No. 14451

Supreme Court of Illinois

Lawrence

---

vs.

Jarvis, et ux.

71641

STATE OF ILLINOIS,

SUPREME COURT,

Third Grand Division

No. 6 C

Lawrence
vs
Jarvis

14457

1863

writ of error to the Circuit Court of Perry County; the Hon. A. L. Merriman, Judge, presiding.

At the December term, 1859, of the Court of Common Pleas in and for the County of Coshocton, in the State of Ohio, John P. Jarvis and his wife recovered a judgment against Charles P. Lawrence for the sum of $317, and costs of suit; for wages due to the plaintiff Caroline Jarvis from Lawrence, prior to her intermarriage with her co-plaintiff, and while sole.

The judgment remaining unsatisfied, Jarvis and wife, in February, 1861, instituted an action of debt thereon in the court below, for the use of William Plowman, to whom the judgment had, in the mean time, been transferred.

The defendant, Lawrence, pleaded, first, nil debet; second, nul tiel record; third, that the Court of Common Pleas had granted a new trial; fourth, that the said Court of Common Pleas had no jurisdiction of the person of the defendant; fifth, that the judgment was ~~obtained~~ procured by the fraud of the plaintiffs therein; and sixth, the defendant pleaded as follows: "And for further plea, defendant says

granted when the Court has original jurisdiction and in which an issue of fact may be joined.

Sec. 2. That any person desiring a second trial, as provided in section one, may have such second trial in entering into an undertaking to the satisfaction of the clerk, in a sum to be fixed by the Court, conditioned to abide and perform the order of the Court, and pay all moneys, costs and damages.

Sec. 3. That a docket shall be made of said second trial, in which shall be entered all cases in which the right to such second trial shall be perfected, &c.

Sec. 4. That either party shall have the right to except to the opinion of the Court, on a motion to direct a non-suit, to arrest the testimony from the jury, and also, in all cases of motion for a new trial.

Here the plaintiffs rested their case. The defendant then offered in evidence the receipt set out in his sixth plea, which was excluded by the Court and Exception taken. And this was all the evidence in the case.

The Court gave certain instructions for the plaintiffs to the jury, upon which no question arises. The defendant asked the

DECEMBER TERM, JANUARY 5, 1860.

JOHN P. JARVIS
AND
CAROLINE JARVIS,
vs.
GEORGE P. LAWRENCE.
} No. 3, CIVIL ACTION.

This day came the parties by their Attorneys, and thereupon came a jury, to-wit: J. H. Zollers, A. J. Lockhard, William Burns, John Clark, Isaac Meredith, Samuel Levens, S. H. Dapey, John D. Marquard and Thomas James, Jurors, of the regular jury of the present term, and Lewis Chany, John Ellsey and James Johnson, tallisman, who being dully impanelled, and sworn the truth to speak, upon the issue joined between the parties, upon their oaths, do say, that the allegations of the Plaintiff's petition are true, and that the allegations of the Defendant's answer are not true, and they do assess the damages of the Plaintiffs by reason of the premises, to the sum of three hundred and seventeen dollars. It is thereupon considered by the Court that the said Plaintiffs do recover against the said Defendant, George P. Lawrence, the said sum of three hundred and seventeen dollars, so found due, as aforesaid, together with their costs herein expended, taxed at $82.36, and thereupon came the Defendant by his Attorney, and demanded a second trial of this cause, and the Court being satisfied that he is entitled to such second trial, it is accordingly granted, and the undertaking to be entered into for such second trial by said Defendant, is fixed in the sum of four hundred dollars.

~~The Defendant below objected to the record, (see Record, page 29,) and for the reason, among others, that the record shows that the Court granted a new trial.~~

The defendant objected to the record upon the ground, among others, that it appeared therefrom the Court had granted a new trial; but the objection was overruled and the defendant ~~by his Counsel excepted~~ excepted. To obviate this objection, however, the plaintiffs introduced a certified copy of an act of the General Assembly of the State of Ohio, of April 12, 1858, Entitled "an act to relieve the District Courts, and to give greater efficiency to the judicial system of the State." The following sections of that act are all that have relation to the question made here:

Sec. 1. That a second trial may be

The plaintiffs joined issue on all the pleas, Except the sixth, to which they put in two replications; first; that the Court rendering the judgment had jurisdiction of the person of the defendant, and that defendant had notice of the suit and Employed an attorney of that Court to appear for him, and who did appear for him: Second, that the judgment was not fraudulently obtained, and issues joined.

The plaintiffs, to maintain the issues on their part, introduced the record of the proceedings and judgment in the Court of Common Pleas of Coshocton County, duly certified, by which appeared that a suit by Petition, duly sworn to, had been commenced by these plaintiffs against the defendant, for the work, labor and services of the wife whilst she was sole and unmarried - that an answer was put in by C. C. Leonard, attorney for the defendant; and a motion made and sustained to strike out the answer, and leave given to file an answer instanter.

The result of that suit is set forth in the following entry:

And the defendant avers, that afterwards, and on or about the year 1855, the said Caroline Shriever intermarried with the plaintiff, John P. Jarvis, and after said marriage, and on or about the 26th day of July, 1856, said plaintiffs brought the suit and recovered the judgment in plaintiffs' declaration mentioned, for the same labor, services, dues and demands, in said receipt specified; the plaintiffs then and all the time well knowing that the defendant had fully paid and satisfied the said Caroline for all the said ~~services~~ services, wages, salaries and moneys. And the defendant avers that at the time said suit was commenced, for and during the two years prior thereto, and from thence hitherto, the said defendant was and is, a citizen and inhabitant of the State of Illinois, and was not an inhabitant of the State of this, and that no process or summons or citation was ever served upon him to appear in said Court, and that he never authorized any attorney, or any agent, to appear for him in said Court; that such judgment is fraudulent as to him, and rendered by said Court without having any jurisdiction of his person, and this he is ready to verify.

action now, because he says that the only claim or demand the said plaintiffs or either, have or ought to have, against the defendant, is for work, labor and services, and salary of the said plaintiff, Caroline Jarvis, done, performed and due to her, while sole and while her name was Caroline Shriever, and which was done, performed and due, prior to Nov. 30th, 1853, and the defendant avers, that on the said 30th day of November, 1853, at the town of Newcastle, in the State of Ohio, the defendant settled and accounted with the said Caroline Shriever, while she was sole and unmarried, and paid to her the sum of one hundred dollars, which said sum of money the said Caroline then and there accepted and received in full payment and satisfaction of all debts, dues and demands against the defendant, and then and there said Caroline executed and delivered to the defendant as evidence of such payment and satisfaction, the receipt in words and figures following:

Newcastle, Nov. 30th 1853.

Received of George P. Lawrence, one hundred dollars, in full of all debts, dues and demands up to this date, November 30th, 1853.

$100. Caroline Shriever.

Newcastle, November 30th 1853.

attest: Franklin Lawrence.

STATE OF ILLINOIS, SUPREME COURT, SS.

APRIL TERM, 1862.

GEORGE P. LAWRENCE,
PLAINTIFF IN ERROR.
vs.
JOHN P. JARVIS, ET UX,
USE OF PLOWMAN.
DEFENDANTS IN ERROR.
} ERROR TO PEORIA.

ABSTRACT OF RECORD AND BRIEF.

This was an action of Debt. The declaration contains but one count. It alleges

Record, pages 1, 2 and 3. that at the December Term, 1859, of the Court of Common Pleas, in and for the County of Coshocton, and State of Ohio, the Defendants, Jarvis and wife, recovered a judgment against the Plaintiff in Error, for the sum of $317, for wages due the Plaintiff, and $82.36 costs.

The Plaintiff in Error filed six pleas, as follows:

Record, page 18. 1. *Nil debet.*

Record, page 18. 2. *Nul tiel record.*

3. That the said Court granted a new trial.

Record, page 19. 4. Said Court has no jurisdiction of the Person of the Plaintiff in Error.

5. Said judgment was procured by the fraud of the Defendants in Error.

Record, pages 19 and 20. 6. The 6th Plea was as follows:

[redacted]

Record, pages, 20 and 21.

By GROVE, *his Attorney.*

Record, pages 22, 23, 24 and 25.

Issue was joined to the 1st, 2d, 3d, 4th and 5th Pleas.

To the 6th Plea, two replications were filed.

1. That the Court that rendered the judgment did have jurisdiction of the person of the Defendant; and that Defendant did have notice of said suit, and employed an Attorney of said Court to appear therein for him; which said Attorney

Record, page 25

did appear for said Defendant.

2. That said judgment and rendition in said declaration was not fradulently obtained, as in said 6th Plea is alleged. To which replication joinders were filed.

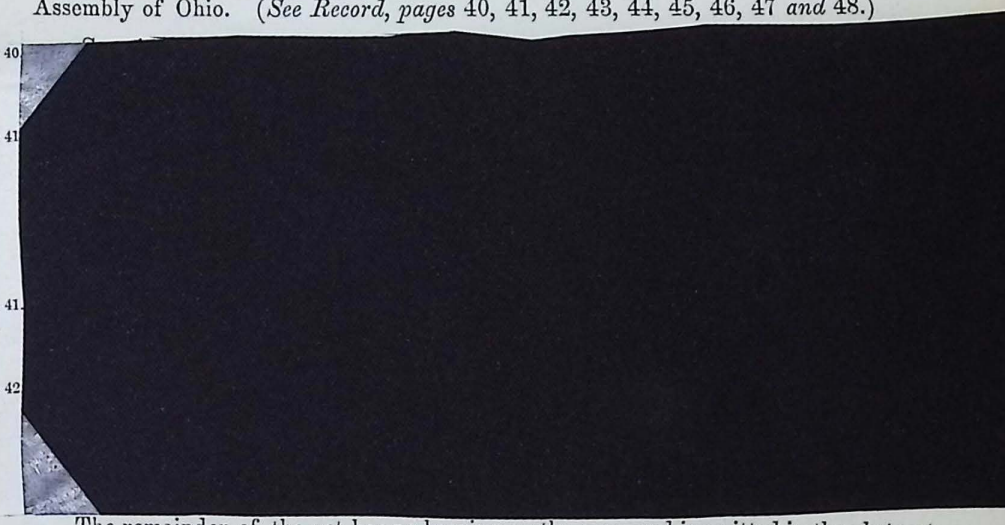
The Plaintiff then offered in evidence a certified copy of an Act of the General Assembly of Ohio. (*See Record, pages* 40, 41, 42, 43, 44, 45, 46, 47 *and* 48.)

Record, page 40

Record, page 41

Record, page 41

Record, page 42



The remainder of the act has no bearing on the case, and is omitted in the abstract. The Plaintiffs below then rested.

The Defendants below, offered, in evidence the receipt set out in and made part of the 6th Plea. The receipt was excluded from the jury. This was all the evidence in the case.

Record, pages 52 and 53

The Plaintiffs below then asked the following instructions, to which Defendant objected but the instructions were given as asked.

1. The Jury are instructed that the Record offered in evidence in this cause, is evidence of the indebtedness in this cause, from Defendant to the Plaintiff, of the amount of the judgment for debt and costs thereon, and that the said amount of the judgment, for debt and costs, in said record specified, together with interest at the rate of six per cent per annum, from the rendition of the judgement, will be the amount of the Plaintiff's recovery, unless the Defendant has shown by competent evidence, that since the judgment was rendered, it has been paid or in some way satisfied.

2. If the Jury in this cause find the issues for the Plaintiff they will find whatever is due upon the judgment, if any, as debt and interest thereon, at the rate of six per cent per annum, from the rendition of the judgment as damages, and they will find in their verdict the amount of debt and amount of damages separately.

3. The Jury are instructed that the receipt offered in evidence in this cause is excluded from the consideration of the Jury in this cause.

The Defendant below asked the following instructions, which were refused:

Record, pages 30 31 and 32.

On the Trial to the Jury, the Plaintiff below offered the record in evidence of the proceedings, and judgment of the Court of Common Pleas, of Coshocton County,

Record, pages 34 and 35.

Ohio, in the case of John P. Jarvis and Caroline Jarvis *vs.* George P. Lawrence, Defendant.

The Petition alleges that Lawrence, on or about February 1, 1854, was indebted to Caroline Jarvis, while sole, in the sum of $300, for wages and salary of said Caroline, before that time due and payable, for services, etc.

The affidavit of said Caroline to the truth of the Petition. The answer of C. C. Leonard, Attorney for the Defendants below. A motion to strike out the answer of Lawrence, which was sustained, and leave given to file answer instanter.

The record shows several continuances, and the following Judgement:

Record, page 53

1. Because the Court admitted irrelevant, illegal and improper evidence for Plaintiff.

2. Because the Court shut out and excluded the evidence of the Defendant.

3. Because the Court gave improper instructions for Plaintiff, and refused proper instructions offered by Defendant.

4. Because the verdict is against the law and the evidence.

The motion was overruled and the Defendant below excepted.

The Plaintiff assigns the following errors upon the Record:

1. The Court below admitted improper evidence on the part of the Plaintiff below.

2. The Court below excluded proper evidence offered by the Defendant below.

3. The Court below gave improper instructions on the part of the Plaintiff below.

4. The Court below refused proper instructions asked by Defendant below.

5. The verdict was against the law and evidence of the case.

6. The Court below erred in refusing to grant a new trial.

7. The Court below erred in refusing to arrest the judgment.

Defendant avers, that on the said 30th day of November, A. D., 1853, at the town of Newcastle, in the State of Ohio, the Defendant settled and accounted with the said Caroline Shriever, while she was sole and unmarried, and paid to her the sum of hundred dollars, which said sum of money, the said Caroline then and there accepted, and received in full payment and satisfaction of all debts, dues and demands, against the Defendant, and then and there, said Caroline executed and delivered to the Defendant as evidence of such payment and satisfaction, the receipt in words and figures following:

Newcastle, Nov. 30th, 1853.

RECEIVED of George P. Lawrence, One Hundred Dollars, in full of all debts, dues and demands up to this date, November 30th, 1853.

[$100.] CAROLINE SHRIEVER.

Newcastle, November 30th, 1853.

Attest: ERASTUS LAWRENCE.

And the Defendant avers, that afterwards, and on or about the year 1855, the said Caroline Shriever intermarried with the Plaintiff, John P. Jarvis, and after said marriage, and on or about the 26th day of July, 1856, said Plaintiff brought the suit and recovered the judgment in Plaintiff's declaration mentioned, for the same labor, services, dues and demands, in said receipt specified; the Plaintiffs then and all the time well knowing that the Defendant had fully paid and satisfied the said Caroline for all the said services, wages, salaries and moneys. And the Defendant avers that at the time said suit was commenced, for and during the two years prior thereto, and from thence hitherto, the said Defendant was and is, a citizen and inhabitant of the State of Illinois, and was not an inhabitant of the said State of Ohio, and

Record, pages, 20 and 21. that no process or summons or citation was ever served upon him to appear in said Court, and that he never authorized any Attorney, or any agent, to appear for him in said Court; that such judgment is fradulent as to him, and rendered by said Court, without having any jurisdiction of his person, and this he is ready to verify.

By GROVE, *his Attorney.*

Record, pages 22, 23, 24 and 25. Issue was joined to the 1st, 2d, 3d, 4th and 5th Pleas.

To the 6th Plea, two replications were filed.

1. That the Court that rendered the judgment did have jurisdiction of the person of the Defendant; and that Defendant did have notice of said suit, and employed an Attorney of said Court to appear therein for him; which said Attorney

Record, page 25 did appear for said Defendant.

2. That said judgment and rendition in said declaration was not fradulently obtained, as in said 6th Plea is alleged. To which replication joinders were filed.

Record, pages 30 31 and 32.

On the Trial to the Jury, the Plaintiff below offered the record in evidence of the proceedings, and judgment of the Court of Common Pleas, of Coshocton County, Ohio, in the case of John P. Jarvis and Caroline Jarvis *vs.* George P. Lawrence, Defendant.

Record, pages 34 and 35.

The Petition alleges that Lawrence, on or about February 1, 1854, was indebted to Caroline Jarvis, while sole, in the sum of $300, for wages and salary of said Caroline, before that time due and payable, for services, etc.

The affidavit of said Caroline to the truth of the Petition. The answer of C. C. Leonard, Attorney for the Defendants below. A motion to strike out the answer of Lawrence, which was sustained, and leave given to file answer instanter.

The record shows several continuances, and the following Judgement:

DECEMBER TERM, JANUARY 5, 1860.

JOHN P. JARVIS
AND
CAROLINE JARVIS,
vs.
GEORGE P. LAWRENCE.
} No. 3, CIVIL ACTION.

This day came the parties by their Attorneys, and thereupon came a jury, to-wit: J. H. Zollers, A. J. Lockhard, William Burns, John Clark, Isaac Meredith, Samuel Levens, S. H. Dapey, John D. Marquard and Thomas James, Jurors, of the regular jury of the present term, and Lewis Chany, John Ellsey and James Johnson, tallisman, who being dully impanelled, and sworn the truth to speak, upon the issue joined between the parties, upon their oaths, do say, that the allegations of the Plaintiff's petition are true, and that the allegations of the Defendant's answer are not true, and they do assess the damages of the Plaintiffs by reason of the premises, to the sum of three hundred and seventeen dollars. It is thereupon considered by the Court that the said Plaintiffs do recover against the said Defendant, George P. Lawrence, the said sum of three hundred and seventeen dollars, so found due, as aforesaid, together with their costs herein expended, taxed at $82.36, and thereupon came the Defendant by his Attorney, and demanded a second trial of this cause, and the Court being satisfied that he is entitled to such second trial, it is accordingly granted, and the undertaking to be entered into for such second trial by said Defendants, is fixed in the sum of four hundred dollars.

The Defendant below objected to the record, (see Record, page 39,) and for the reason, among others, that the record shows that the Court granted a new trial.

The Plaintiff then offered in evidence a certified copy of an Act of the General Assembly of Ohio. (*See Record, pages* 40, 41, 42, 43, 44, 45, 46, 47 *and* 48.)

Record, page 40. Sec. 1, *Provides*, That a second trial may be granted when the Court has original jurisdiction and in which an issue of fact may be joined.

Record, page 41. Sec. 2, *Provides*, That any person desiring a second trial, as provided in Sec. 1, may have such second trial in entering into an undertaking to the satisfaction of the Clerk, in a sum to be fixed by the Court, conditioned to abide and perform the order of the Court, and pay all moneys, costs and damages.

Record, page 41. Sec. 3, *Provides*, That a docket shall be made of said second trial, in which shall be entered all cases in which the right to such second trial shall be perfected, &c.

Record, page 42. Sec. 4, *Provides*, That either party shall have the right to except to the opinion of the Court, on a motion to direct a non-suit, to arrest the testimony from the jury, and also, in all cases of motion for a new trial.

The remainder of the act has no bearing on the case, and is omitted in the abstract.

The Plaintiffs below then rested.

The Defendants below, offered, in evidence the receipt set out in and made part of the 6th Plea. The receipt was excluded from the jury. This was all the evidence in the case.

Record, pages 52 and 53 The Plaintiffs below then asked the following instructions, to which Defendant objected but the instructions were given as asked.

1. The Jury are instructed that the Record offered in evidence in this cause, is evidence of the indebtedness in this cause, from Defendant to the Plaintiff, of the amount of the judgment for debt and costs thereon, and that the said amount of the judgment, for debt and costs, in said record specified, together with interest at the rate of six per cent per annum, from the rendition of the judgement, will be the amount of the Plaintiff's recovery, unless the Defendant has shown by competent evidence, that since the judgment was rendered, it has been paid or in some way satisfied.

2. If the Jury in this cause find the issues for the Plaintiff they will find whatever is due upon the judgment, if any, as debt and interest thereon, at the rate of six per cent per annum, from the rendition of the judgment as damages, and they will find in their verdict the amount of debt and amount of damages separately.

3. The Jury are instructed that the receipt offered in evidence in this cause is excluded from the consideration of the Jury in this cause.

The Defendant below asked the following instructions, which were refused:

1. The Jury are instructed that the Plaintiff in this cause seek to recover only the amount due on a judgment recovered by the Plaintiff against the Defendant, in

the Court of Common Pleas, of Coshocton County, Ohio, at the December Term 1859, for the sum of three-hundred and seventeen dollars.

The Defendant sets up in his sixth Plea, that the only claim or demand the Plaintiffs or either have or ought to have, against the Defendant, is for work, labor, services and salary of the said Plaintiff, Caroline Jarvis, done and performed and due to her while sole, and while her name was Caroline Shriever, which was done, performed and due, prior to November 30th, 1853, and that on that day, at the town of Newcastle, in the State of Ohio, the Defendant settled and accounted with the said Caroline Shriever, while she was unmarried, and paid her the sum of one-hundred dollars, which she accepted and received in full payment and satisfaction of all debts, dues and demands, against the Defendant, and as evidence of such payment and satisfaction, the said Caroline executed the receipt annexed to, and made part of said sixth Plea, and that in the year 1855, said Caroline married the Plaintiff, John, and that in July, 1856, said Plaintiffs brought the suit and recovered the judgment for the same labor, and that the Plaintiffs well knew that said Defendant had fully paid said Caroline, for all the services, wages, salaries and moneys, and that the Defendant for two years prior to the commencement of this suit, and from thence hitherto, was and is, an inhabitant of this State, and not an inhabitant of the State of Ohio, and that no summons or citation had ever been served on him in said cause.

The truth of these facts are not denied by the Plaintiffs—they stand admitted upon the Records, and must be taken as true by the Jury in determining whether the judgment was fradulently obtained.

2. If the Jury believe that the judgment upon which this suit is brought was obtained by the Plaintiffs fradulently, they should find for the Defendant.

3. Unless the Plaintiffs have proved that the Court of Common Pleas of Coshocton County, had jurisdictition of the person of the Defendant, said Court had no authority to render said judgment, and this jury in that case should find for the Defendant.

The Plaintiff alleges that the Defendant employed an Attorney to appear in said cause, in said Court, and unless the Plaintiff has proved to the satisfaction of the Jury, that the Defendant did employ an Attorney in said cause, then said judgement is void, and the Jury should find for the Defendant.

Which instructions the Court refused to give, and the Defendant excepted.

The Jury found for the Plaintiffs below, and the Defendant moved for a new trial and in arrest of judgment. The following reasons were assigned on the motion for a new trial.

Record, page 53

1. Because the Court admitted irrelevant, illegal and improper evidence for Plaintiff.

2. Because the Court shut out and excluded the evidence of the Defendant.

3. Because the Court gave improper instructions for Plaintiff, and refused proper instructions offered by Defendant.

4. Because the verdict is against the law and the evidence.

The motion was overruled and the Defendant below excepted.

The Plaintiff assigns the following errors upon the Record:

1. The Court below admitted improper evidence on the part of the Plaintiff below.

2. The Court below excluded proper evidence offered by the Defendant below.

3. The Court below gave improper instructions on the part of the Plaintiff below.

4. The Court below refused proper instructions asked by Defendant below.

5. The verdict was against the law and evidence of the case.

6. The Court below erred in refusing to grant a new trial.

7. The Court below erred in refusing to arrest the judgment.

GEORGE P. LAWRENCE,
PLAINTIFF IN ERROR,
vs.
JOHN P. JARVIS, ET UX,
USE OF PLOWMAN.
DEFENDANTS IN ERROR.

STATE OF ILLINOIS, SUPREME COURT.
APRIL TERM, 1862.

PLAINTIFF'S BRIEF AND POINTS.

1. The Court of Common Pleas of Coshocton County, had no jurisdiction of the Person of the Plaintiff in Error.

The Record offered in evidence shows that the Court of Common Pleas of Coshocton County granted a new trial. (*See Record, Page* 37.)

3. The receipt offered in evidence by the Plaintiff in Error tended to prove the matters set up in the sixth Plea.

4. The instructions asked by Plaintiff in Error were improperly refused.

5. The Defendant's instructions took all questions of fact from the Jury.

6. A new trial should have been granted.

GROVE,

For Plaintiff in Error.

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In the Supreme Court,

APRIL TERM, A. D. 1862.

GEORGE P. LAWRENCE, PLAINTIFF IN ERROR.

vs.

JOHN P. JARVIS, *et ux*, DEFENDANTS IN ERROR.

ABSTRACT,

ASSIGNMENT OF ERRORS,

AND

BRIEF AND POINTS.

Filed Apr 21. 1863

L Leland Clk

John P Lawrence vs John Jarvis wife } Error
Defts argument & authorities

This suit was brought by the defendants in this court upon a judgment obtained in the Court of Common Pleas in Coshocton County Ohio - And the only question of much consequence is one as to the effect to be given in a Sister State to such judgment - The defendant below offered no evidence whatever upon the trial - The sixth plea seeks to get behind the judgment and retry the original cause upon the merits - This can not be done unless they first show that the court did not have jurisdiction of the person - It would be error or trifling with the court to first litigate the merits of the original suit and then trust to showing that the court did not have jurisdiction when the record showed an appearance - It would have a strong tendency to mislead a jury and consume the time of the Court for no good purpose - But in this case there was no offer or pretense of an offer to show ~~that~~ by proof or in any manner that the court did not have jurisdiction - In Horton vs Critchfield 18 Ills 136 this question is determined and the Court

there say - "The plaintiff offered to show that he left Ohio soon after the trial before the justice and has not since returned there and that he did not owe the debt - Had he first shown that by the laws of Ohio an appeal simply did not transfer and continue the cause in the common pleas without a new summons he would have put himself in a position to go behind the judgment into the original grounds of indebtedness"

The fact that issue was not taken on the averment of settlement can make no difference so long as the judgment remains in full force or the defendant did not show the Court had not jurisdiction - What the effect would have been if he had shown the Court did not have jurisdiction it is not now necessary to enquire

One of the replications to the sixth plea was that the court rendering the judgment did have jurisdiction of the person of the defendant and this was proven prima facie by the production of the record offered in evidence reciting that the defendant appeared by attorney - This question is also settled in this state in case of Welch et al vs Sykes 3 Gill. 199 - The court there say in speaking of a judgment rendered in the

State of Maryland - "The record of the Judgment is to be used as evidence in the trial of the issue, and when introduced affords Conclusive evidence of the facts stated in it Thus if the record shows affirmatively that the defendant was personally served with process. or personally appeared to the action it furnishes conclusive evidence of the fact stated and the defendant can not controvert it - If either of these facts clearly and distinctly appear on the face of the record the plaintiff may reply that the defendant is estopped by the record from denying that the court had jurisdiction ~~of~~ over his person - If the record states that the defendant appeared by attorney it is conclusive proof that the attorney appeared for him but only prima facia evidence ~~that~~ of the authority of the attorney to appear and which latter fact the defendant is at full liberty to disprove"

Again in 15th Illinois Rep Whittaker et al vs Murray the Court say "But this want of authority if such be the fact must be distinctly alleged and proved by Murray 'Prima facia the plaintiffs are entitled to Judgment"

In Bimeler vs Dawson et al ~~the~~ 4 Scam 542 the Court hold the record to be prima facia evidence of the jurisdiction of the court over defe

Upon the question of a second trial I would state that it does not necessarily follow that if a second trial is granted or even a new trial that the first judgment is annulled or in any manner set aside - And where the order of the Court does not show that the first judgment is vacated it remains in full force and debt may be brought upon it or execution issued = The party ~~Claiming~~ Claiming that awarding a second trial vacates a judgment when there is no such order of the Court and when the record shows a judgment, must show that by the law of the place where the judgment was rendered the granting of a new trial or a second trial necessarily avoids and annuls the first judgment - This was not attempted to be done but on the contrary the plaintiff below introduced in evidence "a duly certified Copy of the laws of Ohio explaining what was meant by a second trial = The first section makes it imperative upon the Court to grant a second trial in all cases where the suit has been instituted in the Court of Common pleas in which said Court has original jurisdiction and in which either party has the right to trial by jury and in which an issue of fact has been

joined and after judgment or final order has been rendered = This section makes it necessary that before a second trial can be granted that final judgment must have been rendered - The court granting such second trial has only to look to the record and be satisfied that the case is one where final judgment has been rendered and that suit was commenced in the Court of common pleas - and that such Court had original jurisdiction - that there were issues of fact joined and that either party would have a right to trial by jury These facts being found by the Court the Court must be satisfied under that law that the party is entitled to a second trial and must grant it - The ~~same~~ same section discriminates between a new trial and a second trial = The second section provides that the party asking a second trial shall enter into an undertaking with security or bond to be approved by the Clerk to ~~pay the~~ abide and perform the order and judgment of the Court and pay all money damages costs which may be required of or awarded against him by reason of such second trial. No such undertaking was ever filed in this cause as none appears of record - The law presumes and the Clerk

certifies the record to be full Complete and all that remains of record = Then before any second trial Can be had he must give bond to pay the judgment &c and no bond having been filed he was not entitled to a second trial and consequently the old judgment was not in any manner vacated - To put a different construction upon the Statute the plaintiff would necessarily be driven to a second trial upon the defendants bare application therefor without any showing whatever in order to have any judgment if the first was vacated - Evidently the Statute never Contemplated a second trial or the vacating of the first judgment until the undertaking with security was filed and perfected ~~and~~ Approved by the Clerk and when this is done it requires the Clerk to enter the Case on the ~~Record~~ Second trial docket

On relation to the instructions as no specific objection is Taken in the abstract brief and points of plaintiff I shall only say that even if erroneous from the whole record it is manifest that the Verdict could not possibly have been

different - The court will not grant a new trial or reverse a cause for the reason that improper instructions were given or proper ones refused or proper evidence ruled out unless it has injured the party complaining - So far from the defendant below having been injured by the instructions given or refused it is manifest that if the verdict had been different or in favor of him it would have been the duty of the court to have granted the plaintiff below a new trial and when that is the case it is manifest that no injustice has been done him even if the instructions that were refused expressed the law and there had been evidence to which they applied - Courts will not grant new trials for the purpose of letting parties experiment on their cases -

It is well settled in this State that a new trial will not be granted because proper instructions were refused unless the record also shows that injustice has been done upon the merits of the case - In the Case of Greenup vs Stoker 3 Gill 202 the Court gave this question a thorough discussion and examination of authorities and on page

216 they say "From all these authorities the rule may be easily deduced that a court will not grant a new trial or reverse a judgment on error because of the admission of improper or the rejection of proper testimony or for want of proper direction or misdirection of the Judge who tried the cause provided the court can clearly see by an inspection of the whole record that justice has been done and that the error complained of could not have effected the merits of the cause or influenced the verdict of the jury"

This rule has always been adhered to in this state -- See 18 Ill 454 - 1 Gill 475 - 1 Scam 491 . 1 Scam 407 2 Scam 268 3 Scam 218 - 4 Scam 58 - 1 Gill 10 & 556 14 Ill 472

The court can not see from the whole record in this cause that injustice has been done the defendant below and therefore even if they should believe that improper instructions were given for the plaintiff or refused when asked for by defendant below which I by no means admit yet a new trial should not be granted and if the instructions had been given the verdict from the record should still have been as it was

In relation to admitting improper evidence by the plaintiff below I will only state that the clerk has not copied the certified copy of the judgment in the record & bill of exceptions that was offered in evidence but has copied the one that was attached to the declaration And it is agreed between the Counsel for the defendant below and myself that no objection shall be urged to to the same not being properly certified to otherwise it would have been necessary to have the proper record certified to this court

M. Williamson
atty for deft

I agree that no question is made as to the sufficiency of the certificate of the clerk to the record offered in evidence below

60-16

Lawrence
vs.
Jarvis wife

Defendants argument

No 60

Filed Apl 24. 1863

L Sheldon Clk

George D. Laurence
as
John D. Jarvis et al } In the Supreme Court
April Term 1863

Argument of Plaintiff in error

The Court of common Pleas of Coshocton County had no Jurisdiction of the person of the Plaintiff in error

The record of the proceeding in that case which was offered in evidence on the trial below, shows that there was no Summons or other Precept issued to or served upon the Plaintiff in error and that the only appearance of the Plaintiff in said Court was by an attorney who afterwards withdrew his appearance.

The Plea numbered 6. (record pages No. 20 & 21) distinctly avers that no Precept or Summons or citation was ever served upon the Plaintiff in error to appear in said Court and that he never authorized any attorney or agent to appear for him and that said Court rendered said Judgment without having any Jurisdiction of his person

The defendant in

error replies that said court did have jurisdiction of the person of the plaintiff in error. That he did have notice of said suit, and that he did employ an attorney of said court to appear therein for him.

On the trial to maintain the issues on their part the defendants in error offered in evidence the record of said court of Common Pleas.

The record fails to show that any summons, citation or notice was issued or served upon the plaintiff in error. It does show that some person filed an answer and afterwards withdrew it. This was all the evidence there was as to the question of jurisdiction of plaintiff's person.

The plaintiff in error could have no means of knowing who or when the attorney was. The first intimation he had of any attorney having appeared for him was when the record was offered in evidence.

Was this attorney employed by the plaintiff in error

the latter says not. The defendants in error say in their replication he was, there is no evidence on either side. upon whom did the proof devolve. the affirmation was assumed by the defendants, in error they offered no proof upon the point. It necessarily follows that the verdict should have been for the plaintiff in error.

2 The record offered in evidence shows clearly and distinctly that a new trial was granted, the language is as follows.

It is therefore ~~upon~~ considered by the court that the said Plaintiff do recover against the said defendant George P Laurence the said sum of Three Hundred and Seventeen Dollars so found due as aforesaid. together with the costs herein expended, taxed at Eighty two dollars & Sixty six cents and thereupon came the defendant by his attorney and demanded a second trial of this cause, and the court being satisfied that he is entitled to such second trial, it is accordingly granted and the undertaking

to be entered into for such second trial by said defendants is fixed in the sum of four hundred dollars.

The Statute of Ohio offered in evidence for the purpose of showing that the undertaking of the defendant in said court was a condition precedent to the second trial. It certainly makes no difference what the Statute of Ohio provides. The judgment of the court is that a second trial is granted. The order is peremptory, unconditional and absolute, and until that order is rescinded, set aside, or modified by the court, there is no judgment in the case upon which a suit can be maintained.

The judgment of the court is equivalent to saying that the judgment is set aside and a new trial granted

3. The recept offered in evidence tended to prove the matters set up in the 6th plea.

The 3d plea is set out in the 1st and 2d pages of the abstract, and the material facts

set-forth in the Plea are set-out-in the Plaintiff's in Error's 2d- instruction

Plaintiff in error insists that the receipt- tendered to prove the 6th Plea and should have been given to the Jury, and said second instruction should have been given, See on this Point-, Cowen & Hills notes Vol. 1, Page. 793. Sec. 3. where the rule is laid down in these words.- "The effect- of Pleading over would seem properly to appertain to the Science of Special Pleading; but- it- has a considerable bearing upon the law of evidence; and it- has become of more practical importance since the promulgation, by the Judges, of what- are known in the Profession as the New Rules in Pleading."

The general rule upon this subject- may be thus Stated:- every material fact- which is not- denied by the opposite Party, is taken to be admitted upon the record; and whatever is so admitted need not- be proved, and cannot- be disproved.

5 The Plaintiff here further insists that the instructions given on the part of the defendants in error took all questions of fact from the jury

As the questions presented on the record are so plainly presented and so frequently decided ~~that~~ no authorities are needed to properly determine them.

Brief for Plaintiff in Error

60 — 16

Lanenas
Plff in Error
v
Lavis et ux

Plaintiffs argument

Filed April 21. 1847

L Leland clk

State of Illinois } April Term 1862.
Supreme Court ss }

George P Lawrence
Plaintiff in error
vs
John P Jarvis &
Caroline Jarvis
use of Wm Rowman
defendants in Error

} Error to Peoria County Circuit Court

And the said Plaintiff in error comes and says that in the record proceedings and in the rendition of judgment against him in this cause manifest error has intervened to his injury and for assignment of errors here upon this record shows the following

1. The Court below admitted improper evidence on the part of the Plaintiffs below

2. The Court below excluded proper evidence offered by the defendant below

3. The Court below gave improper instructions on the part of the Plaintiffs below

4. The Court below refused proper instructions asked by defendant below

Error dismissed at cost of plaintiff

om

1. Pleas before the Circuit court within and for the county of Peoria, and state of Illinois, on the thirteenth day of December AD 1861.

Be it Remembered, That heretofore to-wit: on the 25th day of February, AD 1861, there was filed in the office of the clerk of the circuit court aforesaid a "Transcript & Declaration", in words and figures following, to-wit:-

John P. Jarvis and
Caroline Jarvis his wife
for the use of William Plowman
vs.
George P. Lawrence

Circuit Court
of Peoria County
March Term
AD 1861.

State of Illinois } Circuit Court, March
Peoria County } Term 1861.

John P. Jarvis and Caroline Jarvis his wife, plaintiffs in this suit for the use of William Plowman, complain by M. Williamson, their attorney of George P. Lawrence in a plea of Debt, For that whereas the plaintiffs to wit, at the December term AD 1859 of the court of common pleas holden in and for the county of Coschocton and state of Ohio to wit on the 5th day of January AD 1860 by the consideration and Judgment of said court of Common pleas within

and for the county of Coshocton and state of Ohio (the said state being one of the United States of America) the said plaintiffs then and there recovered a judgment in said court against the said defendant for the sum of three hundred and seventeen dollars which in and by the said court was then and there adjudged to the plaintiffs for their damages which they had sustained by reason of the non-payment of certain salary or wages then lately due and owing from the defendant to the plaintiffs and also fifty-two dollars and thirty six cents for his costs therein expended in and about said suit whereof the defendant was convicted as by the record and proceedings thereof remaining in said court fully appears, a copy whereof duly authenticated the plaintiffs now here in court produced, which said Judgment still remains in full force unreversed and unsatisfied and the plaintiffs hath not any execution or satisfaction thereof.

Whereby an action hath accrued to the plaintiffs to demand and have of and from the defendant, the said damages and costs aforesaid amounting to a large sum of money to-wit, the sum of three hundred and ninety nine dollars and thirty six cents. Yet the said defendant hath

not paid the same nor either nor any of said amounts nor either of them nor any part thereof to the plaintiffs damage five hundred dollars and therefore he sues &c By M. Williamson, his atty

John P. Jarvis and Caroline Jarvis his wife for the use of William Plowman } Debt $399 56/100 Damages $500 Issue Summons

I, M. Williamson do hereby enter myself security for costs and bind myself to pay or cause to be paid all costs that may accrue either to the opposite party or any officer of this court.
Feb 21st 1861 = M. Williamson

Pleas enrolled before the Honorable William Sample, one of the Judges of the court of Common Pleas, within and for the county of Cashocton and state of Ohio, at the December term thereof begun and held on the twelfth day of December in the year of our Lord one thousand eight hundred and fifty-nine.

John P. Jarvis & wife } Civil action
vs
George P. Lawrence } Be it remembered that heretofore to wit, on the 26th day of July A.D. 1856, John P. Jarvis and wife filed in the clerks office of said court

their certain petition against George P. Lawrence which is in the words and figures following to-wit:

John P. Jarvis and Caroline his wife, Plaintiffs
against
George P. Lawrence, Defendant

Coshocton County, ss.
Court of Common Pleas
Petition.

The said John P. Jarvis and Caroline Jarvis his wife, plaintiffs, complain of George P. Lawrence, defendant, for that the said defendant whilst the said Caroline Jarvis was sole and unmarried on or about the first day of February A.D. 1854 was indebted to the said Caroline Jarvis in the sum of three hundred dollars for the wages or salary of the said Caroline Jarvis, before that time and then due and payable from the said defendant to the said Caroline Jarvis for the services of the said Caroline Jarvis by her before there performed as the hired servant of and for the said defendant and at his request and which said sum of money the said Caroline Jarvis avers was then due and payable. Yet the said defendant though often requested, hath not paid said sum of money nor any part thereof to the said plaintiffs or to either of them, Wherefore the said

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plaintiffs pray judgment against the said defendant for the said sum of three hundred dollars ($300,00) with interest thereon from the first day of February A.D. 1854.

Charles Hoag, attorney for Plaintiff

The State of Ohio, Coshocton County, ss.

Caroline Jarvis, one of the Plaintiffs in the for-so action, being first duly sworn deposeth and saith that the several matters and things set forth in the above petition are according to the best of her Knowledge information and belief true in substance and in fact Caroline Jarvis.

Subscribed in my presence and sworn to before me this 25th day of July A.D. 1856.

S.N. Zimmerman

Filed with said petition as a precipie for summons in the words and figures following to wit:

John P. Jarvis, and wife, Plaintiffs
against
George P. Lawrence, Deft

Coshocton County, ss
Court of Common Pleas.
Precipie

The clerk of said court will issue a summons in the case for the said George P. Lawrence, directed to the Sheriff of said county of Coshocton. The plaintiffs claims judgment for ($300.00) three hundred

dollars with interest from the first day February A.D. 1854. Charles Hoy, atty for Plffs.

Afterwards to-wit- on the day and year first above written, a summons was issued to the Sheriff of Coshocton County which was returned and filed on the fourth day of August A.D. 1856, but which has since been mislaid and is not now among the papers of the case, And now at the August term of said court, to-wit.

September 3 A.D. 1856 — No. 143, Civil action
John P. Jarvis and wife — This cause continued
vs — with leave to answer
George P. Lawrence — in twenty days.

And now at the november term of said court to-wit:-

Nov. 6, A.D. 1856

John P. Jarvis and wife — No. 70. Civil action
vs — This cause is continued
George P. Lawrence — with leave to defendant to file Answer in thirty days

Afterwards to wit, in the 15 day of December A.D. 1856, an answer to the foregoing petition was filed in the clerks office of said court in the words and figures following to wit:

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John P. Jarvis and
Caroline Jarvis, his wife, Plaintiffs
against
George P. Lawrence, Deft

Coshocton County, ss.
Court of Common
Pleas.
Answer

And now comes the said George P. Lawrence, Deft. and for answer to said petition of the said John P. Jarvis and Caroline Jarvis his wife, Plaintiffs, saith that the said plaintiffs ought not to have their said action against him the said dependant because he saith that the said dependant does not owe said plaintiffs, or either of the said of them the sum of three hundred dollars in manner and form as the said plaintiffs have in their said petition declared nor any part thereof, nor in any other sum nor in any other manner or form whatever and of this he puts himself upon the country.

C. C. Leonard, atty per dependant.

Coshocton County, ss. - C. C. Leonard, being sworn says, that he is the attorney of the dependant - that the said dependant is a non-resident and is now absent from County of Coshocton and that he believes the statement of the foregoing answer to be true

C. C. Leonard

Sworn to by C. C. Leonard before

me and subscribed by him in my presence this 15 day of December AD 1856.

A. M. Williams, Clerk

And now at the April term of said court to wit= April 11 AD 1857.

John P. Jarvis, and Caroline Jarvis
vs
George P. Lawrence

No. 48 Civil Action.

This cause continued at the costs of the defendant, It is therefore considered by the court here that the said defendant pay the costs of this present term taxed at $—

And now at the September term of said court, to-wit= October 8 1857.

John P. Jarvis and Caroline Jarvis his wife
vs
George P. Lawrence

No 28 Civil action

This cause came on to be heard upon the motion of plaintiff to strike the answer of the Defts from the files and was argued by counsel on Consideration whereof said motion was sustained and leave given to file answer instanter and cause continued at the costs of the plaintiff. It is therefore considered by the court

that the said plaintiff pay the costs of the present term in this action taxed at $— and in default of which that execution issue therefor. And now at the December term of said court to wit, January 2, 1857

John P. Jarvis and wife
vs
George P. Lawrence
No. 23 Civil action

This cause continued by consent of the parties.

And now at the April term of said court to wit, April 22 1858

John P. Jarvis & wife
vs
George P. Lawrence
No 16 Civil Action

This cause continued with leave to defendant to answer petition in 30 days and answer in 30 days thereafter.

And now at the December term said court to wit- January 5, 1860.

John P. Jarvis & wife
vs
George P. Lawrence
No 8 Civil Action

This day come the parties by their attorneys and thereupon come a jury to wit J. W. Zollers, A. J. Lockhard, Williams Burns, John Clark, Isaac Meridith, Samuel Lewis, A. H.

Drapery, John D. Marquand, Thomas James, jurors of the regular jury to the present term, and Lewis Chamy, John Ellsey and James Johnston, tallesmen, who being duly empannelled and sworn to speak the truth upon the issues joined between the parties upon their oath do say that the allegation of the plaintiffs petition are true, and that the allegation of the defendants answer are not true and they do assess the damages of plaintiffs by reason of the premises to the sum of three hundred and seventeen dollars - It is therefore considered by the court that the said plaintiffs do recover against the said defendant George P. Lawrence, the said sum of three hundred and seventeen dollars so found due as aforesaid together with their costs herein expended taxed at $82,36.

And thereupon come the defendants by his attorney and demanded a second trial of the cause and the court being satisfied that he is entitled to such second trial it is accordingly granted, and undertaking to be entered into for such second trial by said defendants is fixed in the sum of four hundred dollars

Increase costs $2,15 = Transcript $2.45

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Thursday, May 9th A.D. 1861.

John P. Jarvis et al

vs Debt

George P. Lawrence

This day this cause come on to be heard on the demurrer of dependant to plaintiffs declaration filed herein, and the court being fully advised in the premises overruled said demurrer. On motion dependant is ruled to plead to said declaration by the third day of the next term.

Afterwards, on the 10th day of October A.D. 1861, and at the October term of said Court the dependant by attorny asked and obtained leave of court to file an additional plea to the pleas heretofore filed, which said additional plea is numbered "6". The pleas aforesaid, marked filed, in the clerks office aforesaid, July 22d A.D. 1861, are in words and figures following, to-wit:

State of Illinois } In the circuit court of
Peoria County } Sc. Peoria county.

George P. Lawrence
ats
John P. Jarvis et al } In Debt

1 And the said dependant comes & defends &c. & for plea says he is not indebted in manner & form as the said plaintiff hath thereof complained against him & of this he puts himself upon the country

Grove his atty

And the plff doth the like

Williamson & Adams, plff atty

2 And for further plea deft says actio non, because he says there is no such judgment remaining of record in the court of common in & for the county of Coshocton as in plaintiffs declaration mentioned & this he prays may be enquired of by the court upon the inspection of the Record, by Grove his atty.

3 And for further plea deft says actio non because he says after the rendition of the judgment against the dependant by the said court of Common Pleas in & for the county of Coshocton in the state of Ohio in plaintiffs declaration mentioned and after the said judgment was enrolled in said court, the said court afterward and at & during the said term on motion of the dependant did grant a new trial in said cause & thereby then & there set aside said judgment in plffs declar-

19. ation mentioned & this he is ready to ver-
ify &c by Grove, his atty.

4th And for further plea defendant
says actio non because he says that the
said court of Common Pleas of Co-
shocton county at the time of the ren-
dition of the judgment in plaintiffs
declaration mentioned, had no jurisdiction
of the person of the defendant & no process
of said court was served on or notice given
to the defendant & no attorney was author-
ized by the defendant to appear for him
in said court at the time of said trial
& judgment defendant was & for the two
years prior thereto defendant was &
still is a citizen & resident of the state
of Illinois & this he is ready to verify,
whereupon he prays Jud'gt &c, by Grove his atty.

5 And for further plea defdt says ac-
tio non because he says the said jud'gt.
in plaintiffs declaration mentioned was
recovered, rendered & procured by the fraud,
collusion & wrong of the pltffs & this he is
ready to verify wherefore he prays Jud'gt.
by Grove his atty.

6 And for further plea defendant says
actio non because he says that the only
claim or demand the said plaintiffs or

or either have or ought to have against the defendant is for work, labor & services & salary of the said plaintiff Caroline Jarvis, done, performed & due to her while sole & while her name was Caroline Shreven & which was done, performed & due prior to Nov. 30, 1853. And the defendant avers that on the said 30th day of November AD 1853, at the town of New-castle in the state of Ohio, the defendant settled & accounted with the said Caroline Shreven, while she was sole & unmarried & paid to her the sum of hundred dollars which said sum of money the said Caroline then and there accepted & received in full payment & satisfaction of all debts dues & demands against the defendant & then & there said Caroline executed & delivered to the defendant as evidence of said payment & satisfaction the receipt in words & figures following.

New Castle, Nov. 30th/53.

Received of George P. Lawrence, one hundred dollars, in full of all debts dues and demands up to this date, November 30th 1853.

New Castle Nov. 30th/53 Caroline Shreiver

$10.00

attest Erastis Lawrence

and the defendant avers that afterwards and on or about the year 1855 the said Caroline Shriever intermarried with the plaintiff John P. Jarvis and after said marriage & on or about the 26th day of July 1856 said plaintiffs brought the suit & recovered the judgment in plaintiffs declaration mentioned for the same labor, services, dues & demands in said receipt specified, the plaintiffs then & all the time well knowing that the defendant had fully paid & satisfied the said Caroline for all the said services, wages, salaries & moneys. And the defendant avers that at the time said suit was commenced for & during the two years prior thereto & from thence hitherto the said defendant was & is a citizen & inhabitant of the state of Illinois & was not an inhabitant of the said State of Ohio & that no process or summons or citation was ever served upon him to appear in said court and that he never authorized any attorney any agent to appear for him in said court & that said judgt is fraudulent as to him & rendered without by said court without having any jurisdiction of his person and this he is ready to verify By Grove, his atty.

And afterwards to wit, on the 6th day of August A.D. 1861, there was filed in the office of the clerk aforesaid, replications in words and figures following to wit:-

John P. Jarvis et al } Cir court
vs } August term 1861
George P. Lawrence }

And now comes the said plaintiff by Williamson & Adams and for replication to defendants second plea above pleaded says precludia non, because they say that said Judgment as averred in said declaration mentioned still remains and is of record in the court of Commonpleas of Coshocton County state of Ohio and all of which he is ready to verify by the record to the court, wherefore he prays judgment &c

Williamson & Adams, plff's atty.

And deft doth the like by Grove his atty

Deft. demurs to above replication because same is insufficient in law-does not conclude properly Grove for deft.

And for replication to defendants third plea above pleaded the said plaintiff by Williamson & Adams say precludia non because he says after the said rendition and enrolling of said

judgment as in said declaration mentioned the said court did not grant a new trial in said cause during said term or at any other term but that the same remains of record in full force unreversed not in any manner annulled, wherefore all of which he is ready to verify to the court by the record Williamson & Adams for pltff

And deft. doth the like by Grove his atty

Deft. demurs to the above replication - same is insufficient in law - does not conclude properly, Grove for deft.

And for replication to the fourth plea by defendant above pleaded the plaintiff says preludia non because he says that the court wherein said judgment was rendered as in said declaration mentioned said court did at the time before and at the rendition said judgment have jurisdiction of the person of the said defendant and that said defendant had notice of the pendency of said suit and employed an attorney of said court to appear therein for him which said attorney did appear for said defendant in said cause, all of which he is ready to verify by the record

to the count, wherefore he prays judg=
ment &c Williamson & Adams

And deft doth the like
by Grove his atty

Defendant demurs to above
replication same is insuffi=
cient in law-does not con=
clude properly Grove for dfts

And for replication to the 5th plea
by defendant above pleaded the plaintiff
by Williamson & Adams say precludia non
because they say that the said judgment
in said declaration mentioned was not re=
covered, rendered or procured by the fraud, Col=
lusion or wrong of the plaintiffs and
of this they pray may be enquired of by
the country &c, Williamson & Adams
And deft doth the like for plff
Grove for defts

And afterwards to wit, on the 19th day of
October AD 1861 there was filed in the of=
fice of the clerk aforesaid a replication
to 6th plea, in words and figures follow=
ing to wit:-

And for replication to the sixth
plea by defendant above pleaded the
plaintiffs say precludia non because

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he says that the court wherein said Judgment was rendered as in said declaration mentioned said court did at the time before and at such rendition of said judgment have jurisdiction of the person of the said defendant and that said defendant had notice of the pendency of said suit and employed an attorney of said court to appear therein for him which said attorney did appear for said defendant in said cause, all of which he is ready to verify to the court by the record.

Jn. Williamson, his atty.

And the defft doth the like by Grove his atty

Defft demurs to the above replication - that same is insufficient in law, does not conclude properly - Grove for defts

And for further replication to said sixth plea the defendant say by leave of the court, praedicta non because he says that the said Judgment & the rendition in said declaration mentioned was not fraudulently obtained and rendered as in said sixth plea alleged, all of which he prays may be enquired of by the country

Jn. Williamson, his atty

And defft doth the like by Grove his atty

Defft demurs to above replication as amended because same is insufficient in law - concludes by prayer of 2nd. Grove for defts

Proceedings at a term of the circuit court of Peoria county, began and held at the court house in the city and county of Peoria, state of Illinois, on the first Monday in the month of October in the year of our Lord one thousand eight hundred and sixty one, it being the seventh day of said month. Present, the Honorable Amos L. Merriman, judge of the 16th judicial circuit in said state, Alexander McCoy, states attorney, James Stewart, Sheriff and Enoch D. Sloan, Clerk, to wit:-

Saturday, October 19th A.D. 1861.

John P. James & als

vs Debt

George P. Lawrence

This day came plaintiffs by Williamson their attorney, and move the court to strike defendants 6th plea from the files, for reasons stated. On consideration the court overruled said motion. On motion plaintiffs have leave to reply double, and defendant is ruled to join issue instanter. Defendant by Grove his attorney, demurs to plaintiffs replications and this cause now come on to be heard on said demurrer, and the court being fully advised in the premises sustains said demurrer. On motion plaintiffs have leave to amend their original replications, and defendant is ruled to rejoin by Tuesday next.

Proceedings at a term of the circuit court began and held at the court house in the city and county of Peoria, Illinois, on the first Monday in the Month of December, in the year of our Lord one thousand eight hundred and sixty one, it being the second day of said month. Present, the Honorable Amos L. Merriman, Judge of the 16th judicial circuit in said state, Alexander McCoy States attorney, James Stewart, sheriff, and Enoch Sloan, clerk, to wit:-

Tuesday, December 3rd A.D. 1861.

John P. Jarvis & als
vs
George P. Lawrence
Debt

On motion of plaintiffs by Williamson, attorney, leave is given them to change conclusion to replications.

Friday, December 6th A.D. 1861.

John P. Jarvis & als
vs
George P. Lawrence
Debt

This day come defendant by Grove his attorney and moved the court to rescind the order giving plaintiffs leave to change conclusions to their replications.

Wednesday, December 11th A.D. 1861

John P. Jarvis,
Caroline Jarvis, for the use of
William Plowman

189 vs Debt

George P. Lawrence

This day come the plaintiffs by Williamson, attorney, and the defendant by Johnson & Grove, his attorneys, and it is ordered that a jury be impannelled to try this cause, whereupon come a jury of twelve good and lawful men to-wit- Christian Brownfield, P. Rohman, Isaac Bushell, M.M. Blanchard, Miram Reed, Geo. Hazlhurst, James Richardson, Thomas Keller, Daniel Harker, W.J. Noble, Riley Scott, & Samuel Snyder, who being duly chosen, tried and sworn, to well and truly try the issues joined in this cause, and a true verdict give according to the evidence, do say, "We the jury do find that the said defendant doth owe to the said plaintiffs the sum of three hundred and ninety-nine dollars and thirty-six cents, and do assess their damages by reason of the detention thereof to the sum of forty-six dollars and twenty-seven cents". The defendant by Johnson, attorney, moved the court to set aside verdict and for new trial.

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Friday, December 13th A.D. 1861.

John P. Jarvis & als

vs Debt

George P. Lawrence

This day this cause come on to be heard on the motion of dependant to set aside the verdict herein, and for a new trial, and the court being fully advised in the premises overruled said motion. Therefore it is considered by the court that the said John P. Jarvis, Caroline Jarvis, for the use of William Pearman have and recover of the said George P. Lawrence, the said sum of three hundred and ninety-nine dollars and thirty six cents their debt aforesaid and also the said sum of forty six dollars and twenty-seven cents, their damages aforesaid, together with their costs and charges by them about their suit in this behalf expended, and that execution issue therefor. The dependent by his attorney prayed an appeal to the Supreme court of this State, which is allowed on his giving bond in the penal sum of Seven hundred dollars, payable to said plaintiffs, conditioned as the law directs, with Henry Grove as security. Said bond to be filed with the clerk of this court in thirty days.

And afterwards to-wit, on the 12th day of December A.D. 1861, there was filed in the office of the clerk aforesaid, a Bill of Exceptions in words and figures following to-wit:-

Jarvis & wife
vs
Lawrence
} Peoria county circuit Court, December Term A.D. 1861. Action of Debt upon a judgment from the Court of common Pleas of Coshocton Co., Ohio.

And now on this day this cause come on to be heard and to support the issue upon his part offered in evidence a copy from the records of said court, in words & figures following to-wit:-

Pleas enrolled before the Honorable William Sample, one of the Judges of the court of Common Pleas within and for the county of Coshocton and state of Ohio at the December term thereof begun and held on the twelfth day of December in the year of our Lord one thousand eight hundred and fifty nine.

John P. Jarvis & wife
vs
George P. Lawrence
} Civil Action

Be it remembered that heretofore to-wit, on the 20th day of July A. D. 1856, John P. Jarvis and wife filed in the

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Clerks office of said court their certain petition against George P. Lawrence, which is in the words and figures following to-wit:-

John P. Jarvis and Caroline Jarvis, his wife, Plaintiffs
against
George P. Lawrence, Defendant

Coshocton County ss.
Court of Common Pleas

Petition

The said John P. Jarvis and Caroline Jarvis his wife, plaintiffs, complain of George P. Lawrence defendant, for that the said defendant, whilst the said Caroline Jarvis sole and unmarried on or about the first day of February A.D. 1864 was indebted to the said Caroline Jarvis in the sum of three hundred dollars for the wages or salary of the said Caroline Jarvis, before that time and then due and payable from the said defendant to the said Caroline Jarvis for the services of the said Caroline Jarvis, by her before then performed, as the hired servant of and for the said defendant, and at his request, and which said sum of money the said Caroline Jarvis avers was then due and payable, yet the said defendant, though often requested, hath not paid said sum of money nor any part thereof to the said plaintiffs or to either of them. Whereupon the said plaintiffs pray judgment against the said defendant for the said sum of three hundred

dollars ($300.00) with interest thereon from the first day of February A.D. 1854.

Charles Hoy, attorney for Plaintiff

The State of Ohio, Coshocton County, ss.

Caroline Jarvis, one of the plaintiffs in the ~~foregoing~~ aforesaid action, being first duly sworn deposeth and saith that the several matters and things set forth in the above petition are according to the best of his knowledge, information and belief true in substance and in fact. Caroline Jarvis.

Subscribed in my presence and sworn to before me this 25th day of July A.D. 1856

S.N. Zimmerman

Filed with said petition was a precipie for summons in the words and figures following, to wit:-

John P. Jarvis and Caroline Jarvis, his wife, Plaintiffs
against
George P. Lawrence, Deft

Coshocton County, ss.
Court of Common Pleas,

Precipie

The clerk of said court will issue a summons in this case for the said George P. Lawrence, directed to the Sheriff of said county of Coshocton. The plaintiff claims judgment for ($300.00) three hundred dollars, with interest from the first day of February A.D. 1854. Charles Hoy, atty for Plffs.

Afterwards, to-wit, on the day and year first

above written a summons was issued to the Sheriff of Coshocton County which was returned and filed on the fourth day of August A.D. 1856 but which has since been mislaid, and is not now among the papers of the case.

And now at the August term of said court, to wit: September 3, A.D. 1856.

John P. Jarvis and wife
v
George P. Lawrence
No. 143 Civil action.

This cause continued with leave to answer in 20 days.

And now at the November Term of said court, to wit: Nov. 6 A.D. 1856.

John P. Jarvis and wife
v
George P. Lawrence
No 70 Civil action

This cause is continued with leave to defendant to file answer in thirty days.

Afterwards, to wit- on the 15th day of December A.D. 1856 an answer to the foregoing petition was filed in the clerks office of said court in the words and figures following to wit:-

John P. Jarvis and Caroline Jarvis his wife, plaintiffs
against
George P. Lawrence, Deft
Coshocton County, ss.
Court of Common Pleas
Answer

And now comes the said George P. Lawrence, defendant, and for answer to the petition of the said John P. Jarvis and Caroline Jarvis his wife, plaintiffs, saith that the said plaintiffs ought not to have their said action against him the said defendant because he saith that the said defendant does not owe the said plaintiffs or either of them the said sum of three hundred dollars in manner and form as the said plaintiffs have in their said petition declared nor any part thereof, nor in any other sum, nor in any other manner or form whatever and of this he puts himself upon the country, C.C. Leonard, Atty for defendants

Coshocton County, ss. C. C. Leonard being sworn says that he is the attorney of the defendant, that the said defendant is a non resident of and is now absent from the county of Coshocton, and that he believes the statements of the foregoing answer to be true. C. C. Leonard

Sworn to by C. C. Leonard before me and subscribed by him in my presence this 15 day of December A.D. 1856 A.H. Williams, Clerk

And now at the April Term of said court, to wit: April 11, A.D. 1857.

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John P. Jarvis and
Caroline Jarvis
vs
George P. Lawrence

No. 48. Civil Action

This cause continued at the costs of the dependant. It is therefore considered by the court here that the said dependant pay the costs of this present term taxed at $—

And now at the September term of said court to wit, October 8, 1857.

John P. Jarvis and
Caroline Jarvis his wife
vs
George P. Lawrence

No 28 = Civil action

This cause came on to be heard upon the motion of the plaintiffs to strike the answer of the dependant from the files and was agreed by counsel; on consideration whereof said motion was sustained and leave given to file answer instanter and cause continued at the costs of the plaintiff. It is therefore considered by the court that the said plaintiffs pay the costs of the present term in this action taxed at $— and in default of which that execution issue therefor.

And now at the December Term of said court, to wit, January 2, 1857.

John P. Jarvis and wife
v
George P. Lawrence
No 23, Civil Action

This cause continued by consent of the parties.
And now at the April term of said court,
to wit April 22d 1858.

John P. Jarvis and wife
v
George P. Lawrence
No. 16, Civil Action

This cause continued with leave to
defendant to answer petition in 30 days
and answer in 30 days thereafter.

And now at the december term of said court,
to wit, January 3, 1860.

John P. Jarvis and
Caroline Jarvis
v
George P. Lawrence
No 3, Civil Action

This day come the parties by their attorneys
and thereupon came a jury to wit. I. N. Zollers,
A. J. Lockard, William Burns, John Clark, Isaac Mere-
dith, Samuel Levens, I. N. Draper, John D. Marquand and
Thomas James, jurors of the regular jury to the
present term and Lewis Chamy, John Elsey and
James Johnson, talesman, who being duly im-
pannelled and sworn the truth to speak upon
the issue joined between the parties upon their oaths
do say that the allegations of the plaintiffs

March 1, 1860 = For value received I do hereby assign all my right, title and interest in the within judgment to William Donovan John P. Jarvis.

petition are true, and that the allegations of the defendants answer are not true, and they do assess the damage of the plaintiffs by reason of the premises to the sum of three hundred and seventeen dollars. It is therefore considered by the court that the said plaintiffs do recover against the said defendant George P. Lawrence the said sum of three hundred and seventeen dollars so found due as aforesaid, together with their costs herein expended taxed at $8236. And thereupon came the defendant by his attorney and demanded a second trial of this cause, and the court being satisfied that he is entitled to such second trial it is accordingly granted, and the undertaking to be entered into for such second trial by said defendants is fixed in the sum of four hundred dollars. Incr costs $2.15 Transcript $2.45

The State of Ohio, Coshocton County, ss.

I, Samuel Kinsey, Clerk of the court of common Pleas within and for the county of Coshocton and state of Ohio, do hereby certify that the above and foregoing is a true and correct transcript of the final record in the aforesaid case as appears from the records of said court

In testimony whereof I have hereunto set my hand and

affixed the seal of said court at Coshocton this 5th day of April A.D. 1860.

Samuel Kinsey, Clerk

By M. C. McFarland, Dept Clerk

State of Ohio
Coshocton County } ss

I, William Sample, sole Judge of the court of Common Pleas, in and for the county of Coshocton and state of Ohio, do hereby certify that the foregoing exemplification and certificate of the record now remaining in said court is duly authenticated in due form of law according to the laws of the State of Ohio. In testimony whereof I have hereunto set my hand and seal this 12th day of March A.D. 1861.

Wm. Sample Seal

Judge

State of Ohio
Coshocton County } ss

I, Samuel Kinsey, Clerk of the court of Common Pleas in & for the county of Coshocton and State of Ohio do hereby certify that William Sample whose genuine signature appears subscribed to the foregoing certificate is sole Judge of the said court of Com-

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mon Pleas in and for the county of Coshocton and state of Ohio. In testimony whereof I have hereunto set my hand and affixed the seal of said court at my said office this 12th day of March A.D. 1861.

Seal

Samuel Kinsey, Clerk

By M C McFarland Deputy

For value Received we assign the within to William H. Bowman for value received of him.

To which the defendant objected

1 Because the certified copy offered in evidence was not the same as the copy attached to the declaration and made part thereof

2 Because the said copy is not duly authenticated.

3 Because it does not appear from said record that deft had any notice of the pendency of said suit or that the court rendering said judgment had jurisdiction of the defendant.

4 Because it does not appear by said record that said judgment remains in said court and does appear that a new trial was granted to the said defendant in said court.

But the court overruled said ob-

jections, and admitted the said record to which the defendant excepts.

Plaintiff offered to the court certified copy in connection therewith, of an act of the legislature of the state of Ohio in words and figures following:

An act to relieve the district courts and to give greater efficiency to the judicial system of the state.

Section 1 = Be it enacted by the General Assembly of the state of Ohio - That a second trial may be demanded and had in any civil action which has been heretofore or may be hereafter instituted in any court of common pleas in this state in which said court has original jurisdiction and in which either party has the right by law to demand a trial by jury and in which an issue of fact has been joined between the parties or any two of them by their pleadings in the action, and after a judgment or final order has been or may be rendered upon the terms and in the manner hereinafter provided, and new trials may be granted in such actions after such second trial thereof upon the grounds and in the manner provided for the granting of new trials by the code of civil procedure.

Sec (2) Any person desirous of such second trial, as provided for in the preceding section shall at the term of the court at which judgment was rendered enter on the records of the court notice of his intention to demand such second trial. And in case of such demand for such second trial, the party, at whose instance the demand is made, shall enter into an undertaking with security to the satisfaction of the clerk of the court, payable to the adverse party, in such sum as may be fixed by the court, and conditioned to the effect that the party obtaining such second trial, shall abide and perform the order and judgment of the court and pay all moneys cost and damages which may be required of, or awarded against him consequent upon such second trial.

Sec (3) That there shall be made out and kept in the court of common pleas, a second trial docket in which shall be entered in their order all causes in which the right to second trial shall have been perfected as herein provided which docket shall be called and the causes thereon tried and disposed of under such standing rules as the several judges of the court of common pleas of the district or a majority of them shall establish.

Sec (4) In all causes pending in the court of common pleas or either of the superior courts in this State, either party shall have the right to except to the opinion of the court on a motion to direct a nonsuit, to arrest the testimony from the jury and also in all cases of motion for a new trial by reason of any supposed misdirection of the court to the jury or by reason that the verdict, or in case the jury be waived that the finding of the court may supposed to be against law or evidence, so that said case may be removed by petition in error, and when a party to a suit in either of the foresaid courts alleges an exception to the opinion or order or judgment of such courts, it shall be the duty of the judge or judges of such court concurring in such judgment, opinion or order if required by such party during the progress of the case, to sign and seal a bill containing such exception or exceptions before the case proceeds, or if the party consents the signing and sealing of such bill of exceptions may be suspended until the trial is closed, but said bill of exceptions shall signed and sealed during the term, and such bill of exceptions when signed and sealed shall if the party desires it be made part of the record in such suit.

Sec (5) That section one of an act entitled "An act regulating appeals to the district court" passed March 23, 1852 be so amended as to read as follows: That appeals may be taken from all final judgments orders or decrees in civil actions in which the parties have not the right by virtue of the laws of this state to demand a trial by jury and interlocutory orders dissolving injunctions rendered by any court of common pleas in this state in which it has original jurisdiction by any party against whom such judgment or order shall be rendered, or who may be affected thereby to the district court, and the action so appealed shall be again tried heard and decided in the district court in the same manner as though the said district court had original jurisdiction of the action.

Sec (6) The said original section one and section twelve of the said act regulating appeals to the district court, be and the same are hereby repealed; provided however that such repeal shall not affect any action now pending in the district court or any action in which a party may have given notice of intention to appeal from any judgment or order of any court of common pleas in which it has become too late to apply for a second trial under the provisions of this act.

Sec (7) That it shall be the duty of the judges of the Supreme court or a majority of them in the month of December of every year to fix and prescribe the times for holding the terms of the district courts for the next succeeding year and so arrange the terms and apportion the labor of the judges that a judge of the Supreme court can be always present in every district court which may be held in the state, and a judge of the court of common pleas who has decided a cause in the Common pleas, shall not sit on the review of his own decision in the district court on error or otherwise when there is a quorum in the district court without him.

Sec (8) That immediately after the times for the terms of the district court shall have been fixed as aforesaid, an accurate list of the same shall be furnished to the Secretary of state and the secretary of state shall forthwith thereafter cause copies of the list of the terms of the district courts so fixed for each judicial district to be made out and one copy thereof to be forwarded to each judge of the court of common pleas of the district. And it shall be the duty of the judges of the common pleas in each and

every common pleas district in the state to fix the times for the terms of the court of common pleas in each of the counties in their respective districts so as not to conflict with the terms of the district court fixed and arranged as aforesaid by the judges of the Supreme Court.

Sec (9) That the judges of the court of common pleas or a majority of them in each common pleas district on or before the second Monday of January of each year shall issue their written order to the clerk of the court of common pleas of each and every county in their said district specifying precisely the commencement of the term of the district court and of the several terms of the court of common pleas in said County and in all the counties in said district, provided that not less than three terms of the common pleas court shall be appointed for any county for which three terms are now by law provided, They shall also immediately thereafter transmit a certified copy of said order to the Secretary of State who shall preserve the same among the files of this office

Sec (10) Whenever said order so issued

shall have been received by the clerk of the court of common pleas in any county he shall immediately enter the same upon the Journal of the court of common Pleas and also upon the journal of the district court in his said county in the same manner as other entries when required are made upon said journals during vacations of said court and said entries shall be full and sufficient evidence as to the legal terms for holding said courts as therein ordered. The said clerk shall also cause a copy of said order certified by him to be published for four consecutive weeks in one or more newspapers of general circulation in his said county. The first publication of the same shall be in the first week in the month next ensuing the date of said order.

Sec (11) The courts named in this act shall be held for every year in each judicial district at the times fixed and ordered by the judges in accordance with the foregoing provisions, any act or acts to the contrary not withstanding, provided that nothing herein contained shall have reference to or control the holding

of courts in the year one thousand eight hundred and fifty eight.

Sec. (2) If from any cause there occur a failure to hold the prescribed term of the district court in any county it shall be the duty of the common pleas judges of the district or a majority of them on conference with one or more of the judges of the Supreme Court to appoint and hold within the same year a special term of the district court in such county. And if for the want of time or other good cause the business of the district court in any county cannot be disposed of at the regular term thereof it shall be lawful for the judges of said court whenever in their opinion the business is of sufficient importance to appoint and hold a special term of said court in such county. Thirty days previous notice of the holding of said special terms shall be given in the county wherein the same are ordered to be held.

Sec. (3) That sections one two three four five six and seven of the act entitled; "An act to authorize the judges of the court of common pleas of each judicial district to sit permanently

the times for holding the courts of Common pleas and the district courts thereof" passed, March 29, 1856, and also sections five hundred and sixty two and five hundred & sixty three of an act entitled an act to establish a code of civil procedure passed March 11, 1853 be and the same are hereby repealed.

Sec (14) This act shall take effect from and after its passage. William B. Woods

Speaker of the House of Representatives

Martin Welker

President of the Senate

April 12, 1858.

Secretary of State's office

Columbus O. Mar 15, 1861.

I, Addison P. Russell Secretary of State of the State of Ohio do certify the foregoing to be a correct copy of the original roll now on file in this office

In testimony whereof I have hereunto subscribe my name and affix the Great Seal of the State of Ohio at Columbus on the day and year of the date hereof.

Seal

A. P. Russell

Sec'y of State

which was submitted without objection

Plaintiff then rested his case.

Defendant then offered in evidence the following receipt

New Castle, Nov 30th/53

Received of George P. Lawrence one Hundred dollars in full of all debts dues and demands up to this date November 30th/853

New Castle Nov 30th/53

$100,00 Caroline Shriver

Attest

Erastus Lawrence

which was attached to and made part of said plea and the same together with the plea was read under the order of court upon condition that the said receipt should be followed up by other proof and no other proof being offered by defendant the court excluded said plea and receipt to which defts excepted. This was all the evidence offered in the case. The Jury found a verdict as follows.

We the Jury find a verdict in favor of the plaintiff and assess the debt at Three hundred and ninety nine dollars and thirty six cts. and the damages at twenty six dollars and twenty cts.

Daniel Harker, Foreman

The defendants requested the court to

give the following instructions:-

The Jury are instructed that the plaintiffs in this cause seek to recover only the amount due on a Judgment recovered by the plaintiffs against the defendant in the Court of Common Pleas of Coshocton County Ohio at the December term 1859, for the sum of three hundred and Seventeen dollars

The defendants sets up in his 6 Plea that the only claim or demand the plaintiffs or either have ~~or~~ ought to have against the defendant is for work labor services & Salary of the said plaintiff Caroline Jarvis done & performed and due to her while sole and while her name was Caroline Shroven which was done performed & due prior to Nov. 30 1853 - And that on that day at the town of Newcastle in the state of Ohio the defendant settled & accounted with the said Caroline Schroven while she was unmarried & paid her the sum of one hundred dollars which she accepted & received in full payment & satisfaction of all debts dues and demands against the defendant & as evidence of such payment & satisfaction the said Caroline executed the receipt annexed to & made part of said

5 Refused

6th plea, and that in the year 1855 said Caroline married the plaintiff John and that in July 1856 said plaintiffs brought the suit & recovered judgment for the same labor & that the plaintiffs well knew that said defendant had fully paid said Caroline for all the services wages salaries and moneys And that the defendant for two years prior to the commencement of this suit and from thence hitherto was and is an inhabitant of this state and not an inhabitant of the state of Ohio and that no summons or citation had ever been served on him in said cause".

The truth of these facts are not denied by the plaintiffs = They stand admitted upon the records and must be taken as true by the jury in determining whether the 2nd St. was fraudulently obtained.

2 Refused

If the jury believe that the Judgment upon which this suit is brought was obtained by the plaintiffs fraudulently they should find for the defendant.

3

Unless the plaintiffs have proved that the court of Common pleas of Coshocton County had jurisdiction of the person

Refused

of the defendant said court had no authority to render said judgment & this jury in that case should find for the defendant.

4 The plaintiff alleges that the defendant employed an attorney to appear in said cause in said court & unless the plaintiff has proved to the satisfaction of the jury that the defendant did employ an attorney in said cause then said judgment is void & the jury should find for the defendant.

Refused

But the court refused to which defendant excepted. And the court granted the following instruction to plaintiff:

1 The jury are instructed that the record offered in evidence in this cause is evidence of the indebtedness in this cause from defendant to the plaintiff of the amount of the Judgment for debt and costs therein and that the said Amount of the judgment for debt and costs in said record specified together with interest at the rate of six per cent per annum from the rendition of the Judgment will be the amount of the plaintiffs recovery unless the defendant has shown by competent evidence that since the Judgment was rendered it has been paid or.

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in some way satisfied.

2 If the jury in this cause find the issues for the plaintiff they will find whatever is due upon the Judgment if any as debt, and interest thereon at the rate of six per cent per annum from the rendition of the judgment, as damages and they will find in their verdict the amount of debt and amount of damages separately.

Given.

3 The Jury are instructed that the receipt offered in evidence in this case is excluded from the consideration of the Jury in this cause.

Given

To which the defendant excepted.

Deft moved in arrest of Judgment and for a new trial

John P. Jarvis & Caroline Jarvis for the use of Wm. Plowman } In the circuit court of Peoria county To December term A.D. 1861.

And now comes the said defendant and moves the court to set aside the verdict rendered herein and for a new trial of said cause for the following reasons.

1st Because the court admitted irrelevant illegal and improper evidence for plaintiff

2nd Because the court shut out and excluded the evidence of the defendant.

54 3d Because the court gave improper instruc-
tions for plaintiff and refused proper instruc-
tions offered by defendant.

4th Because the verdict is against the law
and the evidence.

Grove, Johnson & Robison
Attys for Defft.

Whereupon the court overruled the motion
to which the defendant excepted and
requested that this bill of exceptions be
signed which is done,

N L Merriman, Ex ad

State of Illinois, Peoria County, ss.

I, Enoch Sloan, clerk of the circuit
court in and for said county and state, do hereby certify, that
the foregoing is a full, true and complete transcript of the pa-
pers filed in, and of the record of the proceedings of our
said court, appertaining to the cause wherein John P. Jarvis
et al are plaintiffs and George P. Lawrence is defendant, as the
same remains on file and of record in my office.

Given under my hand and seal of said court
at Peoria, this 20th day of March AD 1862

Enoch Sloan, Clerk

Jorge
~~John~~ P Lawrence
vs
John P Jarvis &
Caroline Jarvis

} Supreme Court
April term 1865
3 Hand divis
ion

And now comes the said
defendants John P Jarvis
and Caroline Jarvis his wife
and say there is no error in the
record proceedings and rendition
of Judgment aforesaid or either
of them And therefore they pray
the said Judgment may be
affirmed in this Honorable Court

M Williamson
atty for defts

298 60

Lawrence

vs

Jarvis Admr

use of Rowman

Record of Judgment of Envoy

Filed Aug 24. 1812

S Leland

clerk

Costs due for Record $10