29/18

July 1844 #52

Auguste Guelbreth
vs
Watson + Hildenburn
St. Louis County

} ownership of promissory notes
1 for $350
1 for $359

In the Supreme Court of Missouri
July Term 1844

Auguste Guelberth
vs
James Watson & Joseph H Hildeburn

And the said appellant defendant below says that there is error in the record and proceedings in this cause.

That the court below erred in overruling motion to dismiss.

And that the Court below erred in overruling motion to set aside judgement and grant new trial

Wherefore the said appellant prays that the judgement of the said St Louis Circuit Court be reversed &c

Geo. W Callahan
Atty for ~~[illegible]~~ Appellant
by A Beatty.

Watson & Hildeburn
Ats
A. Guelberth

Appeal from St Louis Circuit Court and the said appellees come and says that there is no error in the record and proceedings in the above entitled cause, nor did the court below err in any of the particulars set forth in the ~~same~~ above assignment of errors. and hereof they submit themselves to the judgment of the court

Th T Gantt for appellees.

110.

In the Supreme Court
July Term 1844

On appeal from St Louis
Circuit Court

Augusta Guelberth
vs
James Watson &
Joseph H Heldeburn

Assignment of errors
by Augusta Guelberth
appellant

Filed July 10 1844
H. L. Boon clk

Joinder filed July 25.
1844 H. L. Boon Clk.
Callahan Atty for Appellant

Auguste Guelberth
vs
Watson & Hildebrun } In the Supreme Court of the State of Missouri. July Term 1844.

The said parties by their attorneys agree that the transcript of the "record hereto annexed is the true copy and exemplification of the proceedings in the above entitled Cause. And the annexed transcript differs from that heretofore filed in this cause in this, that it contains the following entry "And annexed to said writ of summons were copies of the above mentioned notes in the words and figures following to wit "$350 $\frac{62}{100}$. St Louis June 24th 1842. Seven months after date I promise to pay to the order of Watson & Hildebrun Three hundred & fifty $\frac{62}{100}$ dollars for value received negotiable and payable without defalcation or discount with the current rate of exchange in Philadelphia when due.

Due Jan. 24/27. 1843 ~~X~~. 359 = Auguste Guelberth

$ 356 $\frac{89}{100}$ St Louis June 24th 1842. ~~Nonth~~ Nine months after date I promise to pay to the order of Watson & Hildebrun Three hundred and fifty Six $\frac{89}{100}$ dollars for value received, negotiable and payable without defalcation or discount with the current rate of exchange on Philadelphia when due

Due March 24/27. 1843. ~~X~~ 360 # Auguste Guelberth"

which entry was omitted in the transcript heretofore filed in this cause. And this agreement is made in order to dispense with the necessity of bringing the annexed record by certiorari or a writ of diminution.

Thomas F. Gantt
attorney for appellees.

Geo W Callaham by A Batty
attorney for appellant

1)

State of Missouri, County of St. Louis, Ss. Be it remem-
-bered that heretofore, to wit, on the thirtieth day of March in
the year of our Lord, eighteen hundred and forty-three were filed
in the office of the Clerk of the Circuit Court within and for
said County, two notes in the words and figures following, to
Notes. wit: "350.$\frac{62}{100}$ St. Louis June 24th 1842. Seven months af-
-ter date I promise to pay to the order of Watson & Hildeburn
Three hundred & fifty $\frac{62}{100}$ dollars for value received, negotiable
and payable without defalcation or discount, with the current
rate of exchange on Philad^a when due _____
Due Jany 24/27 1843. #359 _____ "Auguste Guelberth." _____
#413 "$356.$\frac{89}{100}$ St. Louis June 24th 1842, Nine months after date,
I promise to pay to the order of Watson & Hildeburn Three hun-
-dred and fifty six $\frac{89}{100}$ Dollars, for value received, negotiable
and payable, without defalcation or discount with the current
rate of Exchange on Philadelphia when due _____
Due March 24/27 1843. _____ "Auguste Guelberth." _____
#360.
And afterwards, to wit, on the same day & year (30th March
1843) a Summons was issued in the words and figures
Summons 3/30 following, to wit: The State of Missouri, To the Sheriff of
St. Louis County — Greeting: We command you to Summon
Auguste Guelberth that he be and appear before the Judge of
our Circuit Court, on the first day of the next term thereof, to be
held at the City of St. Louis, within & for the County of St.
Louis, on the Third Monday of April next, then and there to
answer unto the demand of James Watson & Joseph Howell
Hildeburn on two promissory notes made by the said Auguste
Guelberth, copies of which are hereunto annexed. And have
you then there this writ. (Seal.) Witness, John Ruland, Clerk
of our said Court, with the Seal thereof hereto affixed,
at office, in the City of St. Louis this 30th day of March

in the year of our Lord, eighteen hundred and forty-three, I. Ru-
land Clerk By W. H. Pritchart D. C." * upon which Summons
Shff's. Return. is the following Sheriffs return, to wit: "Executed this writ in
the County of St. Louis on the 31st day of March 1843 by offering
to read it and the ~~declaration~~ copies of the notes to Auguste
Guelberth, the within named defendant which he refused to hear.
William Milburn Sheriff by W. Decker Dpty". Service $1.00.
And afterwards, to wit, on the Third day of May, year last
aforesaid (1843) the following proceedings were had in said
14-8 cause, to wit: "James Watson & Joseph H. Hilderburn vs.
Auguste Guelberth, Now at this day comes the defendant
by his Attorney, and moves the court to dismiss this cause,
for reasons herein filed", in the words and figures following,
Reasons. to wit: "And the said defendant, comes and moves the
Court to dismiss this cause, for the following reasons, to wit:
1st Because it does not appear that the legal owner or owners
of said notes or either of them filed them or either of them in
the office of the Clerk of this Court. 2d Because it does not
appear that this suit was instituted by the legal owner or
owners of said notes or of either of them. 3d Because it does
not appear by whom this suit was instituted. 4th Because
if said suit was instituted by an Attorney or Attorneys, for
the plaintiffs, he or they have not written, subscribed or signed
their names on or to any of the papers therein. 5th. Because
it does not appear from or by said notes or either of them
or otherwise that the plaintiffs are, as mentioned in the
writ, the legal owners thereof. 6th. Because the alleged copy
of the notes mentioned in the writ is not properly and suffi-
-ciently identified as that of the notes aforesaid. 7th Be-
-cause there is no sufficient certificate that copies of the notes
aforesaid are annexed to said writ. 8th. Because copies of
said notes do not appear to be annexed to said writ or

* And annexed to said writ of Summons were copies of the above mentioned notes in the words and figures following to wit;

"350.$\frac{62}{100}$ St Louis June 24th 1842. Seven Months after date I promise to pay to the order of Watson & Hildeburn, Three hundred & fifty $\frac{62}{100}$ dollars for value received, negotiable and payable without defalcation or discount, with the current rate of exchange in Philadelphia when due.

Due Jany 24/27 1843. #359 "Auguste Guelberth"

$356.$\frac{89}{100}$ St Louis June 24th 1842. Nine Months after date I promise to pay to the order of Watson & Hildeburn Three hundred and fifty six $\frac{89}{100}$ dollars, for value received, negotiable and payable, without defalcation or discount with the current rate of exchange on Philadelphia when due

Due March 24/27 1843, #360. "Auguste Guelberth"

Protested for non-payment January 27th 1843 Jas. McNeil Notary Public

Surrender Four hundred and thirteen

$356.89

summons. Geo. W. Callahan, Defts Atty. 9th Because the act under which said suit was instituted, is unconstitu=tional Geo. W. Callahan, Defts. Atty". And afterwards, to wit: on the fifth day of May, eighteen hundred and forty-three, the following further proceedings were had in said cause, to wit: "James Watson & James H. Hildeburn vs. Auguste Guelberth On Motion of the Plaintiffs Attorney leave is given the She=riff to amend his return on the writ herein, which is done". And afterwards on the Seventh day of July, year last aforesaid the following further proceedings were had in said cause, to wit: James Watson and Joseph Howell Hildeburn vs. Auguste Guelberth. On Notes. Now at this day come the parties by their Attorneys and thereupon the motion of the said defendant to dismiss this suit is sub=mitted to the Court, which being seen, heard and fully un=derstood. It is ordered that the same be overruled, and leave is given the defendant to plead herein". And afterwards, to wit, on the Fifth day of December, year last aforesaid, the following further proceedings, were had in said cause, to wit: "James Watson & Joseph Howell Hildeburn vs. Au=guste Guelberth. On Two notes, Now at this day comes the Plaintiffs by their Attorney and the defendant although demanded comes not but makes default nor has he pleaded to the demand of said plaintiffs wherefore they ought to reco=ver against him, & It appearing to the satisfaction of the Court from the notes herein, which are as follows" — "$350.62/100 St. Louis June 24th. 1842, Seven Months after "date, I promise to pay to the order of Watson & Hildeburn "Three Hundred and fifty 62/100 Dollars, for value received, "negotiable and payable without defalcation or discount, "with the current rate of Exchange on Phild.a when due. "Auguste Guelberth. due Jany 24/27 1843". Endorsed, "Protested for non-payment January 27. 1843. fee 2.25 Jos. McNeil, No=

-tary Public." "$356 $\frac{89}{100}$ St. Louis, June 24th. 1842, Nine "months after date I promise to pay to the order of Watson "& Hildeburn, Three hundred & fifty-six $\frac{89}{100}$ Dollars, for va=-lue received, negotiable and payable, without defalcation "or discount, with the current rate of exchange on Philadel=-phia when due. Auguste Guelberth. Due March 24/27, "1843, endorsed number four hundred and thirteen $356 $\frac{89}{}$" that said defendant is indebted to said Plaintiffs in the sum ~~of Sum~~ of Seven Hundred and Seven Dollars and fifty-one cents and that said Plaintiffs have sustained damage by reason of the detention of said debt to the amount of Thirty Two Dollars and ninety Cents. It is therefore considered by the Court that said Plaintiffs reco=-ver of said defendant their debt and damages aforesaid in form aforesaid by the Court found and assessed together with their costs and charges in this behalf expended and have thereof execution." And afterwards, to wit, on the Third day of January, eighteen hundred and forty four, the following further proceedings were had in said cause, to wit: "James Wat=-son & Joseph H. Hildeburn vs. Auguste Guelberth*: "And the said Defendant moves the Court to set aside the judg=-ment herein, for irregularity, for the following reasons, among others, to wit, First, That the Motion to dismiss this cause was overruled. Second, That the damages are assessed by the Court. Third, That at the time it was premature and in=-competent to give final judgment. Fourth, that the said cause was never set or docketed for trial. Fifth, That the proceedings in this cause were such as directly to preclude a trial by jury, and were in other respects utterly contrary to law. Geo. W. Callahan Deft's Atty." And afterwards, to wit, on the Twelfth day of January, year last aforesaid (1844) the following further pro=-ceedings were had in said cause, to wit: "James Watson and

* "Motion to set aside Judgment filed" which motion is as follows, to wit:

14-325

(A) And afterwards, to wit, on the Sixth day of December, in the year eighteen hundred and forty three, an execution was issued in the words and figures following, to wit: "County of St. Louis Set: The State of Missouri, To the Sheriff of the County of St. Louis, Greeting; Whereas James Watson & Joseph Howell Hildeburn on the Fifth December 1843 at our Circuit Court, before our Judge thereof, recovered against Auguste Guelberth the sum of Seven hundred and seven dollars, and fifty-one cents for their debt, also thirty-two dollars and ninety cents for their damages by them sustained by reason of the non-performance of the promises and undertakings in their declaration mentioned together with their costs and charges by them about their suit in this behalf expended which to the said James Watson & Joseph Howell Hildeburn were adjudged, as appears to us of record: These are therefore to comm and you, that of the goods and chattels, lands and tenements of the said Augeste Guelberth in your bailiwick, you cause to be made the aforesaid debt damages and costs; that you have the same before the Judge of our said Court, on the third Monday of April next, to render to the said John Watson & Joseph Howell Hildeburn the debt, damages and costs aforesaid. And that you certify to our said Judge how you execute this writ; and have you then there this writ. (Seal.) Witness, John Ruland, Clerk of our said Court, at St. Louis, the Sixth day of December in the year of our Lord, one thousand eight hundred and forty-three. John Ruland, Clerk, C.C. — Endorsed on the above execution is the Sheriffs' return in words & figures following,

Shff's return. to wit: "In this case an appeal having been taken by the defendant to the Supreme Court of the State of Missouri this writ, is therefore returned accordingly. William Milburn Shff. By Henry B. Belt, Depty. fee $1.00".

2.)

Joseph H. Hildeburn vs. Auguste Guelberth. Now at this day come the Plaintiffs by their Attorney, and thereupon the Motion of said Defendant to set aside the Judgment heretofore ren=dered in this cause, is submitted to the Court, which being seen heard and by the Court here fully understood, it is ordered that the same be overruled". And afterwards, to wit, on the twenty-Seventh day of March, year last aforesaid (1844) the following further proceedings were had in said cause, to wit: "James Watson & Joseph Howell Hildeburn vs. Auguste Guelberth Petition on Notes. Now at this day comes the Defendant by his Attorney, and Files a Bill of Exceptions and an Affidavit herein, and on his motion an appeal is granted him from the judgment rendered in this cause, to the Supreme Court; whereupon said Au=guste Guelberth as principal and Joseph Philibert and Legrand F. Rucker, as Securities, acknowledge themselves indebted unto said Plaintiffs in the Sum of One Thousand, five hundred dollars, to be levied of their respective goods and chattels, lands and tene=ments, to be void upon condition that said Defendant shall pros=ecute this appeal, now taken, with due diligence to a decision in the Supreme Court, and that if the judgment appealed from is affirmed or the appeal dismissed, he will pay what=ever of ~~costs~~ debt, damages and costs have been recovered against him by the judgment of the Circuit Court, together with the interest that shall grow due thereon, or that he will otherwise perform the judgment of the Circuit Court, and that he will pay the costs and damages that may be adjudged against him in the Supreme Court upon this Appeal, other=wise this recognizance to be and remain in full force and virtue". The affidavit refered to above, is as follows, to wit:—

4-461

Affidavit 3

"In the St. Louis Circuit Court, April Term, 1843, Watson & Hildeburn vs. Auguste Guelberth. The said defendant Auguste Guelberth, being sworn on his oath states that

the appeal in this cause by him, is not made of vexation or delay, but because the defendant believes that he is aggrieved by the judgment of the court; and the said appeal is sought to be taken that justice may be done. Auguste Guelberth, Sworn to and subscribed in open Court March 27. 1844 John Ruland Clerk". The Bill of Exceptions is in the words and figures following, to wit: "In the St. Louis Circuit Court April Term, 1843, Watson & Hildeburn vs. Auguste Guelberth, Be it remembered that within the sixteen first days of the April Term 1843, to which this cause was returnable, the defendant made & filed a motion to dismiss the suit, in the words and figures following": "In the St. Louis Circuit Court April Term, 1843. Watson & Hildeburn vs. Auguste Guelberth. And the said defendant comes and moves the Court to dismiss this cause, for the following reasons, to wit: 1st. Because it does not appear that the legal owner or owners of said notes or of either of them ~~is~~ filed them or either of them in the office of the Clerk of this Court. 2d Because it does not appear that this suit was instituted by the legal owner or owners of said notes or of either of them. 3d Because it does not appear by whom this suit was instituted. 4th Because if said suit was instituted by an Attorney or Attorneys, for the Plaintiffs, he or they have not written, subscribed or signed their names on or to any of the papers therein. 5th Because it does not appear from or by said notes or either of them or otherwise that the plaintiffs are, as mentioned in the writ, the legal owners thereof. 6th. Because the alleged copy of the notes mentioned in the writ is not properly and sufficiently identified as that of the notes aforesaid. 7th Because there is no sufficient certificate that copies of the notes aforesaid are annexed to said writ. 8th. Be-

Bill of Excep.

Motion to dismiss.

=cause copies of said notes do not appear to be annexed to said writ or summons. Geo. W. Callahan, Defts' Atty. 9th. Because the act under which said suit was instituted, is unconstitutional. Geo. W. Callahan, Defts. Atty." —— "That the Court overruled said motion. And that the Defendant excepted thereto. And be it further remembered, That, on the fifteenth day of the November term thereafter, to wit, on the fifth day of December, 1843, on the trial of the case, the plaintiffs gave in evidence two promissory notes in the following words and figures" ——

Continuan of Bill of Exceptions.

Notes.

"$350 $\frac{62}{100}$ St. Louis June 24th 1842 Seven months after date, I promise to "pay to the order of Watson & Hildeburn ——
"Three Hundred and fifty —— $\frac{62}{100}$ Dollars —
"for value received, negotiable and payable without defalcation "or discount, with the Current rate of Exchange on Philada. "when due ./. —— ——
"Due Jany 24/27 1843" —— "Auguste Guelberth." ——

Protested for Non-payment. January 27. 1843 Dec 12 25 Sec Neil. Notary Public

#359

#413

"$356 $\frac{89}{100}$ —— St. Louis, June 24th 1842. Nine months "after date I promise to pay to the order of Watson & Hildeburn "Three hundred and fifty-six —— $\frac{89}{100}$ Dollars, for "value received, negotiable and payable, without defalcation or "discount, with the Current rate of Exchange on Philadelphia "when due ./." ——

Number Four hundred and thirteen

$356 89

"Due March 24/27. 1843." —— "Auguste Guelberth". ——

#360

Continuation of Bill of Exceptions.

"That no other evidence was offered. And that the Court gave judgment for the plaintiffs. And be it further remembered, that within five years afterwards, to wit, on the third day of January, 1844, the defendant made and filed a motion to set aside said judgment for irregularity in the words and figures, following:

Motion to set aside.

"In the St. Louis Circuit Court, April Term, 1843. Watson & Hildeburn vs. Auguste Guelberth, And the said defendant moves the Court to set aside the judgment herein, for irregularity, for the following reasons among others, to wit: First, That the

motion to dismiss this cause was overruled. Second, That the damages are assessed by the Court. Third, That at the time it was premature and incompetent to give final judgment. Fourth, That the said cause was never set or docketed for trial. Fifth, That the proceedings in this cause were such as directly to preclude a trial by jury, and were in other respects utterly contrary to law. Geo. W. Callahan, Defts. Atty." That the Court overruled said motion to set aside. And that its decision therein was excepted to by the defendant; who now asks to have this Bill of Exceptions made a part of the record. Bryan Mullanphy (Seal) Judge 8th Jud. Cir. of Mo."

Continued of Bill of Exceptions.

State of Missouri, County of St. Louis, Ss:

I, John Ruland, Clerk of the Circuit Court, within and for said County, Certify the foregoing to be a true, full and correct copy of the Record and Proceedings, in the above cause, as the same now remain of record and on file in my Office.

In Testimony whereof, I hereto set my hand and affix the Seal of said Court, at office, in the City of St. Louis, this twenty seventh day of April, in the year of our Lord, One Thousand, eight hundred and forty-four.

J. V. Ruland Clerk

~~114~~. (52)

James Watson & Joseph Howell Hildeburn, vs. (Transcript.) Auguste Guelberth.

Filed July 25. 1844
H. L. Boon clk

Exd Transc.t $3.37½/100

Guelberth v. Watson & Hildeburn

Appeal from Cal. of Illinois

~~The plain~~ Watson and Hildeburn filed in the office of the Clerk of the Circuit Court of Illinois, two notes, of the following tenor "350. $\frac{62}{100}$. Illinois June 24th 1842. Seven months after date I promise to pay to the order of Watson & Hildeburn, three hundred and fifty ~~dollars~~ $\frac{62}{100}$ dollars for value received, negotiable & payable without defalcation or discount, with the current rate of exchange on Philad.a when due. August Guelberth" Due Jany 24 1843 $ 359 — The second note was for $ 356.89, due nine months after date & payable with the current rate of exchange on Philada. when due. The clerk issued a summons, accompanied with a copy of the notes, which was duly served. At the return term, the defendant, Guelberth, appeared & filed a motion to dismiss the cause, because

1. It did not appear that the legal owners of the notes filed them

2. It did not appear by whom the suit was instituted

3. It did not appear that the legal owner instituted the suit

4. Because ~~the~~ no attorney's name are subscribed to any of the papers

5. Because it does not appear from the notes, that the plaintiffs are the legal owners thereof, as mentioned in the writ

6. 7. 8. Similar causes alleged

9. Because the act, under which suit was instituted is unconstitutional.

The motion to dismiss was overruled and the case continued until the next Term, at which time, no defence being made, ~~the court gave judgment~~, and it appearing to the satisfaction of the court from the notes, that the defendant was indebted to the plaintiffs in the sum of $707.57, the court gave judgment for that amount with damages $32.90 & costs. Afterwards during the same Term, the defendant moved to set aside the judgment, because 1. The motion to dismiss was overruled, 2. The damages were assessed by the court. 3. That it was premature to give final judgment 4. Because the said cause was never docketed for trial 5. Because the proceedings were such as to preclude a trial by jury. This motion was overruled & a bill of exceptions taken. to the opinion of the court in overruling both motions.

This suit appears to have been instituted under the provisions of the act of Assembly of Feby. 27. 1843, and the objections to the proceedings on the motion to dismiss, we are of opinion, are unfounded.

A more serious objection to the action of the court is founded on its assessment of damages, without the intervention of a jury. The 34th & 35th sections of the act regulating practice at law, enact, that whenever an interlocutory judgment by default is entered, in any suit founded on any instrument of writing, and the demand is ascertained by such instrument, the Court shall assess the damages; in all other cases, the damages shall be assessed by a jury empannelled in the court for that

purpose. Rev. Co: 35 p. 461. The seventh section of the act to simplify proceedings at law, passed Feb. 27. 1843, provides that suits commenced under that act, shall be proceeded in to final judgment, in the same manner as if commenced in the ordinary form, except where as in the act it is otherwise provided. No provision is found in this act, altering the course to be pursued in judgments by default.

The question is then, did these notes ascertain the demand on their face, or was there not a question of fact to be determined, before the amount due could be ascertained. The notes were payable in "the current rate of exchange on Philadelphia, when due." What ~~the~~ exchange on Philadelphia was worth in Phoenix, when these notes became due was a matter which could only be ascertained by a visit of enquiry; no information could be obtained from the face of the notes

This case is, in principle, like the case of ~~Tomato~~ &c. v. Kennett, White & Kennett (Vol. 7. 595.) where it was held that a bill payable in currency was not a liquidated demand, but required the intervention of a jury to ascertain ~~the~~ its value when the note was due. The rate of exchange like the value of currency, fluctuates, & ~~to ascertain what it is~~ its value at any specified point of time, must be ascertained, like any other question of fact, by a jury. The court erred therefore in assessing the damages, without the intervention of a jury & the judgment is reversed & the cause remanded.

We concur
Tompkins
W. G. C. H.

W. B. Napton

Copied V 19.

Complete

Guelbert

v.

Watson & Hilderburn

Opinion

Napton

July Term 1844

files Oct. 7. 1844.

H. L. Boon clk

Auguste Guelberth, appellant
vs
Watson & Hildebrun appellees. } appeal from the St Louis Circuit Court.

This ~~case~~ suit was commenced and prosecuted according to the provisions of the act of assembly of Feb. 27th 1843. The plaintiffs (now appellees) filed in the office of the Circuit Court two notes with the clerk of the St Louis Circuit Court: and the clerk thereupon issued a summons accompanied with a copy of the notes, commanding the Sheriff to summon the maker of the notes to appear at the April Term of said Court in the Year 1843. The Summons was duly served, more than ten days before the return day; and during the April Term 1843 the defendant appeared & filed a motion to dismiss the cause. because

1st It does not appear that the legal owners of the notes filed them in the office &c.

2d. because it does not appear that the suit was instituted by the legal owner of the notes.

3d. Because it does not appear by whom the suit was instituted—

4th Because no attorney's names are subscribed to any of the papers in the cause.

5th Because it does not appear from the notes that the plaintiffs are the legal owners thereof as is mentioned in the writ.

6th Because the alleged copy of the notes mentioned in the writ is not properly and sufficiently identified as that of the notes aforesaid.

7th Because there is no sufficient certificate that copies of the notes are annexed to the writ.

8th Because copies of said notes do not appear to be annexed to said writ.

9th Because the act under which the suit is instituted is unconstitutional.

The circuit court, to which the plaintiff submitted the said motion, overruled the same, and the cause being continued until the November Term 1843. and no plea, or affidavit of merits or otherwise, being interposed. the court on motion of plaintiffs counsel, on the 8th Dec 1843. gave judgment against defendant for the amount of said notes and interest from maturity. and on the 3d January 1844 defendant appeared and moved to set aside said judgment for irregularity. 1st Because the original motion to dismiss was overruled.

2d Because the damages were assessed by the court

3d That at the time, it was incompetent & premature to give final judgment.

4th That the cause was never set or docketted for trial.

5th That the proceedings were such as to preclude a trial by jury and are in other respects contrary to law.

The court overruled this motion. and on the 27th March the ~~court~~ defendant filed his bill of exceptions. This bill enumerates the reasons assigned under the two former motions; and excepts to the opinion of the Court thereupon rendered, overruling the same. The defendant then made the usual affidavit and ~~Contained~~ took an appeal to the Supreme Court.

It is submitted that the act of 27th Feb 1843 is constitutional - and that the proceedings in this

Cause are conformable thereto. On this point the counsel for plaintiffs will content himself by referring to the act and to the transcript of the record as corrected by the clerk, supplying a statement omitted in the first transcript delivered to the appellant.

As to the first reason for dismissing the suit, it is submitted that the suit being in the name of the payees, and against the maker, it sufficiently appears that they filed the notes in the ~~proper~~ office out of which the writ issued.

As to the second & third & fifth points. It sufficiently appears from the record that the suit was instituted by the plaintiffs, and that they are the legal owners of the notes.

As to the ~~third~~ fourth. It is unnecessary that the name of an attorney should be subscribed to any paper in a suit instituted under the act of Feb 27th 1843.

As to the 6th, 7th & 8th points, it is submitted that they are fully answered & disproved, and shown to be untenable by an inspection of the record.

The ninth point has already been considered.

As to the second motion. This assigns as reasons for setting aside the judgment, as for irregularity, that the court overruled the first motion to dismiss. Even if this decision, overruling said motion, were erroneous, it would not be a ground for setting aside the judgment as irregular. But as already urged, the motion to dismiss was rightly overruled.

The second reason is that the damages were assessed by the court. It was entirely competent for the court so to do. Judgment by default had been given for want of a plea, or affidavit, and the cause of action being a note for the payment of money, it was proper that the court should compute the damages.

The 3d reason is that it was incompetent and pre-

matured at the time, (i.e. 5th Dec 1843) for the Court to give final judgment in the cause.

It is difficult to see how this objection can be sustained. The statute allows judgment to be rendered unless an affidavit of merits is filed on or before the first day of the term following the return term, i.e. in this case the third monday of November 1843. No such affidavit had been filed as late as the 5th Dec. 1843. It was surely then not incompetent or premature to take judgment by default on that day.

4th That said cause was never set on docket for trial.

This objection if true (which it is not) would have no force. The cases, commenced in the ordinary manner by a summons & returned to any term are not set for trial on any particular day. but unless the defendant pleads thereon a judgment by default is taken at any time after the expiration of the time for pleading, and if the suit be on a note the Court assesses the damages and the judgment is final. This is what was done in this instance.

5th That the proceedings in the cause were such as directly to preclude a trial by jury and were in other respects contrary to law.

This objection cannot have place here - because the defendant has not taken any steps to secure a trial by jury but has allowed the case to go by default. A trial by jury could have been had if he had taken the course indicated by the statute: but he has not chosen to do so. He has not even filed an affidavit of merits in support of his judgment by default. It is submitted then, that he is estopped to say that there is any prejudice to him because the case was submitted to the Court without a demand of a jury by the plaintiffs.

It is conceived that there is nothing in the record calling for a more laboured reply. It is submitted however that the exception of the defendant to the action of the Court overruling his motions comes too late after the lapse

of several weeks from the giving of the judgment, and in one case, and in the other, of several months. The exception should be taken at the time that judgment is given.

Inasmuch as it appears to the plaintiffs that this appeal is taken for frivolous and vexatious reasons, and that there is no good ~~rea~~ or probable reason therefor, they move the Court here to award them by way of damages for the detention of the said sum of money, ten per centum on the amount thereof.

Respectfully submitted

H. T. Gantt

attorney for appellees.

Guelberth, appellant
Watson & Hildebrun appellees
R. T. Gantt for appellees
Brief & points.

No. 110.

Auguste Guelberth
vs
Watson & Hildebrun

Brief and points for
appellees.

Submitted on briefs
without argument.
R. T. Gantt
for appellees.

Auguste Guelberth, appellant
vs
Watson Hildeburn, appellees

In the Supreme Court of the State of Missouri, July Term 1844.

On appeal from St Louis Circuit Court.

The cause of action in this suit consisted of two notes, each executed by the appellant, (defendant below) in favor of the appellees. (plaintiffs below). These notes were filed in the office of the clerk of the circuit court in pursuance of the act of Feb. 27th 1843. and a writ of summons, accompanied by copies of the notes annexed thereto, was issued by the clerk, directed to the Sheriff, and commanding him to summon the defendant to appear &c. at the April Term 1843. of the St Louis circuit Court. This writ was served more than ten days before the first day of the term.

During the April Term 1843. the defendant appeared by his counsel, and moved to dismiss this cause for the following reasons:

1st. Because it did not appear that the legal owners of the notes filed them in the clerk's office &c.

2nd. Because it did not appear that the suit was instituted by the legal owners of the notes.

3d. Because it did not appear by whom the suit was instituted.

4th. Because no attorney's names were signed to the papers in this cause.

5th. Because it does not appear from the notes that the plaintiffs were the legal owners of them as is mentioned in the writ.

6th. Because the alleged copy of the notes mentioned in the writ is not properly and sufficiently identified. as that of the notes aforesaid.

7th. Because there is no sufficient certificate that copies of said notes were annexed to the writ.

8th. Because copies of the notes do not appear to be annexed to the writ.

9th. Because the act under which the suit was instituted, is unconstitutional.

The circuit court overruled the motion to dismiss &c.

the cause was, according to the statute continued to the November Term 1843. At this term the defendant filed neither a plea nor an affidavit of merits: And on the 5th Decr. 1843. the court on the motion of plaintiff's counsel gave judgment by default against the defendant: And, the demand being ascertained by the instruments of writing sued on, the damages were assessed by the court and final judgment given thereon. On Jan. 3d. 1844, Defendant appeared and moved to set aside the judgment by default "for irregularity". He did not file an affidavit of merits, but assigned in support of his motion the following reasons.

1st. That the original motion to dismiss the cause was overruled.

2nd. That the damages were assessed by the court.

3d. That at the time judgment was rendered (i.e. 5th Dec. 1843) it was premature and incompetent for the court to give final judgment.

4th. That the cause was never set or docketted for trial.

5th. That the proceedings are such as to preclude a trial by jury, and are in other respects utterly contrary to law.

The court overruled this motion on January 12th 1844. And on 27th March 1844. the defendant filed his bill of exceptions, and the usual affidavit for an appeal. The bill of exceptions recited the two above stated motions, and stated that the defendant excepted to the decision of the court overruling them.

The plaintiffs below (appellees here) will contend.

1st That the act of Feb. 27th 1843. is constitutional. And that its provisions have been observed in the present case.

2nd That the motion to dismiss was properly overruled.

3d That judgment by default was rightly given, and that such judgment was necessarily final.

4th That the motion to set aside said judgment was properly overruled: and that the circuit court committed no error in the said cause and proceedings.

First. That the act of Feb. 27th 1843. is constitutional. On

his objection to the constitutionality of this act, the defendant laid no stress in the court below, and he did not particularise the defective portion or feature of the law. The appellees will therefore content themselves by referring to the act itself in its own vindication. And it is submitted that the practice and conduct pointed out by the act of Feb. 27. 43. have been complied with, in the cause, the record of which is before the court.

2nd There were no merits in the motion to dismiss and the same was properly overruled. The three first reasons assigned are nearly identical with each other, and with the 5th and they are directly in the teeth of the record. and seem to be merely frivolous. It is submitted that by the record it sufficiently appears that the notes in question were filed in the clerk's office on behalf of the legal owners. That the appellees were such legal owners &. That the suit was instituted by them – As to the fourth reason, it is replied, that the nature of the proceedings, and the spirit of the act of Feb. 27th 43 show very clearly that ~~it was not contemplated~~ they did not contemplate the necessity of the signature by counsel of any paper in the cause. As to the 6th, 7th & 8th reasons, which are mere repetitions, it is submitted that the record discloses with sufficient certainty, that copies of the notes were annexed to the writ, and that such copies were sufficiently identified. The point presented by the 9th reason has already been considered & submitted. And so the appellees say that there were ~~is~~ no merits in the motion to dismiss and that the same was properly overruled.

3d The judgment by default was properly given and was necessarily final. The statute declares the defendant to be in default unless he shall file an affidavit of merits on or before the first day of the term following that to which the suit was returnable. No affidavit of merits was filed, no plea was put in, nor any pretence of a meritorious defence set up. The defendant (now appellant) was in ~~the~~ default on the first day of the term (Nov. Term '43) and so continued up to the time when judgment was given

The action being upon notes by which the demand sued for was ascertained, the judgment was necessarily final (Rev. Code 1835. 461)
4th The judgment thus rendered, the court properly refused to set aside. and defendant's (now appellant's) motion had no merits
1st Because it was not supported by an affidavit of merits. 2d Because judgment was suffered by default under circumstances of neglect for which no manner of palliation is offered. 3d Because the motion was not promptly made. and 4th Because the fact that the case was not docketted for trial if true, (and it is not true) has nothing to do with the propriety of the action of the court in giving the judgment by default. The defendant below had full notice to plead on or before the first day of the Nov. Term 1843: He neglected to do so: and the case is in this respect precisely analogous to an ordinary action by assumpsit, on a promissory note to which the defendant is required by statute to plead on or before the seventh day of the term. If he does not do so, a default can at any time thereafter before plea filed, be taken, and if so taken it is final. So here.

If the defendant had averred on oath the existence of a meritorious defence the case would have been tried before a jury or the court sitting as a jury in the ordinary mode, and before them he would have had an opportunity of making out his defence. He has chosen not to do so and cannot now complain that there was no jury trial: for there never is a trial by jury in an action upon a promissory note if the defendant saves the plaintiff the trouble of so doing, by allowing him to take judgment by default, as for nil dicit.

Wherefore the appellees submit that no error was committed by said Circuit Court in the premises. and they pray the allowance of ten per centum by way of damages, upon the amount for which judgment was rendered in this cause

Respectfully submitted
T. F. Gantt. for
appellees.

No 110.

Auguste Guelberth
vs
Watson & Hildebrun

Brief and argument
of appellees.
Case fulmilled.
Th. T. Gantt
for appellees.

1)

State of Missouri, County of St. Louis Js. Be it remembered that heretofore, to wit, on the thirtieth day of March in the Year of our Lord, eighteen hundred and forty-three were filed in the office of the Clerk of the Circuit Court within and for said County, two notes in the words and figures following, to wit:—

Notes. "$350.$\frac{62}{100}$ St. Louis June 24th, 1842 Seven Months after date, I promise to pay to the Order of Watson & Hildeburn Three Hundred & fifty $\frac{62}{100}$ Dollars, for value received, negotiable and payable without defalcation or discount, with the Current rate of Exchange on Philad^a when due "Auguste Guelberth" Due Jany 24/27. 1843. #359."

Protested for Non-payment January 27 1843 Fee $2.25 Jas McNeil Notary Public

#413. "356\frac{89}{100}$ St. Louis June 24th 1842. Nine Months after date I promise to pay to the order of Watson & Hildeburn Three Hundred & fifty six $\frac{89}{100}$ Dollars, for value received, negotiable and payable, without defalcation or discount with the current rate of Exchange on Philadelphia when due Auguste Guelberth, Due March 24/27 1843. #360

Number Four hundred and thirteen

$356.89

And afterwards on the same day and year (30th March 1843) a Summons was issued in the words & figures following, to

Summons. wit: "The State of Missouri, To the Sheriff of St. Louis County Greeting: We command you to Summon Auguste Guelberth that he be and appear before the Judge of our Circuit Court, on the first day of the next term thereof, to be held at the City of St. Louis within & for the County of St Louis on the third Monday of April next, then and there to answer unto the demand of James Watson & Joseph Howell Hildeburn on two promissory notes made by the said Auguste Guelberth, copies of which are hereto annexed. And have you then there this writ. (Seal.) Witness, John Ruland, Clerk of our said Court with the Seal thereof hereto affixed, at office, in the City of St. Louis, this 30th day of March in the year of our Lord eighteen hundred and forty-three

J. Ruland, Clerk By W. A. Pritchartt D. C.", upon which
Shff's Return. summons is the following Sheriffs return, to wit: "Executed
this writ in the County of St. Louis on the 31st day of March
1843 by offering to read it and the copies of the notes to August
Guelberth, the within named defendant, which he refused to
hear. William Milburn Shff. By W. Decker Dpty." And af-
-terwards, to wit, on the Third day of May, year last aforesaid
(1843) the following proceedings were had in said cause, to wit:
14-8 "James Watson & Joseph A. Hildeburn vs. Auguste Guel-
-berth, Now at this day comes the Defendant by his Attorney,
and moves the court to dismiss this cause, for reasons herein
Reasons. filed.", in the words and figures following, to wit: "And the
said Defendant comes and moves the Court to dismiss this
cause, for the following reasons, to wit: 1st Because it does not
appear that the legal owner or owners of said notes or of either
of them filed them or either of them in the office of the Clerk of this
Court. 2d Because it does not appear that this suit was insti-
-tuted by the legal owner or owners of said notes or of either
of them. 3d Because it does not appear by whom this suit was
instituted. 4th Because if said suit was instituted by an
Attorney or Attorneys, for the Plaintiffs, he or they have not writ-
-ten, subscribed or signed their names on or to any of the pa-
-pers therein. 5th Because it does not appear from or by
said notes or either of them or otherwise that the Plaintiffs are,
as mentioned in this writ, the legal owners thereof. 6th Be-
-cause the alleged copy of the notes mentioned in the writ is
not properly and sufficiently identified as that of the notes
aforesaid. 7th Because there is no sufficient certificate that
copies of the notes aforesaid are annexed to said writ. 8th
Because copies of said notes do not appear to be annexed
to said writ or summons. Geo. W. Callahan, Deft's Atty's.
9th Because the Act under which said suit was institute

is unconstitutional, Geo. W. Callahan, Defts Atty". And after-
-wards, to wit: on the fifth day of May, eighteen hundred and for-
-ty three, the following further proceedings were had in said
14-15 cause, to wit: "James Watson & James H. Hildeburn vs.
Auguste Guelberth, On motion of the Plaintiffs Atty. leave
is given the Sheriff to amend his return on the writ herein,
which is done". And afterwards on the Seventh day of July,
year last aforesaid, the following further proceedings were had
14-84 in said cause, to wit: "James Watson & Joseph Howell Hil-
-deburn vs. Auguste Guelberth. On Notes. Now at this day
come the parties by their Attorneys and thereupon the motion
of the said defendant to dismiss this suit is submitted to
the Court, which being seen heard and fully understood, It
is ordered that the same be overruled, and leave is given the de-
-fendant to plead herein". And afterwards, to wit, on the Fifth
day of December, year last aforesaid, the following further
14-255 proceedings were had in said cause, to wit: "James Watson
& Joseph Howell Hildeburn vs. Auguste Guelberth, On
Two Notes, Now at this day comes the plaintiffs by their Attor-
-ney and the defendant although demanded comes not
but makes default nor has he pleaded to the demand of
said plaintiffs wherefore they ought to recover against him,
& it appearing to the satisfaction of the Court, from the
notes herein, which are as follows "$350.$\frac{62}{100}$ St. Louis June
"24th 1842, Seven Months after date I promise to pay to the
"order of Watson & Hildeburn Three hundred and fifty $\frac{62}{100}$
"Dollars, for value received, negotiable and payable without
"defalcation or discount, with the current rate of Exchange
"on Phila^a when due. Auguste Guelberth due Jany 24/27
"1843". Endorsed. "Protested for nonpayment January 27.
"1843 fee $2.25 Jos. Mc Neil, Notary Public". "$356.$\frac{89}{100}$ St.
"Louis, June 24th 1842, Nine Months after date I promise

"to pay to the order of Watson & Hildeburn, Thre hundred and "fifty-six $\frac{89}{100}$ Dollars, for value received, negotiable and payable, "without defalcation or discount, with the current rate of exchange "on Philadelphia when due. Auguste Guelberth. Due March "24/27, 1843, endorsed number four hundred and thirteen $356\frac{89}{}$" that said defendant is indebted to said Plaintiffs in the sum of Seven Hundred and Seven dollars and fifty-one Cents and that said Plaintiffs have sustained damage by reason of the detention of said debt to the amount of Thirty-two Dollars and ninety cents. It is therefore considered by the Court that said Plain=tiffs recover of said defendant their debt and damages afore=said in form aforesaid by the Court found and assessed toge=ther with their costs and charges in that behalf expended and have thereof execution".* And afterwards, to wit, on the Third day of January, eighteen hundred and forty-four, the follow=ing further proceedings were had in said cause, to wit: "James Watson & Joseph H. Hildeburn vs. Auguste Guelberth, Motion to set aside Judgment filed" "In the St. Louis Circuit Court April Term 1843. Watson & Hildeburn vs. Auguste Guelberth And the said defendant moves the Court to set aside the judg=ment herein, for irregularity, for the following reasons, among others, to wit, First, That the Motion to dismiss this cause was overru=led, Second, That the damages are assessed by the Court Third, That at the time it was premature and incompetent to give final judgment. Fourth, That the said cause was never set or docketed for trial. Fifth, That the proceedings in this cause were such as directly to preclude a trial by Jury, and were in other respects utterly contrary to law Geo. D. Callahan" Defts' attys

motion to set aside.

14-311

And afterwards, to wit, on the Twelfth day of January, year last aforesaid (1844) the following further proceedings were had in said cause, to wit: "James Watson & Joseph H. Hildeburn vs. Auguste Guelberth. Now at this day come the Plaintiffs by

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And afterwards, to wit, on the Sixth day of December, in the year Eighteen hundred and forty-three, an Execution was issued in the words and figures following, to wit: "County of St. Louis, Set. The State of Missouri, To the Sheriff of St. Louis County Greeting: Whereas, James Watson & Joseph Howell Hildeburn on the 5th December 1843 at our Circuit Court, before our Judge thereof recovered against Auguste Guelberth the sum of Seven hundred and Seven dollars, and fifty-one cents for their debt, also thirty-two dollars and ninety cents for their damages by them sustained by reason of the non-performance of the promises and undertakings in their declaration mentioned together with their costs and charges by them about their suit in this behalf expended which to the said James Watson & Joseph Hildeburn were adjudged, as appears to us of record: These are therefore to command you, that of the goods and chattels, lands and tenements of the said Auguste Guelberth in your bailiwick, you cause to be made the aforesaid debt damages and costs; that you have the same before the Judge of our said Court, on the third Monday of April next, to render to the said John Watson & Joseph Howell Hildeburn the debt damages and costs aforesaid. And that you certify to our said Judge how you execute this writ; and have you then there this writ (Seal.) Witness, John Ruland, Clerk of our said Court, at St. Louis, the Sixth day of December in the year of our Lord one thousand eight hundred and forty-three John Ruland Clerk. C. C." Endorsed on the above Execution is the Sheriffs return, in words and figures, to wit: "In this case an appeal having been taken by the Defendant to the Supreme Court of the State of Missouri this writ is therefore returned accordingly. William Milburn Shff. By Henry B. Belt Deputy. fee $1.00."

Execution

Shff's Return.

their Attorney, and thereupon the Motion of said Defendant to set aside the judgment heretofore rendered in this cause, is submitted to the Court, which being seen heard and by the Court here fully understood, it is ordered that the same be overruled. And afterwards, to wit, on the twenty-seventh day of March, year last aforesaid (1844) the following further proceedings were had in said cause, to wit: "James Watson & Joseph Howell Hilde-
14-461 -burn vs. Auguste Guilberth. Petition on Notes, Now at this day comes the Defendant by his Attorney and files a Bill of Exceptions and an Affidavit herein, and on his motion an appeal is granted him from the judgment rendered in this cause, to the Supreme Court; whereupon said Auguste Guil-
-berth as principal and Joseph Philibert and Legrand F. Ruck-
-er, as Securities, acknowledge themselves indebted unto said Plaintiffs in the sum of One Thousand, five hundred dollars, to be levied of their respective goods and chattels, lands and tenements, to be void upon condition that said Defendant shall prosecute this Appeal, now taken, with due diligence to a decision in the Supreme Court, and that if the judg-
-ment appealed from is affirmed or the appeal dismissed, he will pay whatever of debt, damages and costs have been recovered against him by the judgment of the Circuit Court, together with the interest which shall grow due thereon, or that he will otherwise perform the judgment of the Circuit Court, and that he will pay the costs and damages that may be adjudged against him in the Supreme Court upon this Appeal, otherwise this recognizance to be and remain in full force and virtue". The affidavit referred to above, is in the
affidavit words and figures following, to wit: "In the St. Louis Circuit Court April Term 1843. Watson & Hildeburn vs. Auguste Guilberth. The said Defendant Auguste Guilberth, being sworn on his oath states that the Appeal in this cause, is not made by him of vexation or delay, but because the defendant

believes that he is aggrieved by the judgment of the Court; and the said appeal is sought to be taken that justice be done. Auguste Guilberth. Sworn to and subscribed in open Court March 27. 1844 John Pulaid, Clerk". The Bill of Exceptions, above mentioned, is as follows, to wit:

Bill of Exceptns

"In the St. Louis Circuit Court, April Term 1843. — Watson & Hildeburn vs. Auguste Guelberth. Be it remembered, That within the sixteen first days of the April Term 1843, to which this cause was returnable, the defendant made and filed a motion to dismiss the suit,

Motion to dismiss.

in the following words and figures, "In the St. Louis Circuit Court April Term, 1843. Watson & Hildeburn vs. Guelberth. And the said defendant, comes and moves the Court to dismiss this cause, for the following reasons, to wit 1st Because it does not appear that the legal owner or owners of said notes or of either of them filed them or either of them in the office of the Clerk of this Court. 2d Because it does not appear that ~~the legal owner or owners of said notes~~ this suit was instituted by the legal owner or owners of said notes or of either of them. 3d Because it does not appear by whom this suit was instituted. 4th Because if said suit was instituted by an Attorney or Attorneys for the plaintiffs, he or they have not written, subscribed or signed their names on or to any of the papers therein. 5th Because it does not appear from or by said notes or either of them or otherwise that the plaintiffs are, as mentioned in the writ, the legal owners thereof. 6th Because the alleged copy of the notes mentioned in the writ is not properly and sufficiently identified as that of the notes aforesaid. 7th Because there is no sufficient certificate that copies of the notes aforesaid are annexed to said writ. 8th Because copies of said notes do not appear to be annexed to said writ or summons. Geo. W. Callahan Defts. Atty. 9th Because the act under

which said suit was instituted, is unconstitutional, Geo. W. Callahan, Defts. Atty". "That the court overruled said Motion. And that the Defendant excepted thereto. And be it further remembered, That, on the fifteenth day of November term thereafter, to wit, on the Fifth day of December, 1843, on the trial of the case, the plaintiffs gave in evidence two promissory notes in the following words and figures" _____

Continuⁿ of Bill of Exceptions

Notes.

"$350.62/100 St. Louis, June 24th 1842". _____

_____ "Seven Months after date, I promise to pay "to the order of Watson & Hildeburn _____ "Three hundred & fifty _____ 62/100 Dollars, _____ "for value received, negotiable and payable without defalcation or "discount, with the Current rate of Exchange on Philadᵃ "when due ". _____

"Due Jany 24/27. 1843." _____ "Auguste Guelberth." _____

Protested for non-payment January 27th 1843 Fel 2.25 Jos McNeil Notary Public

#359

"$356.89/100 St. Louis, June 24th 1842". _____

#413

_____ "Nine Months after date, I promise to pay "to the order of Watson & Hildeburn _____ "Three Hundred & fifty six _____ 89/100 Dollars, _____ "for value received, negotiable and payable, without defal-"cation or discount, with the current rate of Exchange on Philadel-"phia when due ". _____

"Dumbo Four hundred and thirteen" "$356.89"

"Due March 24/27 1843." _____ Auguste Guelberth." _____

#360

Continuaⁿ of Bill of Exceptⁿ

"That no other evidence was offered, and that the Court gave judgment for the Plaintiff. And be it further re-membered. That within five years afterwards, to wit, on the third day of January, 1844, the defendant made and filed a motion to set aside said judgment for irregularity, in the following words and figures: ___ "In the St. Louis Cir-cuit Court, April Term, 1843. Watson & Hildeburn vs. Auguste Guelberth, And the said Defendant moves the Court to set aside the judgment herein, for irregularity for the following reasons, among other things, to wit, First-

Motion to set aside

That the motion to dismiss this cause was overruled. Second, That the damages are assessed by the Court, Third, That at the time it was premature and incompetent to give final judgment. Fourth, That the said cause was never set or docketed for trial. Fifth, That the proceedings in this cause were such as directly to preclude a trial by Jury, and were in other respects utterly contrary to law. Geo. W. Callahan, Deft's Atty." — "That the Court overruled said Motion to set aside. And that its decision therein was excepted to by the defendant, who now asks to have this Bill of Exceptions made a part of the record. (Seal.) Bryan Mullanphy Judge 8th Jud. Cir. of Mo."

Continuation of Bill of Exceptions

State of Missouri, County of St. Louis, ss. — I, John Roland, Clerk of the Circuit Court, within & for said County, Certify the foregoing to be a true, full and correct transcript of the Record & Proceedings, in the above cause, as the same now remain of record and on file in my office.

In Testimony Whereof, I hereto set my hand and affix the Seal of said Court, at office in the City of St. Louis, this Twenty-Seventh day of April, in the year of our Lord, One Thousand, eight hundred and forty four.

Jno. Roland Clerk

110.

James Watson & Joseph
Howell Hildeburn,
vs. } (Transcript.) ápee's
Auguste Guelberth.
apt

For Mr. Callahan

Filed June 8th 1844
H. L. Boon clk

Paid by Guelberth
Exd. Transc.t $3.37½/100