court erred in rendering judgment against the said Plaintiff.

The following *points* will be presented in the argument of the errors assigned:

I. That parts of a deposition may be excluded by the Court, when a valid objection is taken thereto, but the parts so excluded must be referred to, so as to inform the jury what is, and what is not to go to them as evidence.

II. That depositions taken by a Commissioner must show some where on the face of them, that the witness was sworn to testify the truth in relation to the matters in controversy, so far as the witness may be interrogated; that he was examined upon the interrogatories that were enclosed with the commission, or attached to it, and directed to the witness. That a deposition not showing those facts, should be excluded from the jury, when objection is made to such deposition.

III. In answering interrogatories, a witness should not refer to the contents of letters, or conversations of the party interrogating him; unless such letters or conversations have been made the subject of enquiry by the opposite party; nor should the witness' answers be predicated upon rumor or reports, the truth or falsity of which he has no knowledge; when interrogatories are so answered, the answers should be excluded, when objected to by the party against whom such answers are to be used.

IV. The testimony of *Chloe Hill* was improperly excluded on the presumption that she had an interest in the judgment obtained in Connecticut, and the one to be obtained in this suit. There was no evidence to show that this judgment would not be required to pay the debts of the deceased, or that by the laws of distribution of Connecticut, the witness would not be deprived of any beneficial interest therein. All the presumptions are as strong to show that she had no interest in the judgment, as that she had one, and if she had an interest it was so remote and contingent, that in law she could not be regarded as incompetent to testify on the ground of interest.

V. A judgment that has stood for more than twenty years, is conclusive evidence in a suit upon that judgment, in another State, that it was properly obtained, and that all the facts did exist that were necessary to give the Court jurisdiction of the person of the Defendant, and of the subject matter in controversy.

VI. That the certified copy and the book of laws purporting to have been published "by authority," and read in evidence upon the trial of this cause, were competent and conclusive evidence of the laws of Connecticut which were in force at the time suit was instituted in that State against the Defendant.

VII. The service of the process, as recited in the record of the judgment read in evidence, was made in strict conformity with the laws in force at that time in the State of Connecticut, and such service is tantamount to a personal notice to the Defendant of the pendency of that suit, under the facts established in evidence in this case.

VIII. That the testimony in this cause was sufficient to give the Plaintiff a verdict and judgment on all the issues made. His four witnesses were conclusive as to the fact of the Defendants usual place of abode when the process was served. The two witnesses of Defendant so differ as to the principal fact about which they swear, as to destroy the effect of their testimony for the purpose for which it was introduced. If, by reason of conflicting testimony, there is doubt as to the fact whether the Defendant had his usual place of abode in the State of Connecticut, at the time the said suit was instituted against him in that State, such doubt should be construed in favor of the jurisdiction of the Court in which said judgment was rendered.

IX. That every presumption is in favor of the jurisdiction of the Court over the person of the Defendant, in conformity with the laws in force in the State of Connecticut at the time the said judgment was rendered, and the onus probandi rests upon the Defendant to show affirmatively that his usual place of abode was not in the State of Connecticut, at the time of the service of said writ.

X. The facts established in evidence in this case, on the part of the Plaintiff, show conclusively that the Defendant's *usual place of abode* was at Harwinton, in the county of Litchfield, State of Connecticut, *before*, and about the time the writ recited in the record of said judgment, was served; and the Defendant did not show at the trial below, either by positive proof, or circumstantial testimony, that he had changed his domicile at that time.

XI. The Plaintiff having shown affirmatively that the Defendant's *usual place of abode* was in Connecticut just *before*, or about the time of the service of the said writ, and no facts or circumstances are proved which show, or tend to show, that the Defendant had at that time changed his domicile, the presumption is, that the Defendant's *usual place of abode* was at the place where said writ was served, in the mode returned by the officer.

XII. That the presumption of payment of the said judgment, from lapse of time, was fully rebutted by the testimony in this case.

JOHN M. KRUM,
WILLIAM MARTIN,
Attorneys for Plaintiff.

IN THE SUPREME COURT OF ILLINOIS.

~~William G. Goforth~~ Administrator of Curtis Hale, deceased,

vs.
LYMAN ADAMS.

ABSTRACT OF RECORD.

This was an action of debt, brought in the St. Clair Circuit Court, at the May Term, 1844—by William G. Goforth, Public Administrator, having charge of the estate of Curtis Hale, deceased, against Lyman Adams. The declaration is on a judgment recovered by the Plaintiff's intestate against the Defendant, in the State of Connecticut, in the year 1802. The Plaintiff's declaration contains the usual averments. A *nolle prosequi* having been entered as to the first count, issue was joined and trial was had under the second.

The Defendant filed several pleas, to-wit:

1st. *Nul tiel* Record.

2d. That at the time of the institution of the said suit, in the Plaintiff's declaration mentioned, he, the Defendant, was not an inhabitant or resident of the State of Connecticut, and not within the jurisdiction of the Court which rendered said judgment—nor had he any notice of the said suits, nor did he appear thereto by himself or his counsel, &c.; wherefore he alleges that the said judgment is of no force or effect whatever, &c., and concludes with a verification.

3d. That he was not served with process upon which the said judgment was rendered; that he had no notice of the said suits, nor of the subsequent proceedings therein, nor did by himself or counsel, appear thereto, &c.; wherefore he avers that said judgment is void, and of no force or effect whatever, &c., and concludes with a verification.

4th. That the said Court of Common Pleas, in the said Court mentioned, had no jurisdiction over the person of the said Defendant, &c., wherefore he avers said judgment is null and void, and of no force and effect whatever, &c., and concludes with a verification.

5th. That after the rendition of the said judgment, in the said count mentioned, he, the Defendant, paid and satisfied the same, &c.

The following issues were made, to-wit:

- 1st. On the first plea of *nul tiel* record, the Plaintiff took issue.
- 2d. To the plea of the Defendant to the said count, wherein he alledges that he, the Defendant, at the time, &c., was not an inhabitant or resident of the state of Connecticut, and not within the jurisdiction of said Court, and that he did not appear to said suit, &c., the Plaintiff replied, that, at the time of the institution of the said suit in said Court mentioned, the Defendant had due and legal notice of the commencement and pendency of said suit, according to the laws of the State of Connecticut then in force, &c., and concludes to the country, &c.
- 3d. To the plea of the Defendant to said count, wherein he alledges that he was not served with process in said suit—that he had no notice of the said suit, nor of the subsequent proceedings therein, and that he did not appear, &c., the Plaintiff replied, that the Defendant's *usual place of abode* was in the county of Litchfield, State of Connecticut, at the time of the commencement of said suit in said count mentioned, and that said Defendant, on the 30th July, 1802; then and there had notice of the institution of the said suit, &c., and concludes to the country, &c.
- 4th. To the plea of the Defendant to said count, wherein he alledges that the said Court of Common Pleas had no jurisdiction over the person of said Defendant, &c., the Plaintiff replied that said Court had jurisdiction over the person of the Defendant, &c., and concludes to the country, &c.
- 5th. To the plea of the Defendant to said count, wherein he alledges payment, &c., the Plaintiff traversed said plea, and concluded to the country, &c.

Before the trial of said cause, objections were taken and filed by the Plaintiff, to the deposition of *Andrew Adams*, taken on the part of the Defendant, and subsequently read to the jury, at the trial of said cause, which objections were overruled by the Court, and the Plaintiff excepted, and which objections, as preserved in the bill of exceptions, are as follows:

- 1st. That it does not appear that the said witness was sworn or affirmed, according to law.
- 2d. The answer to the second interrogatory contains the statements of the Defendant, and professes to give the contents of letters written by the Defendant, without excusing the non-production of the letters themselves, and is argument instead of evidence.
- 3d. The fifth interrogatory and the answer thereto, ask and give matters of representation and hearsay.

So much and such parts of the said deposition so objected to, are as follows, viz:

- 1st. "I, Phineas L. Tracy, Commissioner, appointed by the annexed "commission, do hereby certify that Andrew Adams, the deponent, whose

"name is subscribed to the respective depositions on the part of said Defendant and said Plaintiff, marked A and B, was sworn by me, previous to his examination, and that he signed the aforesaid depositions, on the fifth day of May, 1845, at Batavia, in the county of Genessee, and State of New York.

"PHINEAS L. TRACY, *Commissioner.*

2d. "*Answer.*"—In the month of February, 1800, the said Lyman became of the age of 21 years, and left his father's house in the town of Bristol, in the State of Connecticut, and went to reside at Dedham, in the State of Massachusetts, where, to the best of this deponent's recollection, said Lyman continued to reside till the month of December, 1801, or the month of January, 1802, at one of which periods he returned to his father's house in Bristol aforesaid, where he remained till the spring of 1802. In the said spring he left Bristol, stating that he was going to Vermont, and then, should return to said Dedham. During the ensuing summer of 1802, a letter was received by the said Lyman's father, from him the said Lyman, dated, as this deponent believes, at White Hall, in the State of New York, which letter stated that the said Lyman, after he had completed his business at the north, should return to Dedham to reside again. This deponent further says, that in the month of November or December, 1802, his said father received a letter from said Lyman, dated at such Dedham, from which circumstance said deponent believed, and still believes, that said Lyman was then residing in said Dedham."

3d. "*Fifth Interrogatory.*"—Did you ever hear of any law suits commenced by Curtis Hale, in Litchfield, State of Connecticut, against said Adams, in the year 1802? and if you recollect anything about said law suits, state whether Mr. Adams had left the State of Connecticut before or after these suits were commenced."

"*Answer.*"—In the year 1802, it was commonly reported at Bristol aforesaid, that there was a matter of difficulty existing between said Lyman, and said Curtis Hale. It was also commonly reported that the said Curtis had taken out a writ or writs against said Lyman, and was watching his said father's house at Bristol to arrest him, or cause him to be arrested. That previous to the taking out of said writ or writs, as this deponent heard of them, said Lyman had left, at least one or two months, and never did return again to Connecticut, as this deponent ever heard of, and believes, as this deponent had no relative or business transactions to call him back there, as this deponent believes—as his father's family soon removed from the State of Connecticut."

Also, before the trial of the said cause, objections were taken and filed by the Defendant to the Depositions of Chloe Hill, on the ground that said witness was interested in the said suit—which objections were sustained

by the Court, and said deposition was not allowed to be read; to which opinion the Plaintiff excepted. Said Deposition, or so much and such parts thereof as disclose the interest of said witness, are as follows:

“ Interrogatory first on the part of the Plaintiff.”

“ State the usual place of abode of Lyman Adams, the above named Defendant, in the year 1802, and in or about the 30th day of July of that year.”

“ *Answer.*—Lyman Adams lived in Harwinton, Litchfield County, Connecticut, in the year 1802, and on or about the 30th of July, 1802.”

“ Interrogatory second on the part of the Plaintiff.”

“ State all the circumstances within your own knowledge that are material to the parties in the above entitled cause, or to either of them.”

“ *Answer.*—I resided in Harwinton, in the County of Litchfield, State of Connecticut, during all of the year 1802, and for some time before and after that year. Lyman Adams, the Defendant in this suit, married a daughter of Curtis Hale, in the year 1801. Curtis Hale then, and for some years thereafter, lived in said town of Harwinton, County of Litchfield and State of Connecticut aforesaid. From the time of the marriage of the Defendant, Lyman Adams, with the daughter of Curtis Hale, he (the said Adams,) was domiciled with the family of the said Curtis Hale; and that said Lyman Adams continued his domicile and usual place of abode at the house of the said Curtis Hale, in the town of Harwinton, County of Litchfield and State of Connecticut, from the time of the marriage of said Adams, to the month of August of the year 1802. In the early part of the month of August, 1802; the said Lyman left his said usual place of abode and went to parts unknown to this deponent; this deponent has never seen him since. The annexed “Release” marked “A” was signed and sealed by me on the day it bears date, and at the same time was signed and sealed by *Uri Hill* in my presence.

“ CHLOE HILL.”

“ Cross interrogatory first, on the part of the Defendant.”

“ Are you not the daughter of Curtis Hale, and if so, will you please to state when and where said Curtis Hale died?”

“ *Answer.*—I am the daughter of Curtis Hale—I am not able to state when or where the said Curtis Hale died.”

“ Cross Interrogatory second, on the part of the Defendant.”

“ Is your mother still living, or is she dead? and when and where did she die?”

“ *Answer.*—I am not able to state whether my mother is still living; I have been informed that she is dead.”

“ Cross Interrogatory third, on the part of the Defendant.”

“ Have you any recollection of suits being commenced in the State

"of Connecticut, by said Curtis Hale, against the said Lyman Adams, and
 "also of proceedings on the part of the said Lyman Adams' wife for a di-
 "vorce from her husband?"

"*Answer.*—I have an indistinct recollection of suits brought against Ly-
 "man Adams by Curtis Hale. I do not recollect and cannot state that any
 "proceedings were commenced by Lyman Adams' wife for a divorce from
 "her husband."

"*Cross Interrogatory fourth, on the part of Defendant*—(Objected to by Plain-
 "tiff.)

"If you recollect the nature of those suits commenced by Curtis, please
 "state."

"*Answer.*—I do not recollect the nature of the suits commenced by said
 "Curtis Hale."

"*Cross Interrogatory fifth, on the part of the Defendant.*

"Did or did not Mr. Lyman Adams reside in Dedham, in the State of
 "Massachusetts, before he came to Litchfield County, Connecticut; and
 "when he married in said county was he not published as a resident of
 "Massachusetts?"

"*Answer.*—I do not and cannot state as to either of the points in this in-
 "terrogatory."

"*Cross Interrogatory sixth, on the part of the Defendant.*

"How long was Mr. Adams in Connecticut, from the time of his mar-
 "riage, until the time these suits were commenced?"

"*Answer.*—About one year—more or less—I cannot state with cer-
 "tainty."

"*Cross Interrogatory seventh, on the part of the Defendant.*

"Don't you recollect that these suits and proceedings were commenced
 "within the last two days of July, 1802?"

"*Answer.*—I do not recollect and cannot state."

"*Cross Interrogatory eighth, on the part of the Defendant.*

"Please state whether or not, shortly before the commencement of these
 "proceedings, or before the 30th of July, 1802, said Curtis Hale and his
 "wife visited the State of Massachusetts, and whether or not, they, or
 "either of them, had an interview with Lyman Adams in the said State of
 "Connecticut?"

"*Answer.*—I do not know and cannot state whether Mr. Hale and his
 "wife visited Massachusetts that year, or whether they or either of them
 "had an interview with Mr. Adams."

"*Cross Interrogatory ninth, on the part of the Defendant.*

"Don't you know now, that the said Lyman Adams had left Litchfield
 "county, and the State of Connecticut, some time before the suit above re-
 "ferred to, and some time before the commencement of those proceedings?"

"Answer.—I do not know and cannot state."

"Cross Interrogatory tenth, on the part of the Defendant.

"Don't you know that the general report in Litchfield county, in the month of July, 1802, was, that said Lyman Adams had run away, and gone out of the State?" (The Plaintiff objects to this interrogatory.)

"Answer.—I do not."

"Cross Interrogatory eleventh, on the part of Defendant.

"From the time these proceedings were commenced, or, the said month of July 1802, where did said Lyman Adams reside; and if you do not know, where he resided, state whether it was not understood, and the general report, that he was out of the State of Connecticut, ever since said month of July?" (The Plaintiff objects to so much of this question as enquires into general report and understanding.)

"Interrogatory thirteenth, on the part of Defendant.

"Don't you know that on or about the 30th of July, 1802, or about the time all these proceedings were instituted against the said Lyman Adams, the same resided at Skeensborough, now called Whitehall, New York; or if you understood he resided any where else—perhaps Vermont—please state?"

"Answer.—I do not know and cannot state."

"Cross Interrogatory fourteenth, on the part of Defendant.

"While the said Lyman Adams was in Harwinton, Litchfield County, Connecticut, did he keep house, or did he live in the family of Curtis Hale?"

"Answer.—He resided in the house of said Curtis Hale, and lived in the family of said Hale. CHLOE HILL."

["A."]

"State of New York.

"For and in consideration of two dollars, to each of us in hand paid, by Elisha Hale, of Newburgh, New York, the receipt whereof is hereby confessed—and the undersigned, inhabitants of the town of Camden, in the county of Oneida, and State aforesaid, do, each for ourselves, in and by virtue of these presents, hereby release and forever discharge unto the said Elisha Hale, all and every interest or right which we now have, or may have, either in law or equity, of, in or to any judgment or judgments, decree or decrees, in law or chancery, ever or at any time heretofore obtained or procured by Curtis Hale, deceased, who formerly lived in Litchfield county, Connecticut, against Lyman Adams, who formerly resided in the said county of Litchfield.

"The intention of the undersigned is to release and forever discharge, to the said Elisha Hale of Newburgh, all or any claim or proveable right or interest, which they may, or can have as heirs-at-law of said Curtis Hale,

“deceased, and to forever bar their interest in said claim, if any ever did,
“or does now exist.

“In witness whereof, we have hereunto set our hands and seals, this
“twenty-fifth day of September, in the year eighteen hundred and forty-
“four. URI HILL, [SEAL.]”

“CHLOE HILL, [SEAL.]”

The issue of *nul tiel* record was tried by the Court and found for the Plaintiff, and the other issues, made by the pleadings as above stated, were tried by a jury. And upon the trial of the said issues the following evidence, on the part of the Plaintiff, was produced, and offered to the jury, to-wit:

Silas Gridley testified that he “was acquainted with said Curtis Hale in his life time, and in the town of Harwinton, in the County of Litchfield, in Connecticut—was acquainted with the Defendant Lyman Adams; first became acquainted with him in Bristol, Connecticut, in 1800, or 1801; then, was acquainted with him while he lived in said Harwinton, in 1801 and 1802, until he left the State of Connecticut. Should think, and is confident, that the *usual place of abode* of said Lyman Adams, before, and on the 30th day of July, in the year 1802, was in Harwinton aforesaid. Lyman Adams married Rhoda Hale, about the year 1801, and from and after the marriage, he and his wife resided at Harwinton aforesaid, until he ran away. Could not tell precisely the day or month he left, but he, (said Adams,) continued to reside in said Harwinton till late in the year 1802, and, (as witness was confident,) until after 30th July of that year: during that period Harwinton was the only known residence of said Lyman Adams, and it was regarded as his home. Witness served as Constable in said Connecticut for many years, and should regard said Harwinton as said Adams’ usual place of residence, for the service of process on the 30th July, 1802. In 1802 and 1803 resided at his father’s, near said Adams’ place of residence—saw him (said Adams) a number of times on the Sabbath to and from church, from and to the Hale-house in said Harwinton, where he (said Adams) and his wife lived; and saw him also on other occasions.”

On cross examination the witness stated: Knew Lyman Adams, in Litchfield County, one year—did not understand that said Lyman Adams was a resident of Dedham, Massachusetts, or considered so, while he was in said county of Litchfield; impression was that said Adams and wife lived with the family of Curtis Hale most of the time, but that after Curtis Hale moved to the wooden-house, that Adams and his wife kept house at the Hale-place;—understood that some difficulty occurred in the family of Curtis Hale, and that said Hale commenced suits of *debt* and *crim. con.* against said Adams, but did not understand or believe, that said Adams left the State of Connecticut before said suits were commenced; as to Adams

leaving the State of Massachusetts, did not know nor understand anything about it any way; thinks that the report of said Adams having run off was not circulated until some time in the fall of 1802; could not say when was the last time of seeing said Adams in Harwinton.

Anson Smith testified.—Knows Adams the Defendant; first knew him in the town of Harwinton, Litchfield County, Connecticut, in the years 1800 and 1801, at the time when he was visiting Rhoda Hale, whom he afterwards married; was present at the marriage which took place in 1801; marriage took place in Plymouth; after marriage said Lyman Adams and wife resided within a half a mile of where witness lived, at the house of Curtis Hale, (the wife's father,) which was said Adams' usual place of residence, and where he made his home for one year at least; thinks more. At the end of this time said Adams left the State, in the latter part of summer or fall, as near as witness recollects; the cause of leaving understood to be in consequence of a difficulty with Curtis Hales' wife; heard nothing concerning him (said Adams) until about a year since; when he was reported to be in Illinois. At the time of said Adams' marriage, he was considered a man of property; when he left he took all his property with him, leaving his wife and child destitute. If said Adams had left property, witness would have known it.

On cross-examination the witness stated—Was, in 1802, and has been ever since, a resident of the south-east part of said Harwinton; was not very intimate with said Lyman Adams, and was not at all acquainted with other members of his father's family, but was intimate with the family of his wife's father; usually attended same church which he attended and frequently saw him and wife on Sundays. After their marriage, frequently visited at the house where said Adams resided; for at least one summer said Adams worked on the Hale farm. Has no knowledge that said Adams ever, at any time, resided in Dedham, Massachusetts, but knew him frequently to be absent from home peddling—has already stated what he knows in reference to Lyman Adams' place of abode after 1800. Knew said Adams at Harwinton, between two and three years—does not think he kept house, but boarded with his father-in-law after his marriage until he quit, excepting when out peddling as aforesaid. Knew of a difficulty in the family of Curtis Hale, deceased, and heard that said Hale commenced suits against said Adams, and know that Adams absconded about the time said suits were commenced; but whether before or after process was out against him, does not know. Saw Adams in Connecticut in 1802, and is under the impression, as late as July or August, 1802; but has no particular circumstance by which to remember the time of the year—speaks from facts within his own knowledge—is about sixty-three years of age, being in his sixty-fourth year; was raised and brought up in said Harwinton.

Charlotte Hart testified.—Is sister of Anson Smith, who has given his deposition—is acquainted with same facts deposed to by said Smith. Knew said Lyman Adams about the years 1800, 1801 and 1802, and knew him well at the time of his marriage with Rhoda Hale—which took place in the course of the year 1801—was present at the wedding—after the marriage he and his wife were witness's nearest neighbors in the town of Harwinton, in Connecticut, and at the house of her father, where they continued to live and have a place of abode for a year or more, when he left the State, in consequence of being accused of adultery with Curtis Hale's wife; heard nothing from or about said Lyman Adams (who was supposed to be dead,) from the time of his departure until within about a year since, when he was said to be in Illinois; suppose he was a young man of property when married, but he left no property in Connecticut, when he left, to the knowledge of witness.

On cross-examination the witness stated: Resided in said Harwinton from birth until her marriage, in 1814, and after that, resided with Mr. Orvis, her husband, in Farmington, Connecticut, until his death; is now the wife of Seth Hart, and resides with him in Bristol, Connecticut. Was not acquainted with Lyman Adams' family; was not intimate with Lyman Adams, but saw him frequently before and after his marriage; used to see him and wife at church on Sundays, in East Plymouth; worked in the family of Curtis Hale, and often visited them during the time said Adams resided there. Has no knowledge that Lyman Adams resided at Dedham or elsewhere in Massachusetts, either before, after, or during 1802, nor that he ever had his place of abode or was in Massachusetts, excepting temporarily, after the year 1800—has no such knowledge. Said Adams did not keep house, but boarded with his father-in-law. Knew him at said Harwinton as much as two years. Knew of a good deal of difficulty in Curtis Hale's family; does not remember or know anything about suits. Saw Lyman Adams in Connecticut, in 1802, but how late in that year has no means of determining. Speaks from her own knowledge. Was raised and brought up in said Harwinton, and is in the sixty-fifth year of her age.

Major Graves testified.—Was well acquainted with Lyman Adams, the Defendant; first knew him when he resided in Bristol, Connecticut. About the year 1801, he moved to Harwinton, Litchfield county, Connecticut, and his usual place of abode, while there, was in the family of Curtis Hale, and lived there about a year or more; about two months of the latter part of the time, Adams' and Hale's families were domiciled with a Mr. Wooden, in said Harwinton, and during these two months, or a part of them, said Hale was gone to Lake Champlain, or thereabouts. About the 1st of July, 1802, or thereabouts, Hale returned from his journey to Lake Champlain, and there was some trouble in the families of Adams and Hale, or between

them, and Adams left the county, and witness never saw him afterwards. Should think Adams left Harwinton about July—not later—in 1802. Do not know that Adams had any other place of abode after he married Hale's daughter, than in the family of said Hale, in said Harwinton.

On cross-examination, witness stated that he knew said Adams in said Litchfield county, Connecticut, about one year; never heard or knew that said Adams ever resided in Dedham, Massachusetts, or in that State. Lyman Adams did not keep house, but lived in the family of Curtis Hale. Understood that some difficulty had occurred in the family of said Curtis Hale, and Hale commenced suits against Adams; the suits arose out of difficulties in the families; could not state the particular charges made; thinks Adams did not leave until after the suits were commenced. Does not know that Adams ever had his abode in Massachusetts. Does not know that the report, in July, 1802, or about that time, was that said Lyman Adams had run off. Cannot tell the exact time when he, (witness,) last saw Adams, but it was about July, 1802.

John Stewart testified that he had had frequent conversations with the said Defendant, Lyman Adams, since 1835, and has frequently heard said Adams say that he lived in Connecticut, that he had left that State upwards of forty years ago, and did not understand from said Adams, in any conversation with him, that said Adams had ever resided in Massachusetts. Heard said Adams say that after he left Connecticut he settled in Baltimore, afterwards removed to Louisville, and from thence to Illinois.

And also, the Plaintiff read in evidence a public law of the State of Connecticut, from a book purporting to have been published by the authority of the said State, being "an act for the directing and regulating civil actions," as follows:

"§ 1. *Be it enacted by the Governor, and Council and House of Representatives, in General Court assembled,* That the ordinary process in civil actions in this State, shall be a summons or an attachment, fairly written, signed by a Magistrate, Justice of the Peace, or Clerk of the Court, mentioning the Court, the time and place of appearance, therein, also, containing a declaration of the substance of the action; which attachment may be granted against the goods or chattels of the defendants; and for want of them, the lands or person of the defendant may be attached. Provided, the plaintiff, when he prays out an attachment, gives sufficient security to prosecute his action to effect, and answer all damages in case he make not his plea good. And like security shall be given by some substantial inhabitant of this State on granting a summons, when the plaintiff is not an inhabitant of this State; or if it shall appear to the authority signing the same that the plaintiff is unable to pay the costs of prosecution, if recovered against him. And all writs and process shall be directed to the sheriff, his deputy or some con-

stable, if such officer can be had without great charge or inconvenience. And in every case, wherein the authority signing the writ shall find it necessary to direct the same to an indifferent person, such authority shall insert the name of the indifferent person in the direction of the writ, and the reason of such direction; and if any writ be otherwise directed, it shall abate: Provided, nevertheless, that nothing herein shall extend to direct summons for witnesses, warrants to collectors of rates, or warrants granted by military officers."

The Plaintiff also read in evidence a certified copy of the second edition of a law of Connecticut, being "an act for the directing and regulating of civil actions," as follows:

"Be it enacted by the Governor and Council and House of Representatives in General Court assembled:

§ 2. And that no person shall be required to make answer in any civil action, real, personal or mixed, except the writ or process, if returnable to the Superior or County Court, has been served upon him, at least twelve days inclusive before the day of the Court's sitting: or if returnable to an Assistant or Justice, the same has been served six days inclusive as aforesaid: which service shall be, if a summons, by reading the same in the hearing of the Defendant or Defendants, or leaving an attested copy thereof at the place or places of his or their usual abode, but if an attachment, the service shall be the attaching the Defendant or Defendant's estate or person, and giving him notice by reading the writ to him or within his hearing, or by leaving an attested copy thereof at the place of his usual abode, if that be within this State, and that all such writs as are made returnable to the County Courts shall be returned to the Clerk of said Courts on the day before the sitting of such Courts, and not afterwards. That in case any process be duly served on any Defendant or Defendants, and return thereof made to the Court to which the same is made returnable, then if such Defendant or Defendants do not appear, his or their default shall be recorded and judgment entered up against him or them thereupon, unless he or they shall come into Court on or before the second day of the sitting of said Court, and move for a new trial; in which case he or they shall be admitted there-to upon paying down to the adverse party the costs to that time; and the Plaintiff shall pay for entering the action anew."

*On the part of Defendant, Chester Adams testified—*Knows Lyman Adams, the Defendant, and has been acquainted with him for the last fifty years; said Lyman is older brother of witness, but has not seen said Lyman since 1805 or 1806. The father of said Lyman and witness resided in Bristol, Hartford County, Connecticut, about two miles north-westerly of the Central Meeting House. Early in the spring of 1798 or 1799, said Lyman left his father's house on a trading tour to the State of Massachusetts; left

Bristol with three other persons, to wit: Eli Parsons of Bristol, Waterman Bishop of Southington and Samuel Sweet of Farmington; at the advice and request of my brother, on the 12th July, 1799, I went to Dedham, Mass. On arrival found Lyman Adams at Dedham—witness resided and made a home at Dedham until 1807, and was not absent from said Dedham for three weeks at a time, except in 1802. In the spring of last named year Lyman Adams made arrangements for going to Grand Isle, Lake Champlain and Skeensborough, now called White Hall, New York—something said about going to Canada. Lyman Adams left Dedham in the spring of 1802, starting a few weeks before witness, who left about the 20th June, 1802, to visit his father in Bristol, and who returned during the ensuing October. Within a fortnight—certainly within four weeks—after witness returned to said Dedham, Lyman Adams also returned and continued to reside in Dedham the residue of the year. Said Lyman continued to reside at witness's house till spring of 1805 or 1806, as witness thinks, when he left for Philadelphia. From July 16, 1799, till said Lyman's departure for Philadelphia, he was engaged in buying and selling various articles of merchandize, and made frequent expeditions to Vermont, New Hampshire, Maine, Rhode Island and New York, and perhaps other States; but from said 16th of July till 1805 or 1806, when he left Massachusetts, said Lyman's home was, during all the time, in said Dedham; and this was the place to which he always returned from his tours. While said Lyman was absent at Grand Isle and Skeensborough, letters were received at his father's house, while witness was there, from said Lyman, and purporting to come from one of said places—witness thinks from Skeensborough.

The house of said Lyman's father, in 1802, was distant from the meeting house in Harwinton, about five or six miles. From about the 20th of June to the middle of October, 1802 witness was at said house. During part of the summer, attended church at the Episcopal Church, in the corner of Plymouth, a town adjoining Bristol, and about two miles from said house of Lyman's and witness' father, and from one to two miles from the house of Curtis Hale, and on the road to Harwinton. While at home, in 1802, did not see said Lyman, and was so much at home that Lyman could not have been there without the knowledge of witness. Should have heard of said Lyman's residing so near his father's house, if said Lyman had been in Harwinton. Was about eighteen years old then, and retains a vivid recollection of the facts and circumstances that took place at that period. Said Lyman did not, at any time, from 1798 or 1799 till 1805, have his usual place of abode in Connecticut, but from July 16, 1799 till 1805, at said Dedham. Does not know when the suits against Lyman Adams in favor of Curtis Hale were commenced; first heard of them after hay-time in the summer of 1802, but before he (witness) left Bristol for Dedham; should

say he heard of them in August. From the 16th July, 1799, till said Lyman left for Philadelphia, witness boarded with said Lyman, or near him, except as above stated. Said Lyman was often absent on his trading tours.

Andrew Adams testified.—Has known and has been acquainted with both Curtis Hale and Lyman Adams. In February, 1800, said Lyman left his father's house in Bristol, Connecticut, and went to reside at Dedham, Massachusetts; where he continued to reside, to the best of witness' recollection, till December, 1801, or January, 1802, when he returned to his father's house, where he remained till the spring of 1802. In said spring, he left Bristol, stating that he was going to Vermont, and should then return to said Dedham. During the ensuing summer of 1802, said Lyman's father received a letter from said Lyman, dated at White Hall, as witness thinks, which letter stated that said Lyman would return to Dedham to reside again. In December or November, 1802, his said father received a letter from said Lyman, dated at said Dedham; believed and still believes, from this fact, that said Lyman was then residing in Dedham. To the best of witness' knowledge, said Lyman Adams did not reside in Harwinton, Connecticut, in July, 1802, but was then a resident of said Dedham, though during this particular month he was absent in the northern part of New York or Vermont, on business. Said Lyman was reputed to have left the State of Connecticut previous to the latter part of July, 1802. In 1802 it was commonly reported at Bristol aforesaid, that there was a difficulty between said Lyman and said Curtis Hale; that said Curtis had taken out a writ or writs against said Lyman, and was watching his said father's house to have him arrested; that said Lyman had left one or two months before witness heard of the taking out of said writs, and never returned again to Connecticut, as witness believes. Said Lyman was born in Connecticut and permanently resided there till February, 1800, when he became of age; from 1800 to 1806, said Lyman resided at Dedham; since 1806 has had no particular knowledge of said Lyman's place of residence until last winter, when witness received from him a letter from Illinois. Has stated all the facts, &c., known to him, and material in this cause to either party. His knowledge of Lyman Adams' residence at Dedham, arose from letters and declarations of said Lyman, and from the fact that in the latter part of 1804, or the beginning of 1805, witness resided with said Lyman at Dedham, for several months.

On cross-examination, witness stated, that he is a brother of said Defendant—resided in Bristol, Connecticut, in July, 1802; left Connecticut in 1804, and has not resided there since; removed first to Massachusetts, where he lived till 1809, since which time he has lived in New York, and for the last twenty-nine years, in Genesee county, New York. In July, 1802, was at work in his father's hay field, in Bristol, Connecticut, when a

man came into the field, bringing a letter of introduction from said Lyman, and dated, (as witness believes,) at Whitehall, New York. In which letter Lyman referred to the place where he then was, and where he was going. Possible that witness may have got his information of his brother's intended journey down Lake Champlain from Mr. Beardman, the bearer of the letter. This took place, (as witness thinks,) in the latter part of July, 1802, and the letter was dated but three or four days before received. Was called upon to decypher the writing, which was obscure, and thus, is more particular in his recollection of the time. Has endeavored to state clearly the facts which are within his own personal knowledge, and refers to his previous answers, in order to ascertain whether this has been done.

Which was all the evidence in the case.

At the instance of the Defendant, the Court instructed the jury as follows, to-wit:

1. That as the copy of the judgment in this case read in evidence by the Plaintiff, to establish his rights to recover, shews that judgment to have been rendered upwards of twenty years before the commencement of this suit, the law regards it as having been paid and satisfied, and this presumption of payment thus arising, can be removed only by the Plaintiff's showing that it is not paid, or by the proof of facts inconsistent with the truth of such presumption, or that the Defendant has within twenty years acknowledged it to be still due and unpaid, and that if the Plaintiff has not shown sufficient to destroy such presumption of payment, the jury will find a verdict in favor of the defendant.

5. That if they believe from the evidence that the said Court of Common Pleas had no jurisdiction over the person of the Defendant in said suit, in which the judgment mentioned in the Plaintiff's declaration, was rendered, they must find for the Defendant.

6. That this suit is brought upon a judgment rendered against the Defendant in the State of Connecticut, in the year 1802, and that if they believe from the evidence, that said Defendant did not have notice in said original suit, according to the laws of Connecticut, they are bound to find for the Defendant under the third plea, or first issue before them.

8. That if they believe, from the evidence, that the Defendant's usual place of abode on the 30th of July, 1802, was not in the State of Connecticut, they are bound to find for Defendant under the 4th plea or second issue.

9. That under the fourth plea or second issue to the country, it is incumbent upon the Plaintiff to show that the Defendant had personal notice, in fact, in the original suit against him.

10. That the laws of Connecticut are foreign laws, and cannot be noticed by the jury unless they have been pleaded and proved; that the replication

to the fourth plea does not aver notice according to the laws of Connecticut, or what the laws of that State are, and should the Jury even believe from the evidence, that *constructive* notice was given according to the laws of Connecticut, but that there was no actual notice or appearance by the Defendant, still they must find for the Defendant upon said fourth plea or second issue to the country.

The two foregoing instructions were given, but the Court also stated to the Jury that if they found the issue joined on the third plea, in favor of the Plaintiff, that would show jurisdiction of the person of the Defendant in the Court in Connecticut, and they must consequently find a verdict for the Defendant, unless they found the issue on the plea of payment in his favor.

11. That ignorance of the said Curtis Hale, in his life, of the place of residence of the defendant, is not, of itself, sufficient to rebut the presumption of payment, arising from the lapse of time, since the rendition of the judgment sued on in this case—which was given by the Court [the Judge] who said he meant to be understood thereby, that such facts would not necessarily constrain them to find against the presumption, but that it was a circumstance entitled to their consideration on the question.

12. That if the Jury believe, from the evidence, that the Defendant was not an inhabitant of the State of Connecticut at the time of the institution of the said suit against him in that State, nor until after its rendition, and did not appear, they are bound to find for the Defendant upon the fifth and sixth pleas, or third and fourth issues.

13. That although judgments in a sister State are binding and conclusive, when rendered on personal notice given; yet, those judgments which are rendered without notice—actual or constructive—are void, and cannot be enforced in the Courts of this State; and the Defendant is not precluded in this case from showing that the judgment now sued on, was fraudulently obtained, or rendered by a Court in Connecticut which had no jurisdiction of the cause of action, or over the Defendant's person.

To the giving of which instructions the Plaintiff excepted.

Upon the evidence and under the instructions aforesaid, the Jury returned the following verdict, to wit: "We the jury find the issues for the Defendant, and we specially find that the Defendant was not a resident or inhabitant of the State of Connecticut on the 30th day of July, A. D. 1802." And upon the publishing of the said verdict of the jury, the Plaintiff moved the Court to grant a new trial, for the reasons following—

1. The verdict of the Jury is against evidence.
2. Against law and evidence.
3. Against the weight of evidence.
4. The Court erred in the instructions given to the Jury, on the part of the Defendant.
5. The Court erred in excluding the Deposition of Chloe Hill.

6. The Court erred in permitting portions of the Deposition of Andrew Adams to be read to the Jury.

7. The verdict is informal, uncertain and insufficient, and no judgment can be rendered thereon.

Which motion was overruled by said Court, and judgment *de bonis testatoris* was rendered against the Plaintiff for costs, &c.

To all which the Plaintiff excepted, and his exceptions were allowed, signed and sealed by the Court, and made part of the record.

The following Errors are assigned to reverse the judgment of the Court below, to wit:

1. The Court erred in excluding from the Jury a part of the depositions of Plaintiff, without designating with any certainty the parts of the depositions so excluded.

2. The Court erred in not excluding from the Jury the deposition of Andrew Adams, on the second objection made thereto by the Plaintiff; and also in not excluding the answers of said Adams to the second and fifth interrogatory put by Defendant, on the sixth and eighth objection made thereto by the counsel for Plaintiff.

3. The Court erred in excluding from the jury the deposition of *Chloe Hill*.

4. That the Court erred in overruling exceptions and objections made by the Plaintiff to Depositions offered and read in evidence on the part of the Defendant.

5. That the Court erred in sustaining exceptions and objections made by Defendant to Depositions and proofs offered on the part of the Plaintiff.

6. That the Court erred in refusing to allow depositions and proofs offered on the part of the Plaintiff to be read to the Jury on the trial of said cause.

7. That the Court erred in giving the instructions asked on the part of the Defendant.

8. That the Court erred in its instructions to the Jury.

9. That the Court erred in refusing to grant a new trial in said cause.

10. That the Court erred in rendering judgment against the said Plaintiff.

The following *points* will be presented in the argument of the errors assigned:

I. That parts of a deposition may be excluded by the Court, when a valid objection is taken thereto, but the parts so excluded must be referred to, so as to inform the jury what is, and what is not to go to them as evidence.

II. That depositions taken by a Commissioner must show some where on the face of them, that the witness was sworn to testify the truth in relation to the matters in controversy, so far as the witness may be interrogated; that he was examined upon the interrogatories that were enclosed with the commission, or attached to it, and directed to the witness. That a deposition not showing those facts, should be excluded from the jury, when objection is made to such deposition.

III. In answering interrogatories, a witness should not refer to the contents of letters, or conversations of the party interrogating him; unless such letters or conversations have been made the subject of enquiry by the opposite party; nor should the witness' answers be predicated upon rumor or reports, the truth or falsity of which he has no knowledge; when interrogatories are so answered, the answers should be excluded, when objected to by the party against whom such answers are to be used.

IV. The testimony of *Chloe Hill* was improperly excluded on the presumption that she had an interest in the judgment obtained in Connecticut, and the one to be obtained in this suit. There was no evidence to show that this judgment would not be required to pay the debts of the deceased, or that by the laws of distribution of Connecticut, the witness would not be deprived of any beneficial interest therein. All the presumptions are as strong to show that she had no interest in the judgment, as that she had one, and if she had an interest it was so remote and contingent, that in law she could not be regarded as incompetent to testify on the ground of interest.

V. A judgment that has stood for more than twenty years, is conclusive evidence in a suit upon that judgment, in another State, that it was properly obtained, and that all the facts did exist that were necessary to give the Court jurisdiction of the person of the Defendant, and of the subject matter in controversy.

VI. That the certified copy and the book of laws purporting to have been published "by authority," and read in evidence upon the trial of this cause, were competent and conclusive evidence of the laws of Connecticut which were in force at the time suit was instituted in that State against the Defendant.

VII. The service of the process, as recited in the record of the judgment read in evidence, was made in strict conformity with the laws in force at that time in the State of Connecticut, and such service is tantamount to a personal notice to the Defendant of the pendency of that suit, under the facts established in evidence in this case.

VIII. That the testimony in this cause was sufficient to give the Plaintiff a verdict and judgment on all the issues made. His four witnesses were conclusive as to the fact of the Defendants *usual place of abode* when the process was served. The two witnesses of Defendant so differ as to the principal fact about which they *swear*, as to destroy the effect of their testimony for the purpose for which it was introduced. If, by reason of conflicting testimony, there is doubt as to the fact whether the Defendant had his *usual place of abode* in the State of Connecticut, at the time the said suit was instituted against him in that State, such doubt should be construed in favor of the jurisdiction of the Court in which said judgment was rendered.

IX. That every presumption is in favor of the jurisdiction of the Court over the person of the Defendant, in conformity with the laws in force in the State of Connecticut at the time the said judgment was rendered, and the *onus probandi* rests upon the Defendant to show *affirmatively* that his usual place of abode was not in the State of Connecticut, at the time of the service of said writ.

X. The facts established in evidence in this case, on the part of the Plaintiff, show conclusively that the Defendant's *usual place of abode* was at Harwinton, in the county of Litchfield, State of Connecticut, *before*, and about the time the writ recited in the record of said judgment, was served; and the Defendant did not show at the trial below, either by positive proof, or circumstantial testimony, that he had changed his domicile at that time.

XI. The Plaintiff having shown affirmatively that the Defendant's *usual place of abode* was in Connecticut just *before*, or about the time of the service of the said writ, and no facts or circumstances are proved which show, or tend to show, that the Defendant had at that time changed his domicile, the presumption is, that the Defendant's *usual place of abode* was at the place where said writ was served, in the mode returned by the officer.

XII. That the presumption of payment of the said judgment, from lapse of time, was fully rebutted by the testimony in this case.

JOHN M. KRUM,
WILLIAM MARTIN,
Attorneys for Plaintiff.

IN THE SUPREME COURT OF ILLINOIS.

Wm. G. Goforth
Adm. of Curtis Hale, deceased,

vs.

Lyman Adams
LYMAN ADAMS.

ABSTRACT OF RECORD.

This was an action of debt, brought in the St. Clair Circuit Court, at the May Term, 1844—by William G. Goforth, Public Administrator, having charge of the estate of Curtis Hale, deceased, against Lyman Adams. The declaration is on a judgment recovered by the Plaintiff's intestate against the Defendant, in the State of Connecticut, in the year 1802. The Plaintiff's declaration contains the usual averments. A *nolle prosequi* having been entered as to the first count, issue was joined and trial was had under the second.

The Defendant filed several pleas, to-wit:

1st. *Nul tiel* Record.

2d. That at the time of the institution of the said suit, in the Plaintiff's declaration mentioned, he, the Defendant, was not an inhabitant or resident of the State of Connecticut, and not within the jurisdiction of the Court which rendered said judgment—nor had he any notice of the said suits, nor did he appear thereto by himself or his counsel, &c.; wherefore he alleges that the said judgment is of no force or effect whatever, &c., and concludes with a verification.

3d. That he was not served with process upon which the said judgment was rendered; that he had no notice of the said suits, nor of the subsequent proceedings therein, nor did by himself or counsel, appear thereto, &c.; wherefore he avers that said judgment is void, and of no force or effect whatever, &c., and concludes with a verification.

4th. That the said Court of Common Pleas, in the said Court mentioned, had no jurisdiction over the person of the said Defendant, &c., wherefore he avers said judgment is null and void, and of no force and effect whatever, &c., and concludes with a verification.

5th. That after the rendition of the said judgment, in the said count mentioned, he, the Defendant, paid and satisfied the same, &c.

The following issues were made, to-wit:

1st. On the first plea of *nul tiel* record, the Plaintiff took issue.

2d. To the plea of the Defendant to the said count, wherein he alleges that he, the Defendant, at the time, &c., was not an inhabitant or resident of the state of Connecticut, and not within the jurisdiction of said Court, and that he did not appear to said suit, &c., the Plaintiff replied, that, at the time of the institution of the said suit in said Court mentioned, the Defendant had due and legal notice of the commencement and pendency of said suit, according to the laws of the State of Connecticut then in force, &c., and concludes to the country, &c.

3d. To the plea of the Defendant to said count, wherein he alleges that he was not served with process in said suit—that he had no notice of the said suit, nor of the subsequent proceedings therein, and that he did not appear, &c., the Plaintiff replied, that the Defendant's *usual place of abode* was in the county of Litchfield, State of Connecticut, at the time of the commencement of said suit in said count mentioned, and that said Defendant, on the 30th July, 1802; then and there had notice of the institution of the said suit, &c., and concludes to the country, &c.

4th. To the plea of the Defendant to said count, wherein he alleges that the said Court of Common Pleas had no jurisdiction over the person of said Defendant, &c., the Plaintiff replied that said Court had jurisdiction over the person of the Defendant, &c., and concludes to the country, &c.

5th. To the plea of the Defendant to said count, wherein he alleges payment, &c., the Plaintiff traversed said plea, and concluded to the country, &c.

Before the trial of said cause, objections were taken and filed by the Plaintiff, to the deposition of *Andrew Adams*, taken on the part of the Defendant, and subsequently read to the jury, at the trial of said cause, which objections were overruled by the Court, and the Plaintiff excepted, and which objections, as preserved in the bill of exceptions, are as follows:

1st. That it does not appear that the said witness was sworn or affirmed, according to law.

2d. The answer to the second interrogatory contains the statements of the Defendant, and professes to give the contents of letters written by the Defendant, without excusing the non-production of the letters themselves, and is argument instead of evidence.

3d. The fifth interrogatory and the answer thereto, ask and give matters of representation and hearsay.

So much and such parts of the said deposition so objected to, are as follows, viz:

1st. "I, Phineas L. Tracy, Commissioner, appointed by the annexed "commission, do hereby certify that Andrew Adams, the deponent, whose

"name is subscribed to the respective depositions on the part of said Defendant and said Plaintiff, marked A and B, was sworn by me, previous to his examination, and that he signed the aforesaid depositions, on the fifth day of May, 1845, at Batavia, in the county of Genessee, and State of New York.

"PHINEAS L. TRACY, *Commissioner*.

2d. *Answer*.—In the month of February, 1800, the said Lyman became of the age of 21 years, and left his father's house in the town of Bristol, in the State of Connecticut, and went to reside at Dedham, in the State of Massachusetts, where, to the best of this deponent's recollection, said Lyman continued to reside till the month of December, 1801, or the month of January, 1802, at one of which periods he returned to his father's house in Bristol aforesaid, where he remained till the spring of 1802. In the said spring he left Bristol, stating that he was going to Vermont, and then, should return to said Dedham. During the ensuing summer of 1802, a letter was received by the said Lyman's father, from him the said Lyman, dated, as this deponent believes, at White Hall, in the State of New York, which letter stated that the said Lyman, after he had completed his business at the north, should return to Dedham to reside again. This deponent further says, that in the month of November or December, 1802, his said father received a letter from said Lyman, dated at such Dedham, from which circumstance said deponent believed, and still believes, that said Lyman was then residing in said Dedham."

3d. *Fifth Interrogatory*.—Did you ever hear of any law suits commenced by Curtis Hale, in Litchfield, State of Connecticut, against said Adams, in the year 1802? and if you recollect anything about said law suits, state whether Mr. Adams had left the State of Connecticut before or after these suits were commenced."

Answer.—In the year 1802, it was commonly reported at Bristol aforesaid, that there was a matter of difficulty existing between said Lyman, and said Curtis Hale. It was also commonly reported that the said Curtis had taken out a writ or writs against said Lyman, and was watching his said father's house at Bristol to arrest him, or cause him to be arrested. That previous to the taking out of said writ or writs, as this deponent heard of them, said Lyman had left, at least one or two months, and never did return again to Connecticut, as this deponent ever heard of, and believes, as this deponent had no relative or business transactions to call him back there, as this deponent believes—as his father's family soon removed from the State of Connecticut."

Also, before the trial of the said cause, objections were taken and filed by the Defendant to the Depositions of Chloe Hill, on the ground that said witness was interested in the said suit—which objections were sustained

by the Court, and said deposition was not allowed to be read; to which opinion the Plaintiff excepted. Said Deposition, or so much and such parts thereof as disclose the interest of said witness, are as follows:

“ Interrogatory first on the part of the Plaintiff.

“ State the usual place of abode of Lyman Adams, the above named Defendant, in the year 1802, and in or about the 30th day of July of that year.”

“ *Answer.*—Lyman Adams lived in Harwinton, Litchfield County, Connecticut, in the year 1802, and on or about the 30th of July, 1802.”

“ Interrogatory second on the part of the Plaintiff.

“ State all the circumstances within your own knowledge that are material to the parties in the above entitled cause, or to either of them.”

“ *Answer.*—I resided in Harwinton, in the County of Litchfield, State of Connecticut, during all of the year 1802, and for some time before and after that year. Lyman Adams, the Defendant in this suit, married a daughter of Curtis Hale, in the year 1801. Curtis Hale then, and for some years thereafter, lived in said town of Harwinton, County of Litchfield and State of Connecticut aforesaid. From the time of the marriage of the Defendant, Lyman Adams, with the daughter of Curtis Hale, he (the said Adams,) was domiciled with the family of the said Curtis Hale; and that said Lyman Adams continued his domicile and usual place of abode at the house of the said Curtis Hale, in the town of Harwinton, County of Litchfield and State of Connecticut, from the time of the marriage of said Adams, to the month of August of the year 1802. In the early part of the month of August, 1802, the said Lyman left his said usual place of abode and went to parts unknown to this deponent; this deponent has never seen him since. The annexed “Release” marked “A” was signed and sealed by me on the day it bears date, and at the same time was signed and sealed by *Uri Hill* in my presence.

“ CHLOE HILL.”

“ Cross interrogatory first, on the part of the Defendant.

“ Are you not the daughter of Curtis Hale, and if so, will you please to state when and where said Curtis Hale died?”

“ *Answer.*—I am the daughter of Curtis Hale—I am not able to state when or where the said Curtis Hale died.”

“ Cross Interrogatory second, on the part of the Defendant.

“ Is your mother still living, or is she dead? and when and where did she die?”

“ *Answer.*—I am not able to state whether my mother is still living; I have been informed that she is dead.”

“ Cross Interrogatory third, on the part of the Defendant.

“ Have you any recollection of suits being commenced in the State

“of Connecticut, by said Curtis Hale, against the said Lyman Adams, and
 “also of proceedings on the part of the said Lyman Adams’ wife for a di-
 “vorce from her husband?”

“*Answer.*—I have an indistinct recollection of suits brought against Ly-
 “man Adams by Curtis Hale. I do not recollect and cannot state that any
 “proceedings were commenced by Lyman Adams’ wife for a divorce from
 “her husband.”

“*Cross Interrogatory fourth, on the part of Defendant*—(Objected to by Plain-
 “tiff.)”

“If you recollect the nature of those suits commenced by Curtis, please
 state.”

“*Answer.*—I do not recollect the nature of the suits commenced by said
 “Curtis Hale.”

“*Cross Interrogatory fifth, on the part of the Defendant.*”

“Did or did not Mr. Lyman Adams reside in Dedham, in the State of
 “Massachusetts, before he came to Litchfield County, Connecticut; and
 “when he married in said county was he not published as a resident of
 “Massachusetts?”

“*Answer.*—I do not and cannot state as to either of the points in this in-
 “terrogatory.”

“*Cross Interrogatory sixth, on the part of the Defendant.*”

“How long was Mr. Adams in Connecticut, from the time of his mar-
 “riage, until the time these suits were commenced?”

“*Answer.*—About one year—more or less—I cannot state with cer-
 “tainty.”

“*Cross Interrogatory seventh, on the part of the Defendant.*”

“Don’t you recollect that these suits and proceedings were commenced
 “within the last two days of July, 1802?”

“*Answer.*—I do not recollect and cannot state.”

“*Cross Interrogatory eighth, on the part of the Defendant.*”

“Please state whether or not, shortly before the commencement of these
 “proceedings, or before the 30th of July, 1802, said Curtis Hale and his
 “wife visited the State of Massachusetts, and whether or not, they, or
 “either of them, had an interview with Lyman Adams in the said State of
 “Connecticut?”

“*Answer.*—I do not know and cannot state whether Mr. Hale and his
 “wife visited Massachusetts that year, or whether they or either of them
 “had an interview with Mr. Adams.”

“*Cross Interrogatory ninth, on the part of the Defendant.*”

“Don’t you know now, that the said Lyman Adams had left Litchfield
 “county, and the State of Connecticut, some time before the suit above re-
 “ferred to, and some time before the commencement of those proceedings?”

"Answer.—I do not know and cannot state."

"Cross Interrogatory tenth, on the part of the Defendant."

"Don't you know that the general report in Litchfield county, in the month of July, 1802, was, that said Lyman Adams had run away, and gone out of the State?" (The Plaintiff objects to this interrogatory.)

"Answer.—I do not."

"Cross Interrogatory eleventh, on the part of Defendant."

"From the time these proceedings were commenced, or, the said month of July 1802, where did said Lyman Adams reside; and if you do not know where he resided, state whether it was not understood, and the general report, that he was out of the State of Connecticut, ever since said month of July?" (The Plaintiff objects to so much of this question as enquires into general report and understanding.)

"Interrogatory thirteenth, on the part of Defendant."

"Don't you know that on or about the 30th of July, 1802, or about the time all these proceedings were instituted against the said Lyman Adams, the same resided at Skeensborough, now called Whitehall, New York; or if you understood he resided any where else—perhaps Vermont—please state?"

"Answer.—I do not know and cannot state."

"Cross Interrogatory fourteenth, on the part of Defendant."

"While the said Lyman Adams was in Harwinton, Litchfield County, Connecticut, did he keep house, or did he live in the family of Curtis Hale?"

"Answer.—He resided in the house of said Curtis Hale, and lived in the family of said Hale.
CHLOE HILL."

["A."]

"State of New York.

"For and in consideration of two dollars, to each of us in hand paid, by Elisha Hale, of Newburgh, New York, the receipt whereof is hereby confessed—and the undersigned, inhabitants of the town of Camden; in the county of Oneida, and State aforesaid, do, each for ourselves, in and by virtue of these presents, hereby release and forever discharge unto the said Elisha Hale, all and every interest or right which we now have, or may have, either in law or equity, of, in or to any judgment or judgments, decree or decrees, in law or chancery, ever or at any time heretofore obtained or procured by Curtis Hale, deceased, who formerly lived in Litchfield county, Connecticut, against Lyman Adams, who formerly resided in the said county of Litchfield.

"The intention of the undersigned is to release and forever discharge, to the said Elisha Hale of Newburgh, all or any claim or proveable right or interest, which they may, or can have as heirs-at-law of said Curtis Hale,

“deceased, and to forever bar their interest in said claim, if any ever did,
“or does now exist.

“In witness whereof, we have hereunto set our hands and seals, this
“twenty-fifth day of September, in the year eighteen hundred and forty-
“four. URI HILL, [SEAL.]”

“CHLOE HILL, [SEAL.]”

The issue of *nul tiel* record was tried by the Court and found for the Plaintiff, and the other issues, made by the pleadings as above stated, were tried by a jury. And upon the trial of the said issues the following evidence, on the part of the Plaintiff, was produced, and offered to the jury, to-wit:

Silas Gridley testified that he “was acquainted with said Curtis Hale in his life time, and in the town of Harwinton, in the County of Litchfield, in Connecticut—was acquainted with the Defendant Lyman Adams; first became acquainted with him in Bristol, Connecticut, in 1800, or 1801; then, was acquainted with him while he lived in said Harwinton, in 1801 and 1802, until he left the State of Connecticut. Should think, and is confident, that the *usual place of abode* of said Lyman Adams, before, and on the 30th day of July, in the year 1802, was in Harwinton aforesaid. Lyman Adams married Rhoda Hale, about the year 1801, and from and after the marriage, he and his wife resided at Harwinton aforesaid, until he ran away. Could not tell precisely the day or month he left, but he, (said Adams,) continued to reside in said Harwinton till late in the year 1802, and, (as witness was confident,) until after 30th July of that year: during that period Harwinton was the only known residence of said Lyman Adams, and it was regarded as his home. Witness served as Constable in said Connecticut for many years, and should regard said Harwinton as said Adams’ usual place of residence, for the service of process on the 30th July, 1802. In 1802 and 1803 resided at his father’s, near said Adams’ place of residence—saw him (said Adams) a number of times on the Sabbath to and from church, from and to the Hale-house in said Harwinton, where he (said Adams) and his wife lived; and saw him also on other occasions.”

On cross examination the witness stated: Knew Lyman Adams, in Litchfield County, one year—did not understand that said Lyman Adams was a resident of Dedham, Massachusetts, or considered so, while he was in said county of Litchfield; impression was that said Adams and wife lived with the family of Curtis Hale most of the time, but that after Curtis Hale moved to the wooden-house, that Adams and his wife kept house at the Hale-place;—understood that some difficulty occurred in the family of Curtis Hale, and that said Hale commenced suits of *debt* and *crim. con.* against said Adams, but did not understand or believe, that said Adams left the State of Connecticut before said suits were commenced; as to Adams

leaving the State of Massachusetts, did not know nor understand anything about it any way; thinks that the report of said Adams having run off was not circulated until some time in the fall of 1802; could not say when was the last time of seeing said Adams in Harwinton.

Anson Smith testified.—Knows Adams the Defendant; first knew him in the town of Harwinton, Litchfield County, Connecticut, in the years 1800 and 1801, at the time when he was visiting Rhoda Hale, whom he afterwards married; was present at the marriage which took place in 1801; marriage took place in Plymouth; after marriage said Lyman Adams and wife resided within a half a mile of where witness lived, at the house of Curtis Hale, (the wife's father,) which was said Adams' usual place of residence, and where he made his home for one year at least; thinks more. At the end of this time said Adams left the State, in the latter part of summer or fall, as near as witness recollects; the cause of leaving understood to be in consequence of a difficulty with Curtis Hales' wife; heard nothing concerning him (said Adams) until about a year since; when he was reported to be in Illinois. At the time of said Adams' marriage, he was considered a man of property; when he left he took all his property with him, leaving his wife and child destitute. If said Adams had left property, witness would have known it.

On cross-examination the witness stated—Was, in 1802, and has been ever since, a resident of the south-east part of said Harwinton; was not very intimate with said Lyman Adams, and was not at all acquainted with other members of his father's family, but was intimate with the family of his wife's father; usually attended same church which he attended and frequently saw him and wife on Sundays. After their marriage, frequently visited at the house where said Adams resided; for at least one summer said Adams worked on the Hale farm. Has no knowledge that said Adams ever, at any time, resided in Dedham, Massachusetts, but knew him frequently to be absent from home peddling—has already stated what he knows in reference to Lyman Adams' place of abode after 1800. Knew said Adams at Harwinton, between two and three years—does not think he kept house, but boarded with his father-in-law after his marriage until he quit, excepting when out peddling as aforesaid. Knew of a difficulty in the family of Curtis Hale, deceased, and heard that said Hale commenced suits against said Adams, and know that Adams absconded about the time said suits were commenced; but whether before or after process was out against him, does not know. Saw Adams in Connecticut in 1802, and is under the impression, as late as July or August, 1802; but has no particular circumstance by which to remember the time of the year—speaks from facts within his own knowledge—is about sixty-three years of age, being in his sixty-fourth year; was raised and brought up in said Harwinton.

Charlotte Hart testified.—Is sister of Anson Smith, who has given his deposition—is acquainted with same facts deposed to by said Smith. Knew said Lyman Adams about the years 1800, 1801 and 1802, and knew him well at the time of his marriage with Rhoda Hale—which took place in the course of the year 1801—was present at the wedding—after the marriage he and his wife were witness's nearest neighbors in the town of Harwinton, in Connecticut, and at the house of her father, where they continued to live and have a place of abode for a year or more, when he left the State, in consequence of being accused of adultery with Curtis Hale's wife; heard nothing from or about said Lyman Adams (who was supposed to be dead,) from the time of his departure until within about a year since, when he was said to be in Illinois; suppose he was a young man of property when married, but he left no property in Connecticut, when he left, to the knowledge of witness.

On cross-examination the witness stated: Resided in said Harwinton from birth until her marriage, in 1814, and after that, resided with Mr. Orvis, her husband, in Farmington, Connecticut, until his death; is now the wife of Seth Hart, and resides with him in Bristol, Connecticut. Was not acquainted with Lyman Adams' family; was not intimate with Lyman Adams, but saw him frequently before and after his marriage; used to see him and wife at church on Sundays, in East Plymouth; worked in the family of Curtis Hale, and often visited them during the time said Adams resided there. Has no knowledge that Lyman Adams resided at Dedham or elsewhere in Massachusetts, either before, after, or during 1802, nor that he ever had his place of abode or was in Massachusetts, excepting temporarily, after the year 1800—has no such knowledge. Said Adams did not keep house, but boarded with his father-in-law. Knew him at said Harwinton as much as two years. Knew of a good deal of difficulty in Curtis Hale's family; does not remember or know anything about suits. Saw Lyman Adams in Connecticut, in 1802, but how late in that year has no means of determining. Speaks from her own knowledge. Was raised and brought up in said Harwinton, and is in the sixty-fifth year of her age.

Major Graves testified.—Was well acquainted with Lyman Adams, the Defendant; first knew him when he resided in Bristol, Connecticut. About the year 1801, he moved to Harwinton, Litchfield county, Connecticut, and his usual place of abode, while there, was in the family of Curtis Hale, and lived there about a year or more; about two months of the latter part of the time, Adams' and Hale's families were domiciled with a Mr. Wooden, in said Harwinton, and during these two months, or a part of them, said Hale was gone to Lake Champlain, or thereabouts. About the 1st of July, 1802, or thereabouts, Hale returned from his journey to Lake Champlain, and there was some trouble in the families of Adams and Hale, or between

them, and Adams left the county, and witness never saw him afterwards. Should think Adams left Harwinton about July—not later—in 1802. Do not know that Adams had any other place of abode after he married Hale's daughter, than in the family of said Hale, in said Harwinton.

On cross-examination, witness stated that he knew said Adams in said Litchfield county, Connecticut, about one year; never heard or knew that said Adams ever resided in Dedham, Massachusetts, or in that State. Lyman Adams did not keep house, but lived in the family of Curtis Hale. Understood that some difficulty had occurred in the family of said Curtis Hale, and Hale commenced suits against Adams; the suits arose out of difficulties in the families; could not state the particular charges made; thinks Adams did not leave until after the suits were commenced. Does not know that Adams ever had his abode in Massachusetts. Does not know that the report, in July, 1802, or about that time, was that said Lyman Adams had run off. Cannot tell the exact time when he, (witness,) last saw Adams, but it was about July, 1802.

John Stewart testified that he had had frequent conversations with the said Defendant, Lyman Adams, since 1835, and has frequently heard said Adams say that he lived in Connecticut, that he had left that State upwards of forty years ago, and did not understand from said Adams, in any conversation with him, that said Adams had ever resided in Massachusetts. Heard said Adams say that after he left Connecticut he settled in Baltimore, afterwards removed to Louisville, and from thence to Illinois.

And also, the Plaintiff read in evidence a public law of the State of Connecticut, from a book purporting to have been published by the authority of the said State, being "an act for the directing and regulating civil actions," as follows:

"§ 1. *Be it enacted by the Governor, and Council and House of Representatives, in General Court assembled,* That the ordinary process in civil actions in this State, shall be a summons or an attachment, fairly written, signed by a Magistrate, Justice of the Peace, or Clerk of the Court, mentioning the Court, the time and place of appearance, therein, also, containing a declaration of the substance of the action; which attachment may be granted against the goods or chattels of the defendants; and for want of them, the lands or person of the defendant may be attached. Provided, the plaintiff, when he prays out an attachment, gives sufficient security to prosecute his action to effect, and answer all damages in case he make not his plea good. And like security shall be given by some substantial inhabitant of this State on granting a summons, when the plaintiff is not an inhabitant of this State; or if it shall appear to the authority signing the same that the plaintiff is unable to pay the costs of prosecution, if recovered against him. And all writs and process shall be directed to the sheriff, his deputy or some con-

stable, if such officer can be had without great charge or inconvenience. And in every case, wherein the authority signing the writ shall find it necessary to direct the same to an indifferent person, such authority shall insert the name of the indifferent person in the direction of the writ, and the reason of such direction; and if any writ be otherwise directed, it shall abate: Provided, nevertheless, that nothing herein shall extend to direct summons for witnesses, warrants to collectors of rates, or warrants granted by military officers."

The Plaintiff also read in evidence a certified copy of the second edition of a law of Connecticut, being "an act for the directing and regulating of civil actions," as follows:

"Be it enacted by the Governor and Council and House of Representatives in General Court assembled:

§ 2. And that no person shall be required to make answer in any civil action, real, personal or mixed, except the writ or process, if returnable to the Superior or County Court, has been served upon him, at least twelve days inclusive before the day of the Court's sitting: or if returnable to an Assistant or Justice, the same has been served six days inclusive as aforesaid: which service shall be, if a summons, by reading the same in the hearing of the Defendant or Defendants, or leaving an attested copy thereof at the place or places of his or their usual abode, but if an attachment, the service shall be the attaching the Defendant or Defendant's estate or person, and giving him notice by reading the writ to him or within his hearing, or by leaving an attested copy thereof at the place of his usual abode, if that be within this State, and that all such writs as are made returnable to the County Courts shall be returned to the Clerk of said Courts on the day before the sitting of such Courts, and not afterwards. That in case any process be duly served on any Defendant or Defendants, and return thereof made to the Court to which the same is made returnable, then if such Defendant or Defendants do not appear, his or their default shall be recorded and judgment entered up against him or them thereupon, unless he or they shall come into Court on or before the second day of the sitting of said Court, and move for a new trial; in which case he or they shall be admitted thereupon paying down to the adverse party the costs to that time; and the Plaintiff shall pay for entering the action anew."

On the part of Defendant, Chester Adams testified—Knows Lyman Adams, the Defendant, and has been acquainted with him for the last fifty years; said Lyman is older brother of witness, but has not seen said Lyman since 1805 or 1806. The father of said Lyman and witness resided in Bristol, Hartford County, Connecticut, about two miles north-westerly of the Central Meeting House. Early in the spring of 1798 or 1799, said Lyman left his father's house on a trading tour to the State of Massachusetts; left

Bristol with three other persons, to wit: Eli Parsons of Bristol, Waterman Bishop of Southington and Samuel Sweet of Farmington; at the advice and request of my brother, on the 12th July, 1799, I went to Dedham, Mass. On arrival found Lyman Adams at Dedham—witness resided and made a home at Dedham until 1807, and was not absent from said Dedham for three weeks at a time, except in 1802. In the spring of last named year Lyman Adams made arrangements for going to Grand Isle, Lake Champlain and Skeensborough, now called White Hall, New York—something said about going to Canada. Lyman Adams left Dedham in the spring of 1802, starting a few weeks before witness, who left about the 20th June, 1802, to visit his father in Bristol, and who returned during the ensuing October. Within a fortnight—certainly within four weeks—after witness returned to said Dedham, Lyman Adams also returned and continued to reside in Dedham the residue of the year. Said Lyman continued to reside at witness's house till spring of 1805 or 1806, as witness thinks, when he left for Philadelphia. From July 16, 1799, till said Lyman's departure for Philadelphia, he was engaged in buying and selling various articles of merchandize, and made frequent expeditions to Vermont, New Hampshire, Maine, Rhode Island and New York, and perhaps other States; but from said 16th of July till 1805 or 1806, when he left Massachusetts, said Lyman's home was, during all the time, in said Dedham; and this was the place to which he always returned from his tours. While said Lyman was absent at Grand Isle and Skeensborough, letters were received at his father's house, while witness was there, from said Lyman, and purporting to come from one of said places—witness thinks from Skeensborough.

The house of said Lyman's father, in 1802, was distant from the meeting house in Harwinton, about five or six miles. From about the 20th of June to the middle of October, 1802 witness was at said house. During part of the summer, attended church at the Episcopal Church, in the corner of Plymouth, a town adjoining Bristol, and about two miles from said house of Lyman's and witness' father, and from one to two miles from the house of Curtis Hale, and on the road to Harwinton. While at home, in 1802, did not see said Lyman, and was so much at home that Lyman could not have been there without the knowledge of witness. Should have heard of said Lyman's residing so near his father's house, if said Lyman had been in Harwinton. Was about eighteen years old then, and retains a vivid recollection of the facts and circumstances that took place at that period. Said Lyman did not, at any time, from 1798 or 1799 till 1805, have his usual place of abode in Connecticut, but from July 16, 1799 till 1805, at said Dedham. Does not know when the suits against Lyman Adams in favor of Curtis Hale were commenced; first heard of them after hay-time in the summer of 1802, but before he (witness) left Bristol for Dedham; should

say he heard of them in August. From the 16th July, 1799, till said Lyman left for Philadelphia, witness boarded with said Lyman, or near him, except as above stated. Said Lyman was often absent on his trading tours.

Andrew Adams testified.—Has known and has been acquainted with both Curtis Hale and Lyman Adams. In February, 1800, said Lyman left his father's house in Bristol, Connecticut, and went to reside at Dedham, Massachusetts, where he continued to reside, to the best of witness' recollection, till December, 1801, or January, 1802, when he returned to his father's house, where he remained till the spring of 1802. In said spring, he left Bristol, stating that he was going to Vermont, and should then return to said Dedham. During the ensuing summer of 1802, said Lyman's father received a letter from said Lyman, dated at White Hall, as witness thinks, which letter stated that said Lyman would return to Dedham to reside again. In December or November, 1802, his said father received a letter from said Lyman, dated at said Dedham; believed and still believes, from this fact, that said Lyman was then residing in Dedham. To the best of witness' knowledge, said Lyman Adams did not reside in Harwinton, Connecticut, in July, 1802, but was then a resident of said Dedham, though during this particular month he was absent in the northern part of New York or Vermont, on business. Said Lyman was reputed to have left the State of Connecticut previous to the latter part of July, 1802. In 1802 it was commonly reported at Bristol aforesaid, that there was a difficulty between said Lyman and said Curtis Hale; that said Curtis had taken out a writ or writs against said Lyman, and was watching his said father's house to have him arrested; that said Lyman had left one or two months before witness heard of the taking out of said writs, and never returned again to Connecticut, as witness believes. Said Lyman was born in Connecticut and permanently resided there till February, 1800, when he became of age; from 1800 to 1806, said Lyman resided at Dedham; since 1806 has had no particular knowledge of said Lyman's place of residence until last winter, when witness received from him a letter from Illinois. Has stated all the facts, &c., known to him, and material in this cause to either party. His knowledge of Lyman Adams' residence at Dedham, arose from letters and declarations of said Lyman, and from the fact that in the latter part of 1804, or the beginning of 1805, witness resided with said Lyman at Dedham, for several months.

On cross-examination, witness stated, that he is a brother of said Defendant—resided in Bristol, Connecticut, in July, 1802; left Connecticut in 1804, and has not resided there since; removed first to Massachusetts, where he lived till 1809, since which time he has lived in New York, and for the last twenty-nine years, in Genesee county, New York. In July, 1802, was at work in his father's hay field, in Bristol, Connecticut, when a

man came into the field, bringing a letter of introduction from said Lyman, and dated, (as witness believes,) at Whitehall, New York. In which letter Lyman referred to the place where he then was, and where he was going. Possible that witness may have got his information of his brother's intended journey down Lake Champlain from Mr. Beardman, the bearer of the letter. This took place, (as witness thinks,) in the latter part of July, 1802, and the letter was dated but three or four days before received. Was called upon to decypher the writing, which was obscure, and thus, is more particular in his recollection of the time. Has endeavored to state clearly the facts which are within his own personal knowledge, and refers to his previous answers, in order to ascertain whether this has been done. of that

Which was all the evidence in the case. his most recent a letter received

At the instance of the Defendant, the Court instructed the jury as follows, to-wit:

1. That as the copy of the judgment in this case read in evidence by the Plaintiff, to establish his rights to recover, shews that judgment to have been rendered upwards of twenty years before the commencement of this suit, the law regards it as having been paid and satisfied, and this presumption of payment thus arising, can be removed only by the Plaintiff's showing that it is not paid, or by the proof of facts inconsistent with the truth of such presumption, or that the Defendant has within twenty years acknowledged it to be still due and unpaid, and that if the Plaintiff has not shown sufficient to destroy such presumption of payment, the jury will find a verdict in favor of the defendant. now has several like judgments allow to show

5. That if they believe from the evidence that the said Court of Common Pleas had no jurisdiction over the person of the Defendant in said suit; in which the judgment mentioned in the Plaintiff's declaration, was rendered, they must find for the Defendant. several like cases before the Court

6. That this suit is brought upon a judgment rendered against the Defendant in the State of Connecticut, in the year 1802, and that if they believe from the evidence, that said Defendant did not have notice in said original suit, according to the laws of Connecticut, they are bound to find for the Defendant under the third plea, or first issue before them. to establish

8. That if they believe, from the evidence, that the Defendant's usual place of abode on the 30th of July, 1802, was not in the State of Connecticut, they are bound to find for Defendant under the 4th plea or second issue. in evidence a list of all the places visited by the Defendant

9. That under the fourth plea or second issue to the country, it is incumbent upon the Plaintiff to show that the Defendant had personal notice, in fact, in the original suit against him. now has several like cases before the Court

10. That the laws of Connecticut are foreign laws, and cannot be noticed by the jury unless they have been pleaded and proved; that the replication

to the fourth plea does not aver notice according to the laws of Connecticut, or what the laws of that State are, and should the Jury even believe from the evidence, that *constructive* notice was given according to the laws of Connecticut, but that there was no actual notice or appearance by the Defendant, still they must find for the Defendant upon said fourth plea or second issue to the country.

The two foregoing instructions were given, but the Court also stated to the Jury that if they found the issue joined on the third plea, in favor of the Plaintiff, that would show jurisdiction of the person of the Defendant in the Court in Connecticut, and they must consequently find a verdict for the Defendant, unless they found the issue on the plea of payment in his favor.

11. That ignorance of the said Curtis Hale, in his life, of the place of residence of the defendant, is not, of itself, sufficient to rebut the presumption of payment, arising from the lapse of time, since the rendition of the judgment sued on in this case—which was given by the Court [the Judge] who said he meant to be understood thereby, that such facts would not necessarily constrain them to find against the presumption, but that it was a circumstance entitled to their consideration on the question.

12. That if the Jury believe, from the evidence, that the Defendant was not an inhabitant of the State of Connecticut at the time of the institution of the said suit against him in that State, nor until after its rendition, and did not appear, they are bound to find for the Defendant upon the fifth and sixth pleas, or third and fourth issues.

13. That although judgments in a sister State are binding and conclusive, when rendered on personal notice given; yet, those judgments which are rendered without notice—actual or constructive—are void, and cannot be enforced in the Courts of this State; and the Defendant is not precluded in this case from showing that the judgment now sued on, was fraudulently obtained, or rendered by a Court in Connecticut which had no jurisdiction of the cause of action, or over the Defendant's person.

To the giving of which instructions the Plaintiff excepted.

Upon the evidence and under the instructions aforesaid, the Jury returned the following verdict, to wit: "We the jury find the issues for the Defendant, and we specially find that the Defendant was not a resident or inhabitant of the State of Connecticut on the 30th day of July, A. D. 1802." And upon the publishing of the said verdict of the jury, the Plaintiff moved the Court to grant a new trial, for the reasons following—

1. The verdict of the Jury is against evidence.
2. Against law and evidence.
3. Against the weight of evidence.
4. The Court erred in the instructions given to the Jury, on the part of the Defendant.
5. The Court erred in excluding the Deposition of Chloe Hill.

6. The Court erred in permitting portions of the Deposition of Andrew Adams to be read to the Jury.

7. The verdict is informal, uncertain and insufficient, and no judgment can be rendered thereon.

Which motion was overruled by said Court, and judgment *de bonis testatoris* was rendered against the Plaintiff for costs, &c.

To all which the Plaintiff excepted, and his exceptions were allowed, signed and sealed by the Court, and made part of the record.

The following Errors are assigned to reverse the judgment of the Court below, to wit:

1. The Court erred in excluding from the Jury a part of the depositions of Plaintiff, without designating with any certainty the parts of the depositions so excluded.

2. The Court erred in not excluding from the Jury the deposition of Andrew Adams, on the second objection made thereto by the Plaintiff; and also in not excluding the answers of said Adams to the second and fifth interrogatory put by Defendant, on the sixth and eighth objection made thereto by the counsel for Plaintiff.

3. The Court erred in excluding from the jury the deposition of *Chloe Hill*.

4. That the Court erred in overruling exceptions and objections made by the Plaintiff to Depositions offered and read in evidence on the part of the Defendant.

5. That the Court erred in sustaining exceptions and objections made by Defendant to Depositions and proofs offered on the part of the Plaintiff.

6. That the Court erred in refusing to allow depositions and proofs offered on the part of the Plaintiff to be read to the Jury on the trial of said cause.

7. That the Court erred in giving the instructions asked on the part of the Defendant.

8. That the Court erred in its instructions to the Jury.

9. That the Court erred in refusing to grant a new trial in said cause.

10. That the Court erred in rendering judgment against the said Plaintiff.

The following *points* will be presented in the argument of the errors assigned:

I. That parts of a deposition may be excluded by the Court, when a valid objection is taken thereto, but the parts so excluded must be referred to, so as to inform the jury what is, and what is not to go to them as evidence.

II. That depositions taken by a Commissioner must show some where on the face of them, that the witness was sworn to testify the truth in relation to the matters in controversy, so far as the witness may be interrogated; that he was examined upon the interrogatories that were enclosed with the commission, or attached to it, and directed to the witness. That a deposition not showing those facts, should be excluded from the jury, when objection is made to such deposition.

III. In answering interrogatories, a witness should not refer to the contents of letters, or conversations of the party interrogating him; unless such letters or conversations have been made the subject of enquiry by the opposite party; nor should the witness' answers be predicated upon rumor or reports, the truth or falsity of which he has no knowledge; when interrogatories are so answered, the answers should be excluded, when objected to by the party against whom such answers are to be used.

IV. The testimony of *Chloe Hill* was improperly excluded on the presumption that she had an interest in the judgment obtained in Connecticut, and the one to be obtained in this suit. There was no evidence to show that this judgment would not be required to pay the debts of the deceased, or that by the laws of distribution of Connecticut, the witness would not be deprived of any beneficial interest therein. All the presumptions are as strong to show that she had no interest in the judgment, as that she had one, and if she had an interest it was so remote and contingent, that in law she could not be regarded as incompetent to testify on the ground of interest.

V. A judgment that has stood for more than twenty years, is conclusive evidence in a suit upon that judgment, in another State, that it was properly obtained, and that all the facts did exist that were necessary to give the Court jurisdiction of the person of the Defendant, and of the subject matter in controversy.

VI. That the certified copy and the book of laws purporting to have been published "by authority," and read in evidence upon the trial of this cause, were competent and conclusive evidence of the laws of Connecticut which were in force at the time suit was instituted in that State against the Defendant.

VII. The service of the process, as recited in the record of the judgment read in evidence, was made in strict conformity with the laws in force at that time in the State of Connecticut, and such service is tantamount to a personal notice to the Defendant of the pendency of that suit, under the facts established in evidence in this case.

VIII. That the testimony in this cause was sufficient to give the Plaintiff a verdict and judgment on all the issues made. His four witnesses were conclusive as to the fact of the Defendants *usual place of abode* when the process was served. The two witnesses of Defendant so differ as to the principal fact about which they *swear*, as to destroy the effect of their testimony for the purpose for which it was introduced. If, by reason of conflicting testimony, there is doubt as to the fact whether the Defendant had his *usual place of abode* in the State of Connecticut, at the time the said suit was instituted against him in that State, such doubt should be construed in favor of the jurisdiction of the Court in which said judgment was rendered.

IX. That every presumption is in favor of the jurisdiction of the Court over the person of the Defendant, in conformity with the laws in force in the State of Connecticut at the time the said judgment was rendered, and the *onus probandi* rests upon the Defendant to show *affirmatively* that his usual place of abode was not in the State of Connecticut, at the time of the service of said writ.

X. The facts established in evidence in this case, on the part of the Plaintiff, show conclusively that the Defendant's *usual place of abode* was at Harwinton, in the county of Litchfield, State of Connecticut, *before*, and about the time the writ recited in the record of said judgment, was served; and the Defendant did not show at the trial below, either by positive proof, or circumstantial testimony, that he had changed his domicile at that time.

XI. The Plaintiff having shown affirmatively that the Defendant's *usual place of abode* was in Connecticut just *before*, or about the time of the service of the said writ, and no facts or circumstances are proved which show, or tend to show, that the Defendant had at that time changed his domicile, the presumption is, that the Defendant's *usual place of abode* was at the place where said writ was served, in the mode returned by the officer.

XII. That the presumption of payment of the said judgment, from lapse of time, was fully rebutted by the testimony in this case.

JOHN M. KRUM,
WILLIAM MARTIN,
Attorneys for Plaintiff.

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Syman Adams

1855

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