No. 11864

Supreme Court of Illinois

Hough.

vs.

Leonard.

71641 7

David L. Hough
vs
Harvey Leonard

La Salle
106

11864

Prepaid

1851

David S. Hough ~~appell~~ Plff. in Error
v
Harvey Leonard Deft. in Error.

In Sup. Court 3d Grand Division

And now comes the said Plff. in Error by M. E. Hollister his atty, and says that in the Records & proceedings, and in the rendition of the Judgment aforesaid there is manifest error, to wit.

1st. That the said Circuit Court erred in overruling the motion of the Plff. in error, to dismiss the suit for want of jurisdiction in the Justice's Court.

2. In allowing deft in Error to amend his bill of particulars.

3. In rendering judgment in favor of deft. in Error

Wherefore he prays that the said Judgment may be set aside, reversed and wholly for nothing esteemed,

M. E. Hollister
Atty for Plff. in Error

And the said appellee Harvey Leonard comes & says there is no such error in said Record & proceedings and prays that said judgment be affirmed

Moore & Chenoweth
for appellee

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La Salle County Circuit Court April Term 1850

State of Illinois } Pleas before the Hon Theophilus L.
La Salle County } ss Dickey presiding Judge of the 9th
Judicial Circuit of the State of Illinois

as a term of said Court begun and held in & for the County of La Salle on Monday April 22d 1850. It being the Seventy fifth year of the Independence of the United States of America,

Present the Hon. Theophilus L. Dickey presiding Judge
Philo Lindley Clerk
Henry Heulbert Sheriff
B. W. Cook States Atty.

Be It remembered that heretofore to wit; on the 20th day of March 1850. David L. Hough the defendant in this suit filed the following Summons which was issued from the Court below & is in words & figures following to wit:

State of Illinois } The People of the State of Illinois
La Salle County } ss To any Constable of said County Greeting
You are hereby commanded to summon David L. Hough to appear before me at my office in La Salle on the 25 day of February 1850 at 10 o'clock A.M. to answer the complaint of Henry Seward for a failure to pay him a certain demand not exceeding one hundred dollars and have of make day return as the law directs. Given under my hand and seal this 19 day of February A.D. 1850

Warren Wate J.P. (Seal)

On back of said Summons was the following Endorsement — viz: Henry Seward vs David L. Hough Demand $50.00, Justice fees 75, Constable fees 30.

Served the within named defendant by reading to him

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on the 19th day of February 1850

James Cody Constable

Also on same day said defendant filed the following Transcript viz:

Harry Leonard
vs
David L. Vaugh

Judgment for plt. 50.00

Summons	.18¾
2 subpoenas	.37½
Docket	.12½
Judgment	.25
Const fees	1.25
witness fees	
R. Logsdell	.50
W. Ferguson	.50
T. B. Elliott	.50
8 oaths	.50
	$4.18
Appeal	.25
Transcripts	.25
Bond	.50

February 19. 1850
Issue Summons on an account
Returnable February 25 day at 10 o'clock A.M. to J. Cody Const
and issue subpoena on part of plt for Benjamin Foster, Thomas B. Elliott James McVaugh and William Whaley
Returnable Feb. 25 at 10 o'clock 1850
Summons returned served by reading to Deft. on the 19 day of Feb. 1850 by J. Cody Const. Subpoena returned served by reading to the within named witnesses J. Cody Const
Feb 23 issue subpoena on part of Plt. for Chester J. Harry Bartley Ferguson and William Reily returnable Feb 25 at 10 o'clock A.M. Subp returned served by reading the within named witnesses on the 23 day of Feb 1850 James Cody Const

February 25 at 10 o'clock parties appeared and trial issue and after hearing the testimony and allegations on behalf of Plaintiff Judgment is rendered in favor of plaintiff for fifty dollars and cost of suit

I hereby certify that the above and the ~~annexed~~ papers annexed are a true and perfect transcript of the proceeding had before me in the above cause

Defs filed his acct. at commencement

Warren Wade J.P. (Seal)

Defendant also filed his bond in words & figures following viz:

"Know All men by these presents that we David S. Hough & Wm Martin are held & firmly bound unto Harry Leonard in the penal sum of one hundred dollars lawful money of the United States for the payment of which well and truly to be made we bind ourselves our heirs and administrators jointly, severally & firmly by these presents Witness our hands and seals this 8th day of March 1850

The condition of the above obligation is such that whereas the said Harry Leonard did on the 25th day of February 1850 before Warren Wait a Justice of the peace for the County of La Salle recover a Judgment against the above bounden David S. Hough for the sum of fifty dollars & costs of suit from which Judgment the said David S. Hough has taken an appeal to the Circuit Court of the County of La Salle aforesaid & State of Illinois, now if the said David S. Hough shall prosecute his appeal with effect & shall pay whatever judgment may be rendered by the Court upon dismissal or trial of said appeal then the above obligation to be void, otherwise to remain in full force & effect.

David S. Hough (Seal)
Wm Martin (Seal)

Approved by me at my office
this day of March A.D. 1850
Warren Wait J.P. (Seal)

Also on same day (March 20th 1850) the summons was issued in words & figures following viz:

State of Illinois } The People of the State of Illinois to the
La Salle County } ss. Sheriff of said County Greeting:

We commend you to summon Harry Leonard if to be found in your County if not his agent or attorney personally to be and appear before the Circuit Court

of said County on the 1st day of the next term thereof to be holden at the Court House in Ottawa on the 22 day of April next to prosecute his suit which he instituted against David L. Hough and recovered Judgment before Hannah Wate a Justice of the peace of said County on the 25th day of February 1850 for the sum of $50.00 besides costs from which said Judgment the said David L. Hough has taken an appeal to the Circuit Court of said County and further to do and perform whatever said Court may then and there consider in the premises. And have you then and there this writ Witness Phile Lindley Clerk of said Court

Seal

and the seal of said Court at Ottawa this 20th day of March A.D. 1850

P. Lindley Clerk

The following is the return of the Sheriff on said Summ viz:

"Executed this writ by reading to Harry Leonard March 25th 1850 H. Faulkner Shff. R. Eaton Deputy Serv & retn 60 - 15 miles .75 = 1.35"

Filed March 25th 1850 P. Lindley Clk.

Afterwards to wit: on Monday April 22 1850 the following proceedings were had in said Court viz:

Harry Leonard
vs
David L. Hough

Appeal

This day the defendant entered a motion to dismiss this suit for want of Jurisdiction before the Justice in the Court below

And afterwards to wit on the 23 day of April the following further proceedings were had viz:

LaSalle Circuit Court April Term 1850

Harry Leonard
vs
David L. Hough

State of Illinois LaSalle County ss.
Harry Leonard plaintiff in this suit

being sworn says that William Martin whose name is signed to the appeal bond filed in this cause as security is as affiant is informed and believes utterly insufficient and that affiant will be in danger of losing his debt unless additional security is filed herein.

Subscribed & sworn to
this 23 day of April 1850

Henry Leonard

P. Lindley Clerk

And afterwards on the same day the following further proceedings were had that is to say

Henry Leonard
vs
Daniel L. Hough } Appeal

This day came the plaintiff by Chumasero his Atty. & the defendant by Hollister his Atty. & on motion of plaintiff it is ordered that defendant file additional security on the appeal bond herein or show cause to the contrary & that plaintiff have leave to amend his bill of particulars filed herein by striking out or endorsing specific credits to reduce his demand to the sum of fifty dollars.

The following is a copy of the amended appeal bond filed herein on the 23 of April 1850 viz:

"Know all men by these presents that we Daniel L. Hough & Wm Martin & G. A. Lindley are held & firmly bound unto Henry Leonard in the penal sum of one hundred dollars lawful money of the United States for the payment of which well & truly to be made we bind ourselves our heirs and administrators jointly, severally & firmly by these presents. Witness our hands and seals this 8th day of March A.D. 1850

The condition of the above obligation is

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such that whereas the said Henry Lemond did on the 25th day of February A.D. 1850 before Warren Wait a Justice of the peace for the County of LaSalle recover a Judgment against the above Defendant Daniel L. Keough for the sum of fifty dollars & costs of suit from which Judgment the said Daniel L. Keough has taken an appeal to the Circuit Court of the County of LaSalle aforesaid State of Illinois Now if the said Daniel L. Keough shall prosecute his appeal with effect & shall pay whatever Judgment may be rendered by the Court upon dismissal or trial of said appeal then the above obligation to be void. otherwise to remain in full force & effect

Daniel L. Keough (Seal)
Wm Martin (Seal)
G. A. Lindley (Seal)

Approved by me as my office this day of March A.D. 1850. Warren Wait J. P. (Seal)

And also on the 30th day of April the defendant by his Atty. filed his bill of Exceptions in words & figures following to wit

Henry Lemond
vs
Daniel L. Keough } Appeal from Justices Court April term A.D. 1850 LaSalle Co. Circuit Court.

Be it remembered that on the 22d day of April A.D. 1850 this cause came on to be heard by the Court upon motion of defendants Counsel entitle herein to dismiss the suit for want of Jurisdiction in the Justices Court

And thereupon the bill of particulars of the plaintiff herein filed in the Justices Court, and also in this Court of which the following is a copy, was shown to the Court here by the defendant viz:

Daniel L. Keough

To Henry Lemond Dr.

To services as agent of canal lands winter 1846 & 47 $40.00
" " do 1847 & 48 40.00

To 96 lights of sash 8 by 10 @ 5 cts 4.80
To 500 feet timber @ 4 cts 20.00
Dec. 18 ~~To cash~~ ~~9.03~~
To do 5.00

And the defendant also showed to the Court a paper containing a copy of the proceedings in part before the Justice of which the following is a copy viz:

Harry Leonard
vs
David L. Hough

In the above cause the plaintiff introduced Evidence tending to prove his claim set forth in his bill of particulars, and said that he rested his case for the present, not having allowed any credits to the defendant. Defendant made no defence, but moved for a non-suit for want of Jurisdiction in the magistrate. Plaintiff then offered to allow credits sufficient to reduce his demand aforesaid to one hundred dollars. Plaintiff was permitted so to do and motion of defendant for nonsuit was overruled by the Court. Defendant Excepted and asked that his bill of Exceptions may be signed & sealed by the Court which is done

Warren Wate J. P. Seal

LaSalle February 25th 1850

Whereupon the plaintiff asked leave of the Court him to amend his bill of particulars by striking out or endorsing specific credits to reduce his demand to fifty dollars and leave was granted by the Court to which decision of the Court in allowing the plaintiff to amend his bill of particulars the defendant herein Excepted. And thereupon an amended bill of particulars was filed herein by the plaintiff of which the following is a copy viz:

David L. Hough
To Harry Leonard Dr

To services as agent of Canal lands winter of 1846 & 47. $20.00
To do do winter of 1847 & 48 20.00

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To 418 feet timber @ 4 cts 16.72
" 96 lights sash @ 4 cts 4.80
$61.52

Cr.
By 56 cedar posts @ 12½ $7.00
" 31 lb. nails @ 6¼ 1.93
" 130 feet clear lumber 2 cts 2.60 $11.53
$49.99

Whereupon the motion of the defendants Counsel to dismiss this suit for want of Jurisdiction in the Justices Court was overruled by the Court to which opinion of the Court in overruling the said motion of the defendant the defendant herein excepts and prays that this his bill of exceptions might be signed sealed and made a part of the record which is done T. L. Jeffry Judge

And also on the same day the following further proceedings were had in said cause to wit

Henry Leonard
v
David L. Hough } Appeal
On motion of defendant it is ordered that he have leave to file an additional appeal bond herein.

The following is a copy of the appeal bond filed herein on the 30th of April 1850 to wit:

"Know all men by these presents that we David L. Hough & William H. W. Cochrane are held & firmly bound unto Henry Leonard in the penal sum of one hundred dollars lawful money of the United States for the payment of which well & truly to be made we bind ourselves our heirs & administrators jointly & severally by these presents witness our hands & seals this 24th day of April A.D. 1850

The condition of the above obligation is such that

whereas the said Henry Seymour did on the 25th day of February A.D. 1850 before Warren Wate a Justice of the peace in & for the County of LaSalle recover a Judgment against the above bounden David L. Hough for the sum of fifty dollars & cents of suit from which Judgment the said Hough has taken an appeal to the Circuit Court of the County of LaSalle & State of Illinois. And whereas the said Hough did procure the signature of one Wm Martin upon his appeal bond who signed said bond as security thereon. to which security exceptions having been taken by said Seymour & it being adjudged by said Court that further security be given by said Hough. Now therefore if the said Hough shall prosecute his appeal with effect & shall pay whatever Judgment may be rendered by the Court upon dismissal or trial of said appeal then the above obligation to be void otherwise to remain in full force & effect.

David L. Hough (Seal)
Wm H. W. Cushman (Seal)

And again on the 4th day of May the following further proceedings were had viz:

Henry Seymour
vs
David L. Hough } Appeal

This day again come the parties hereto by their respective Attys & also the following Jurors of a Jury viz: W. S. Gibson, Justus Harris, L. D. Cowaly, A. B. Butterfield, Chas Ryder, A. F. Wagner, B. B. Reynolds, D. W. Fleter, A. Hoff, Lyman Waterman, Olivers Ligler, and Josiah Denny, who were elected tried & sworn to well & truly try the issues herein & after hearing the evidence & arguments of counsel the Jury retired to consider of their verdict & after due deliberation thereon had returned into Court the following verdict viz: We the Jury find the issues for the plaintiff & assess his

damages at forty eight dollars & fifty six cents & thereupon the defendant entered a motion for a new trial.

On the 9th of May 1850 & before the retiring of the Jury the following instructions were given to the said Jury on the part of the defendant viz:

If the Jury believe from the testimony that the plff. was in the service of the Board of Trustees of the Ills & Michigan Canal as canal agent, and not in the employment of deft then the deft is not liable for such services.

Given

If the Jury believe from the testimony that local agents for the protection of the canal lands are paid usually for their services by the Board of trustees of the Illinois & Michigan Canal as such local agents, this raises the presumption in want of other proof that such local agents were in their employ.

Given

And on the 10th day of May 1850 the following final proceedings were had in this cause to wit:

Henry Sercard
vs
David L. Hough

Appeal

It is ordered by the Court that the motion herein for a new trial be overruled. It is therefore considered that the plaintiff have & recover from the defendant the sum of forty eight dollars & fifty six cents for his damages & his costs & charges by him herein expended & that he have execution therefor.

State of Illinois }
La Salle County } ss

I, Phils. Lindley Clerk of the Circuit Court within for said County do hereby certify the foregoing to be a true and complete copy of the record of the proceedings in the foregoing cause as the same appear of record on file in my office

In testimony whereof I have hereunto set my hand and affixed the seal of said Court at my office in Ottawa this 1st day of July A.D. 1850

P. Lindley Clerk

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Harvey Conant
vs
David L. Keogh
Transcript

Filed July 17. 1850.
L. Leland Clk.

$3.35

Know all men by these presents that we David L Hough and John V. A Hoes of the county of LaSalle & State of Illinois, are held and firmly bound unto Harry Seward in the penal sum of ~~Three~~ One hundred Dollars lawful money of the United States, to which payment well and truly to be made, we bind ourselves, our heirs, executors and administrators jointly & severally, firmly by these presents, Sealed with our seals. Dated this 19th day of July A D 1850.

The condition of this obligation is such, that whereas at the April Term of the Circuit Court of ~~Ro~~ LaSalle County for the year A D 1850 the said Court rendered a judgment in favor of the said Harry Seward for the sum of forty Eight dollars and fifty five cents, and costs of suit, in a proceeding in which the said David L. Hough was defendant, and the said Harry Seward was plaintiff

And whereas the said defendant has sued out a writ of Error from the Supreme Court of the State of Illinois for the third Grand Division at Ottawa, to the Circuit Court of La Salle County aforesaid, for the purpose of reversing the said judgment, which said writ is to be made a supersedeas, upon the condition that the said David L Hough & John V. A Hoes do enter into bond in the sum of One hundred Dollars as the law Directs.

Now therefore, if the said defendant in the said suit in the said Circuit Court shall well and truly prosecute his said writ of Error, and if the said David L Hough shall pay whatever judgment may be rendered against him, and all costs, interest & damages in case the said judgment shall be affirmed in the said Supreme court, then the above obligation to be void, otherwise the same is to be and remain in full force

David L. Waugh
v
Henry Leonard
Bond

Filed July 19. 1850.
L. Leland Clk.

David D. Waugh (Seal)
S. H. Hitt (Seal)

and effect.

State of Illinois, Sct.

The people of the State of Illinois,

To the Clerk of the circuit court for the county of La Salle — Greeting:

BECAUSE in the record and proceedings, as also in the rendition of the judgment of a plea which was in the Circuit Court of La Salle — county, before the Judge thereof, between Harvey Leonard —

plaintiff and David K. Hough

defendant it is said manifest error hath intervened to the injury of the aforesaid Hough as we are informed by his complaint, and we being willing that error, if any there be, should be corrected in due form and manner, and that justice be done to the parties aforesaid, command you that if judgment thereof be given, you distinctly and openly without delay, send to our Justices of the Supreme Court the record and proceedings of the plaint aforesaid, with all things touching the same, under your seal, so that we may have the same before our Justices aforesaid at Ottawa, in the county of La Salle, on the second monday in June — next, that the record and proceedings, being inspected, we may cause to be done therein, to correct the error, what of right ought to be done according to law.

WITNESS, the Hon. Samuel H. Treat — Chief Justice of our said Court, and the seal thereof at Ottawa, this 19th day of July — in the year of our Lord one thousand eight hundred and forty—

K. Leland
Clerk of the Supreme Court.

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David L. Hough
vs
Harvey Leonard

Writ of Error

This writ of error is made a Supersedeas & is to be obeyed accordingly —
L. Leland Clk.

Filed July 19. 1850.
L. Leland Clk.

SCIRE FACIAS.—FREE TRADER OFFCE, OTTAWA.

State of Illinois, } SS.
Supreme Court,

The People of the State of Illinois

TO THE SHERIFF OF La Salle County.

Because in the record and proceedings, and also in the rendition of the judgment, of a plea which was in the circuit court of La Salle county, before the Judge thereof, between Harvey Leonard plaintiff, & David K. Haugh

defendant it is said that manifest error hath intervened to the injury of the said Haugh

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

that he be and appear before the Justices of our said Supreme Court, at the next term of said Court, to be holden at Ottawa, in said State, on the 2d Monday in June next, to hear the records and proceedings aforesaid, and the errors assigned, if he shall think fit; and further to do and receive what the said Court shall order in this behalf; and have you then there the names of those by whom you shall give the said Harvey Leonard notice, together with this writ.

WITNESS, the Hon. Samuel H. Treat
Chief Justice of our said Court, and the seal thereof, at Ottawa, this 19th day of July in the year of our Lord, one thousand eight hundred and forty.

K. Leland
Clerk of the Supreme Court.

[11864-11]

David V. Haugh
vs
Harvey Leonard

Scire Facias

To June Term 1881.

Executed this writ
by reading to H. Leonard
Sept 25 1880
Sept 26
W. Hurlbut Shff
By D. Goodwerth

Serg & Ret 60
15 miles 75
135

~~Filed September 27 1880~~
~~V. Leland Clk~~

Filed Oct. 8. 1880.
V. Leland Clk.

State of Illinois, ss.

Clerk's Office of the Supreme Court—Third Grand Division:

I HEREBY CERTIFY, That a Writ of Error hath issued from this office, for the reversal of a Judgment obtained by Harvey Leonard against David L. Haugh in the Circuit Court of La Salle county, at the April Term, in the year of our Lord one thousand eight hundred and fifty in a certain ~~action of~~ suit appealed from a justice of the Peace which Writ of Error is to operate as a Supersedeas, and as such is to be obeyed by all concerned.

Given under my hand, and the Seal of the said Supreme Court, at Ottawa, this 19th day of July A. D. 1850.

L. Leland *Clerk of the Supreme Court.*

[11864-10]

David L. Hough
vs
Harvey Leonard

Supersedeas

Executed this writ
by reading to Philo Lindley
Clerk of the Circuit Court
of LaSalle County
July 19, 1850
H. Hurlbut Shff
R. E. Goodell Dy

Serg't Fee 60
1 Writ 5
65

Filed July 19. 1850.
Leland Clk.

In Sup. Court 3d Grand Div. June Term 1857.

David L. Hough
vs
Harvey Leonard. } In Error to LaSalle.

Errors assigned.

1st Overruling motion of Pltff. to dismiss for want of jurisdiction in the Justice's court.

2d Allowing deft. in Error to amend bill of particulars

3d Rendering Judgt. in favor of deft. in Error.

Abstract of Record.

1st That deft in Error, who was Pltff. below, brot suit before Warren Wait a Justice of the Peace, upon the following claim. viz.

David L. Hough,
To Harvey Leonard Dr.

To services as agent of Canal Sands, winters 1846, 1847,	$40.00
" " " " " 1847, & 48.	40.00
" 96 Lights of Sash 8 by 10. @ 5 cts.	4.80
" 500 feet lumber	20.00
" Cash	5.00

2d That Pltff. below introduced evidence tending to prove the above claim & rested his case, not having allowed any credits, upon which Deft. below made no defense, but moved for a non-suit for want of jurisdiction in the magistrate. Pltff. then offered to allow credits so as to reduce his demand aforesaid to $100. Justice allowed him to do so, and overruled deft's motion for a non-suit, and judgt. was

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rendered against deft. for $50.00 the amt. endorsed on the back of the Summons.

3. That deft. appealed to the La Salle Cir. Court, in which was filed the pltffs bill of particulars as above set forth, with other papers sent up by the Justice, & filed by the deft.

4 That when the case came on to be heard in the Cir. Court, deft. made his motion to dismiss the suit for want of jurisdiction in the Justice, as appeared by the pltffs bill of particulars, upon which Pltff interposed a cross-motion to amend his bill of particulars, by striking out or endorsing specific credits to reduce his demand to fifty dollars, which cross motion was allowed, whereupon the Pltff filed his amended bill of particulars, of which the following is a copy. viz.

David L Hugh

To Harry Leonard Dr

To Services as agent of Canal lands, winters of 1846 & 47			$20.00
" " " " " " 1847 & 48			20.00
" 418 feet of timber	c. 4 cts		16.72
" 96 Lights Sash	c. 4 cts.		4.80
			$61.52

Cr.

By 56 cedar posts	c 12½	$7.00	
" 31 lbs. nails	c 6¼	1.93	
" 130 feet clear Lumber	2 cts.	2.60	$ 11.53
			49.99

Upon which filing, defts motion to dismiss for want of jurisdiction was overruled.

5 That a trial was had by a jury, a verdict returned that the Plff. recover for his damages $48.55 and final judgt. for that amt. with costs was rendered by the Cir. Court,

The following points & authorities are relied upon by Plff. in Error for a reversal of the judgt. below. viz.

1 The jurisdiction of the justice is not determined from the Process.
Bees 263 - 2 Gil: 335 11th Ill. R. 501 -

2 The jurisdiction is determined from the declaration or statement of the pltffs claim.
Nelson v Daniel 1 Cond. R. 185. Sayers vs Scudder Pennington R 38. top paging - Price vs Smock Penn. R 150. Sanders vs Stratton Do - 398 - Colwell vs Parcell Do 420 - Rice vs Oppenimo Do. 488. all top paging. Eacint vs Keen 1 Southard 203, Cahill vs Dolph 1 Johns. Cases 333 - Bowditch vs Salisbury 9 Johns. 365. 6th Vermont R 91 12 Verm. 595 - Bees 263 - 1 Scam. 28 - Do. 137 - 168 - 198 - 575 - Newland vs Nees 3 Blackford 460. and is not determined from the verdict. 4 J. J. Marsh: 242 - 1 U.S. Cond Rep. 185 - 2 U.S. Suppl. Digest Page 252 - Sec. 107 - 12 Vermont 597 - 1 Scam. 138

3 The pltff's bill of particulars or statement of his demand, constitutes his claim under our Stat. Rev. Stat. p.p. 315-16. Sec. 17, 18. & stands for a declaration. 3 Scam. 195. 12 Vermont 597

The demand on back of the summons is not a statement of his claim or demand. 5 Blackf. R. 97 11th Ill. R. 619.

4 Justices cannot try causes unless the amt. claimed to be due comes within their jurisdiction & this jurisdiction must appear 1st. where the amt. claimed to be due originally did not exceed $100 & 2d. where the amt. in controversy on unsettled accounts, originally exceeded $100, but has been reduced to that sum by fair credits.

Rev. Stat. p.p. 315. 316. Sec. 17, 18.
1 Scam. 168. 575. 2d Scam. 475.

5. Fictitious credits cannot be entered in order to reduce the demand within a justice's jurisdiction.

1 Scam. 168. 575. 1 South. 104. 203. 220. Penn. 38. 150. 398. 420. 488. top paging. 2 U. S. Supp. Digest p 252. Sec. 108. Rev. Stat. p 316. Sec. 18.

6 Jurisdiction cannot be conferred by the act of the party.

1 South. 205. 1 Scam. 168. 576.

7 If the justice had no jurisdiction the Cir. Court acquired none.

2 J. J. Marsh: 29. 6 Verm: 94. 12 do 597. 3 Gil. 594.

8 If the Cir. Court acquired no jurisdiction, its decision in allowing the pltff. below to amend his bill of particulars was erroneous, because its proceedings were coram non judice,

6 Vermont. 94. 12 Do. 597. 2 Cow. Treat. 30 & cases there cited.

and its proceedings being coram non judice, were void & hence the verdict against pltff in error is erroneous & the judgt. of the Cir. Court ought to be reversed.

2 Cow. Treat. 30 & cases there cited,

[1864-14]

David L. Hough

vs

Nancy Leonard

Plff's

Abstract & Brief

Filed June 21. 1884.

L. Leland Clk.

2 cop.

[57-47813]