

8572

No. _____

Supreme Court of Illinois

Wm. Sim

vs.

Samuel Frank et al

71641  7

Pleas begun and held at the Court House in the town of Carlyle
within and for the County of Clinton and State of Illinois, in Second Judicial
Circuit of said State, on Monday the first day of August A.D. 1859. present
the Honorable H. K. O'Leary Circuit Judge holding pleas therein James
J. Justice Sheriff and John B. Roper Clerk

Samuel Frank assignee of
William Primrose

vs
William Simr

J. Justice

Be it remembered that heretofore to wit on the twenty
fifth day of May in the year of our Lord one thousand eight hundred
and fifty nine Samuel Frank assignee of William Primrose
by Benjamin Bond his attorney filed in the Clerk's office of the
Court aforesaid the following precept and declaration to wit,
Samuel Frank assignee of

" William Primrose

" vs

Debt \$ 4000.

" William Simr

Damages 1000

" The Clerk of the Clinton Cir Court will issue a writ in the
" above entitled cause directed to Sheriff of Clinton Co ret. to 1st day of
" next term of said Court to be holden on the 1st Monday in the
" month of August 1859.

Ben Bond

" May 25. 59.

Att'y for Plff "

" State of Illinois } Of the Clinton Circuit Court
" Clinton County } August, 4th term A.D. 1859
" Samuel Frank assignee of William Primrose Complainer of
" William Simr in a plea of Debt for that whereas the said Samuel
" Frank assignee by the consideration of the District Court held
" within and for the City and County of Philadelphia and State of
" Pennsylvania to wit at the County and Circuit aforesaid on the 21st
" day of July at the June term of said Court A.D. 1857. recovered a
" judgment against the said William Simr for the sum of Four thousand

„ dollar debt and seven dollar and seventy five cents costs of suit - a copy whereof
 „ duly authenticated the said Samuel Frank assigns as aforesaid now here
 „ in Court produces and which said judgment is in full force and not reversed
 „ annulled or satisfied: And the said Samuel Frank avers that though often
 „ requested the said William Sim hath never paid the said judgment nor
 „ any part thereof, to the damage of the said Samuel Frank of One thousand
 „ dollars and thereupon he sues &c Ben Bond atty for Plff
 „ Samuel Frank ass^o of William Purnose

„ 107
 „ William Sim } Of the Clinton Circuit Court
 „ I do hereby enter myself security for costs in this cause and
 „ acknowledge myself bound to pay or cause to be paid all costs which may
 „ accrue in this action either to the opposite party or to any of the officers of this
 „ Court in pursuance of the laws of this State dated this 25th day of May AD 1859.
 „ Ben Bond

Upon which said precept and declaration the following writ of summons
 was issued to wit

„ State of Illinois } The People of the State of Illinois
 „ Clinton County } To the Sheriff of Clinton County Greeting
 „ We command you that you summon William Sim to be and appear
 „ before the Circuit Court of Clinton County on the first day of the next term
 „ to be holden at Carlyle on the first Monday in the month of August next
 „ to answer Samuel Frank assignee of William Purnose in a plea of Debt \$4000.
 „ Damages \$1000⁰⁰ And have you then there this writ
 „ Witness the Clerk of said Court and the seal thereof at Carlyle
 „ this 25th day of May AD 1859
 „ John R Poper Clerk

Upon which said writ of summons the sheriff of said County of Clinton
 endorsed the following returns to wit
 „ William Sim is not found in my county July 13th 1859
 „ J J Justice Sheriff
 „ By W B Hild Deft
 „ Returns 10 -

And afterwards to wit at the August term of our said Court the following order was made and entered of record to wit.

Same day August 13th 1859.

" Samuel Frank assignee of
" William Premrose

In debt

" William Sim

This Cause is Continued generally

And afterwards to wit on the thirtieth day of January A D 1860 the following writ of summons was issued out of the Clerks office of said Court to wit

" State of Illinois }
" Clinton County } The People of the State of Illinois
" To the Sheriff of Clinton County Greeting

" We command You to summon William Sim et to be found in your
" County to appear before the Circuit Court of Clinton County on the first day of the
" next term thereof to be holden at the Court House in Carlyle on the first Monday
" in the month of March next to answer Samuel Frank assignee of William Premrose
" in a plea of Debt \$4000⁰⁰ damages \$1000⁰⁰ and hereof make due return to our
" said Court as the Law directs

" 

Witness John B Roper Clerk of our said Court and the Judicial
Seal thereof at Carlyle this 30th day of January A D 1860
J B Roper Clerk

Upon which said writ of summons the Sheriff of Clinton County made the following return to wit

" I have served this writ by reading the same to William Sim, the within
" named defendant Feb 10. 1860.

Service 50
Mileage 75
Returns 10 \$1.35

J J Justice Sheriff
By M C Stiles Deft

And afterwards to wit at the March term of said to wit the fifth day of March A D 1860 the said defendant by William M Underwood his attorney files his several pleas to the plaintiffs declaration as follows

To wit

Samuel Frank assignee
vs
M^{rs} Sum

Clinton Circuit Court March term
1860. Action of Debt

And the said Deft comes & defends the wrong and injury when he says there is not records of the said judgment in the said Court in the said Declaration mentioned in manner & form as the said plff hath in that behalf alleged & this the said Deft is ready to verify wherefore he prays judgment &c

And for further plea in this behalf the said Deft says acts now because he says that at the said time when the said supposed judgment was rendered in said State of Pennsylvania the said Deft was and for a long time before and ever since has been a resident & citizen of the State of Illinois nor was the said Deft at the said time said supposed judgment was rendered in said State of Pennsylvania nor was this Deft served with any process in or actual or constructive notice of said case in which said judgment was rendered nor did this Deft in person or by attorney enter his appearance in said case, and the said Court then and there has no jurisdiction over the person of this Deft, and this the said Deft is ready to verify wherefore he prays judgment &c

M^{rs} H Underwood Atty for Deft

And at the term last aforesaid to wit on the 6th day of March A^d 1860 the said defendant by William H Underwood his attorney files in said Court his 3^d plea as follows to wit

Samuel Frank Assignee vs
M^{rs} Sum
Debt

And for further plea in this behalf the said Deft says acts now because he says that before the obtaining of the said judgment to wit on &c at &c aforesaid the said Deft paid to said plff all of the amount mentioned in said power of Atty mentioned in said judgment except \$1000 and after the said Deft has removed from the said State of Pennsylvania

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" and become a resident and citizen of the State of Illinois to wit on the
" 21st day of July A.D. 1857, the said Plaintiff well knowing the premises for
" the purpose of defrauding this debt went into the said Court of
" Pennsylvania and filed the said power of attorney and caused and
" procured the entry of the said judgment in the said declaration
" mentioned for the whole sum of \$4000. + \$⁷⁵/₁₀₀ Costs without the
" appearance of this debt being entered being entered in said Court
" in person or by any attorney in this behalf wherefore the said debt
" says that the said judgment was caused & obtained by fraud
" & this debt is ready to verify wherefore he prays judgment &c

M^{rs} Underwood atty for Debt

And afterwards to wit at the term aforesaid to wit on the 9th day of March A.D. 1860 the said plaintiff by Ben Bond his atty filed his replications to the said defendants several pleas as follows to wit.

Samuel Frank assignee &c

1st

by

Williams Junr

" And the said plaintiff as to the plea of the said debt by him
" secondly above pleaded says preclude non because he says
" that at the time when the appearance of the said defendant
" was entered in said cause by an attorney of said Court
" therunto authorized by the said debt wherefore the said
" plaintiff says the said Court to wit the District Court aforesaid
" then and there had jurisdiction over the person of the said
" defendant and this he the said plaintiff is ready to verify
" wherefore he prays judgment for his debt aforesaid together
" with his damages &c

2^d And for a second replication to the said plea of the
" said defendant by him secondly above pleaded the said
" plaintiff says preclude non because he says at the time
" when the appearance of the said defendant was entered in
" said cause by one John L. Mitchell an attorney duly author-
" ized and empowered by the said defendant to appear

for him the said deft in said cause and this the said defen
 3. " dant is ready to verify wherefore he prays Judgment &c
 " And for further replication to the said plea of the said
 " defendant by him secondly above pleaded the said plaintiff
 " says that at the time when &c in said plea and declaration
 " mentioned the appearance of him the said defendant was
 " duly entered in said cause by one John B Mitchell who was
 " then and there duly and legally authorized by warrant of
 " Attorney under the hands and seal of the said defendant
 " to appear at and before said district Court and confess
 " the judgment aforesaid against him the said defendant
 " and this he the said plaintiff is ready to verify wherefore he
 " prays Judgt. for his said debt aforesaid together with his damages
 " by reason of the detention of the same to be adjudged when &c

4th " And the said plaintiff for further replication to the said
 " plea of the said defendant by him secondly above pleaded says
 " preclude now because he says that the appearance of the said
 " defendant in said cause was duly entered by one John
 " B Mitchell his attorney he the said John B Mitchell then and
 " there being duly authorized by said defendant to enter his
 " appearance in said cause and this he the said plaintiff
 " prays may be enquired of by the Country &c

Ben Bond atty for Plff

Samuel Frank assignee to

William Sim

5th " And the said plaintiff as to the 3^d plea of the said Deft
 " says preclude now because he says that the said judgment
 " in the said declaration mentioned was obtained fairly and
 " honestly by him the said plaintiff and not by fraud in
 " manner and form as the said defendant hath in his said
 " plea by him thirdly above pleaded alleged and this he the
 " said plaintiff prays may be enquired of by the Country &c

Deft doth the like

W^m Underwood

Att^y for Deft

Samuel Frank assignee

William Sim

Ben Bond att^y for the
Plaintiff

6th And the said plaintiff as to first plea of the said deft
to him pleaded says preclude now because he says that
there is such a record of the said recovery remaining in said
Court as he the said plaintiff hath above in his said declar-
ation in that behalf alleged and this he the said plff
is ready to verify by the said record of the said law and
he prays that the said record may be seen & inspected by the
said Court here to

Ben Bond att^y for plff

Deft doth the like

W^m Underwood

Att^y for Deft

And afterwards to wit at the term aforesaid to wit on the
9th day of March aforesaid A.D. 1860 the said defendant by
William Underwood his attorney filed his rejoinder and
~~demurrer to the said~~ to the said plaintiffs 1st 2^o and three
replications to the defendant's 2^o plea. and his demurrer
to the ^{4th} replication as follows to wit

Samuel Frank assignee

William Sim

Debt

And the said deft as to the 4th replication of
said plff says the same is not sufficient in law it concludes
to the Country & not with a verification

And says deft as to the 1st 2^o & 3^o replications of
said plff to deft's 2^o plea says that the appearance of said
def't was not entered in said Court in said case in Pennsylvania
in manner and form as the said plff hath in that behalf
alleged and of this the def't puts himself upon the

Country &c

8
Mr St Underwood

Atty for deft

And afterwards to wit at the March terms of said Court to wit on the 9th day of March A.D. 1860 the said Court did make and enter of records the following order to wit

Friday March 9th 1860

Samuel Franks assignee of

William Primrose

vs
William Sew

In Debt

And now at this time comes the said plaintiff by Ben Bond his attorney, and the said defendant by William St Underwood his attorney, and the said defendant interposes his demurrer to the fourth replication to the plaintiff's second plea and after argument of Counsel It is considered by the Court that the demurrer of the said defendant be sustained to the fourth replication of the plaintiff to the defendant's second plea, Whereupon this Cause is submitted to the Court for trial upon the issues as joined Wherefore after argument of Counsel upon the pleadings The Court takes the same under advisement and the judgment thereon to be entered up in vacation as of this term, and that either party have the right to take the same to the Supreme Court upon a bill of exceptions to be filed by the next term of this Court - And afterwards to wit in the vacation between the March and August terms of this Court A.D. 1860 the Court being sufficiently advised in the premises upon the pleas and written arguments of Counsel, It is considered by the Court that the said plaintiff recover of and from the said defendant his debt in the said declaration mentioned to the sum of four thousand dollars to be discharged upon the payment of two thousand dollars damages and interest from this date at six per cent and costs of this suit &c And that this Cause be docketed to take further proceedings thereon &c

Tuesday August 7th 1860

" Samuel Frank assignee
" of William Pennrose }
" ^{vs} William Sim } Debt

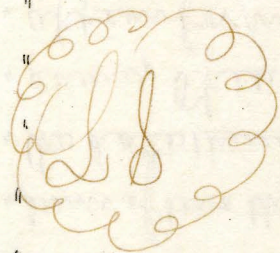
" And now at this time comes the said defendant by William
" Underwood his attorney, and interposes his motion for a new trial
" in this cause, and the Court after hearing the arguments of Counsel
" and being sufficiently advised in the premises disallows the motion"

Upon which the said defendant files the following bill of
exceptions to wit

" Samuel Frank assignee + }
" ^{vs} William Sim } Debt

" Be it remembered that on the trial of this suit by the Court
" the p^lff introduced the following transcript with the certificates
" hereinafter set forth

" State of Pennsylvania
" City and County of Philadelphia }
"



" Pleas at Philadelphia before the Honorable George
" Sharswood President George M Stroud and
" J J Clark Hars Esquires Judges of the District
" Court for the City and County of Philadelphia
" of June 3. A.D. 1857.

" (D. S. B. Docket Entries)

" Samuel Frank assignee }
" 396. of William Pennrose } D. S. B.
" ^{vs} William Sim } June 3. 1857
" } No 396

" Judgment entered on Bond & Warrant of Attorney dated
" October 16 1855 for \$4000. Conditioned for the payment of \$2000.
" in one year from the date thereof together with lawful interest
" to period half yearly for the term

" July 21. 1857 Judgment

And now July 21st 1857 Warrant of Attorney & assignment of same filed in the following words to wit

To John B. Mitchell Esq Attorney of the Court of Common Pleas at Philadelphia in the County of Philadelphia in the State of Pennsylvania, or any other Attorney of the said Court or of any other Court there or elsewhere

Whereas I William Bin of the County of Bucks and State of Pennsylvania Farmer in and by a certain obligation bearing even date herewith do stand bound unto William Premrose of the City of Philadelphia in the sum of four thousand dollars lawful money of the United States of America Conditioned for the payment of the first sum of two thousand dollars such as aforesaid in one year from the date thereof to gether lawful interest to be paid half yearly for the same, These are to desire and authorize you or any of you to appear for me my heirs executors or administrators in the said Court or elsewhere in an action of debt there or elsewhere brought or to be brought against me my heirs executors or administrators at the suit of the said William Premrose his executors administrators or assigns on the said obligation, of any term or time past present or any other subsequent term or time there or elsewhere to be held and confess judgment thereupon against me my heirs executors or administrators for the sum of four thousand dollars lawful money of the United States of America debt besides costs of suit Non sum informatus Nihil dicet or otherwise as to you shall seem meet And for you or any of you so doing this shall be your sufficient Warrants. And I do hereby for myself my heirs executors and administrators remise release and forever quit claims unto the said William Premrose his certain attorney executors administrators and assigns all and all manner of error and errors misprisons misentries defects and imperfections whatever in the entering of the said Judgment or any process or proceedings thereon or thereto or any way touching or concerning the same. In witness whereof I have hereunto set my hand


" and seal the sixteenth day of October in the year of our Lord one
" thousand eight hundred and fifty five (1855)

" Sealed and Delivered

" In the presence of

" Charles D Freeman

" Benj A Lattimer


William Sim 

" For valuable Consideration to me to me in hand
" paid by Samuel Frank of the City of Philadelphia Jeweller I
" do hereby assign transfer & set over unto him his executors ad
" ministrators and assigns. the annexed Bonds or obligations given
" and executed to me by William Sim dated the 16th day of October
" 1855 for the sum of two thousand dollars together with the warrant
" of Attorney thereto annexed and all monies principal & interest
" due and to grow due thereon and all my rights title & interest
" therein - Witness my hands and seal this twenty second day
" of April AD 1856.

" Sealed & delivered in presence of

" W J McElroy

" Williams Ogle

William Primrose 

" And now July 21st 1857 Judgment
" Whereupon it is considered by our said Court that said plaintiff
" do recover from the said defendant the sum of four thousand
" dollars also the further sum of seven dollars. and seventy five
" cents for his costs and charges by him about his suit in that behalf
" expended whereof the said defendant is convicted as appears of
" records &c and the said defendant in mercy &c

" The Commonwealth of Pennsylvania
" City and County of Philadelphia

" I James W Fletcher Esquire Prothonotary of the
" District Court for the City and County of Philadelphia
" do certify that the foregoing is a true copy of the whole
" records in the case there stated

" In testimony whereof I have hereunto set

my hand and affixed the seal of the said Court the 24th day
of July eighteen hundred and fifty seven
Gas W Fletcher Prothonotary

City and County of Philadelphia ss.
I George Sharwood Esquire President of the District Court
for the City and County of Philadelphia do certify that the
foregoing Record and attestation made by Gas W Fletcher
Esquire Prothonotary of said Court whose name is thereto
subscribed and seal of office affixed are in due form
and made by the proper officer

In testimony whereof I have hereunto set my hand the
24th day of July eighteen hundred and fifty seven
Geo Sharwood

City and County of Philadelphia ss.
I Gas W Fletcher Esquire Prothonotary of the
District Court for the City and County of Philadelphia
do certify that the Honorable Geo Sharwood Esq
by whom the foregoing attestation was made and
whose name is thereto subscribed was at the time
of making thereof and still is President Judge of
the District Court for the City and County of
Philadelphia duly commissioned sworn to all
whose acts as such full faith ^{and credit} are and ought to
be given as well in Courts of Justice as elsewhere
In testimony whereof I have hereunto set my hand
and affixed the seal of the said Court the 24th
day of July eighteen hundred and fifty seven
Gas W Fletcher Prothonotary

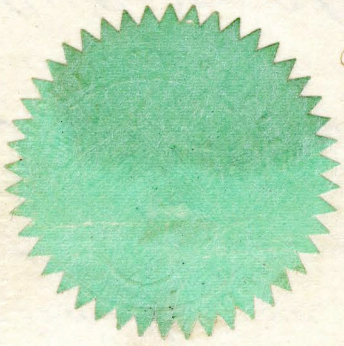
This was all the evidence The Court thereupon found for the
Plff upon which the defendant moves for a new trial because
the finding was contrary to law and contrary to evidence

" which motion was overruled by the Court and to which decisions
" of the Court the defendant at the time excepted & prays this his bill
" of exceptions may be signed sealed and made a part of the
" records which is done

H K S O'Neil
Judge of the Judicial Circuit Court

State of Illinois

Clinton County } I John B Roper clerk of
the Circuit Court in and for said County do certify
the foregoing is a true copy of the whole record in
the case therein stated



In testimony whereof I have hereunto
set my hand and affixed the seal of said
Court at office in Carlyle this 25th
day of August A.D. 1860
J B Roper Clerk

33

William Sims
vs

Samuel Frank
Assignee of
William Pierson

County of Clinton

Clerk of the Supreme
Court please issue
Sci. fa. to the Sheriff
of Clinton County
and oblige yourself

Wm H Underwood
Att. for plaintiff in error

Filed Nov. 13. 1860.

N. Johnston Clk

WILLIAM SIM,
 vs.
 SAMUEL FRANK, Assignee, &c. } ERROR FROM CLINTON COUNTY.

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This was an action of debt on a supposed judgment rendered on the 21st day of July, 1857, for \$4,000 debt and \$7 75 costs, in the District Court of the city and county of Philadelphia, in the State of Pennsylvania, in favor of Deft., in error against Pltff., in error. On the 5th of March, 1860, the Deft., filed 3 pleas. 1st, *Not tiel record*. 2nd, That when said supposed judgment was rendered, said Sim was and for a long time before and ever since had been a resident and citizen of the State of Illinois, nor was he when said judgment was rendered, in said State of Pennsylvania, nor was he served with any process, or actual, or constructive notice of said case in which said judgement was rendered, nor did said Sim in person, or by attorney enter his appearance in said case and the said court then and there had no jurisdiction over his person, &c. 3d, That before the obtention of the said judgment said Sim paid said Pltff., all the amount mentioned in said power of Attorney, except \$1000, and after said Sim had removed from the State of Pennsylvania and become a resident of the State of Illinois, the said Frank well knowing the premises for the purpose of defrauding said Sim went into the said court of Pennsylvania and filed the said power of Attorney and caused and procured the entry of said judgment sued on for the whole sum of \$4000 debt and \$7 75 cts. without the appearance of Sim being entered in person or by attorney &c. Said Frank replied to said 2d plea, that the appearance of said Sim was entered in said cause by an Attorney of said court thereto lawfully authorized by said Sim &c. 2d, Replication to same plea, That the appearance of said Sim was entered in said cause by one John C. Mitchell an attorney duly authorized by said Sim to appear for him in said cause &c. 3d Replication to same plea substantially the same as the 2d, 4th, Do. Replication to 3d plea that judgment was obtained fairly, and not by fraud as alleged in that plea &c. Replication to 1st plea alleges there is such record as alleged in declaration &c.

Rejoinder traverses 1st, 2d, and 3d replications Demurrer to 4th replication was sustained by the court. The cause was tried by consent by the court. The plaintiff, below then introduced a transcript certified by the Prothonotary of the District court in Philadelphia, Pennsylvania of a judgment as follows:

"SAMUEL FRANK, Assignee, of William Primrose, } "D. S. B."
 vs. } "June 7, 1857."
 "WILLIAM SIM." } "No. 396."

"Judgment entered on Bond and Warrant of Attorney, dated October 16, 1855, for \$4000, conditioned for the payment of \$2000 in one year, from the date thereof, together with lawful interest to be paid half yearly for the same.
 "July 21, 1857, Judgment."

On same day was filed a power of Attorney, purporting to be signed by Sim, directed to John C. Mitchell or any Attorney of the Court of Common Pleas at Philadelphia, in the county of Philadelphia and State of Pennsylvania, or of any other Court there or elsewhere. It recites that Sim was indebted by obligation to Primrose in \$4000, conditioned to pay \$2000 in one year from October 16, 1855, with interest and if the same was not paid authorises such Attorney to confess Judgment for same in favor of Primrose, or his Assignee, &c.; also an assignment of said power of Attorney from Primrose to Frank. Then the Judgment proceeds as follows:

"And now July 21st, 1857, Judgment.
 "Whereupon it is considered by our said Court that said plaintiff do recover from the said defendant the sum of "four thousand dollars; also the further sum of seven dollars and seventy-five cents for his costs and charges by "him about his suit in that behalf expended whereof the said defendant is convicted as appears of record, &c., "and the said defendant in mercy, &c."

This was all the evidence, Court found for plaintiff. Sim thereupon moved for a new trial because the verdict was contrary to evidence and to law, which was overruled and exception taken at the time and judgment rendered against Sim for \$4000 debt, to be discharged upon the payment of \$2000 damage and interest from date of judgment and costs of suit. Sim thereupon brings the case to this court and assigns for error: 1st, The judgment is contrary to law. 2nd, Contrary to evidence.

Brief:

1 Where the record shows neither service of process, nor notice to the defendant, nor appearance by him, the judgment is a nullity when attempted to be enforced in another State, the record not affording even a presumption in favor of the jurisdiction. Remeler vs. Dawson, 4 Scam. R. 541, Smith vs. Smith, 17 Ill. R. 483, D'Arcy vs. Ketchum et. al., 11 How U. S. R. 165, 3 Gil. R. 200.

The deff in error refers to same authorities as above also to Purdous Digest Penna Statutes page No. - 465 sec 30
New: Bond of the for deff in error

2 No attorney appears to have entered Sim's appearance. 3. Judgments under powers of attorney are not to be favored as they may be entered when claim is partially paid, &c.

WM. H. UNDERWOOD, Att'y. for Pltff. in Error.

be located as they may be entered upon which is hereby held, &c.

Handwritten notes:
No return appears to have entered since appearance. 3 Indgments upon return are not to be located as they may be entered upon which is hereby held, &c.
The return appears to have entered since appearance. 3 Indgments upon return are not to be located as they may be entered upon which is hereby held, &c.

W. H. CALDWELL, JR., CLERK OF THE COURT.

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Where the record shows neither return of process nor notice to the defendant, not appearance by him, the return is contrary to law. See Contract to execute.

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Handwritten signatures:
William P. ...
Samuel Frank ...
Abraham ...

MR. WALLING

STANLEY BRYAN, Assignee, vs. ...

WILLIAM SIM,
 vs.
 SAMUEL FRANK, Assignee, &c. } ERROR FROM CLINTON COUNTY.

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Rejoinder traverses 1st, 2d, and 3d replications Demurrer to 4th replication was sustained by the court.

The cause was tried by consent by the court. The plaintiff, below then introduced a transcript certified by the Prothonotary of the District court in Philadelphia, Pennsylvania of a judgment as follows:

"SAMUEL FRANK, Assignee, of William Primrose, } "D. S. B."
 vs. } "June 7, 1857."
 "WILLIAM SIM." } "No. 396."

"Judgment entered on Bond and Warrant of Attorney, dated October 16, 1855, for \$4000, conditioned for the payment of \$2000 in one year, from the date thereof, together with lawful interest to be paid half yearly for the same.

"July 21, 1857. Judgment."

On same day was filed a power of Attorney, purporting to be signed by Sim, directed to John C. Mitchell or any Attorney of the Court of Common Pleas at Philadelphia, in the county of Philadelphia and State of Pennsylvania, or of any other Court there or elsewhere. It recites that Sim was indebted by obligation to Primrose in \$4000, conditioned to pay \$2000 in one year from October 16, 1855, with interest and if the same was not paid authorises such Attorney to confess Judgment for same in favor of Primrose, or his Assignee, &c.; also an assignment of said power of Attorney from Primrose to Frank. Then the Judgment proceeds as follows:

"And now July 21st, 1857, Judgment.

"Whereupon it is considered by our said Court that said plaintiff do recover from the said defendant the sum of four thousand dollars; also the further sum of seven dollars and seventy-five cents for his costs and charges by him about his suit in that behalf expended whereof the said defendant is convicted as appears of record, &c., and the said defendant in mercy, &c."

This was all the evidence, Court found for plaintiff. Sim thereupon moved for a new trial because the verdict was contrary to evidence and to law, which was overruled and exception taken at the time and judgment rendered against Sim for \$4000 debt, to be discharged upon the payment of \$2000 damage and interest from date of judgment and costs of suit. Sim thereupon brings the case to this court and assigns for error: 1st, The judgment is contrary to law. 2nd, Contrary to evidence.

Brief:

1 Where the record shows neither service of process, nor notice to the defendant, nor appearance by him, the judgment is a nullity when attempted to be enforced in another State, the record not affording even a presumption in favor of the jurisdiction. *Remeler vs. Dawson*, 4 Scam. R. 541, *Smith vs. Smith*, 17 Ill. R. 483, *D'Arcy vs. Ketchum et. al.*, 11 How U. S. R. 165, 3 Gil. R. 200.

2 No attorney appears to have entered Sim's appearance. 3. Judgments under powers of attorney are not to be favored as they may be entered when claim is partially paid, &c.

WM. H. UNDERWOOD, *Att'y. for Pltff. in Error.*

No 33

Nov. Term 1860

Sir

my

Friend Mr

Ernst Schuster

Rev. H. M. M. M. M.

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