

No. 13044 $\frac{1}{2}$

Supreme Court of Illinois

Hankinson

vs.

Jackson

71641  7

IN THE SUPREME COURT OF ILLINOIS.

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 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 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 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, *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

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

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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 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.

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, *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 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 particualar 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 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.

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