Baker, John v. Stonebraker, John E 1863 495/3

625/12 39/172

Lewis Alexander PE

A Krekel DE

Baker (PE) A

v

Stonebraker (DE) R

Baker sued - SB a long time
age for large $ for promise and Sheet & Marked

St Charles
Oct 63
Oct 63

Reversed, remanded
nonsuit set aside

Bates

The State of Missouri, ss.

The State of Missouri, to the Honorable the Circuit Court of the County of St. Charles, **in said State—Greeting:**

WHEREAS, In the record and proceedings in a certain cause lately pending in the Circuit Court of St. Charles County, Missouri,

wherein John Baker was plaintiff and John Stonebraker's administrators defendants

in a civil action ——— manifest error hath intervened, to the great damage of said John Baker, plaintiff as by his complaint we are informed.

NOW, being willing that the error, if any there be, should be corrected, and full and speedy justice done to the parties aforesaid, in that behalf, COMMAND YOU, that you send to us, certified under your seal, the record and proceedings in the cause aforesaid, as fully as the same remain of record before you in said Court, so that we may have them before us at our Supreme Court, to be begun and held in the City of St. Louis, in the County of St. Louis, in said State, on the third Monday in October — next, so that our Judges of our Supreme Court, on inspecting the record and proceedings aforesaid, may cause to be further done therein, for correcting the error, what of right, and according to law, ought to be done.

WITNESS, ~~WILLIAM S. CLANVILLE~~ Andrew W. Mead, Clerk of our said Supreme Court, at office in the City of Saint Louis, the 27th day of August — in the year of our Lord one thousand eight hundred and ~~fifty~~ sixty three.

A W Mead CLERK.

State of Missouri
County of St. Charles } I Pen. Emmons Jr
Clerk of the Circuit Court of St Charles
County certify that in obedience to the
within writ I have certified a transcript of
the record and proceedings in the within entitled Cause
which transcript is hereunto annexed

In Witness Whereof I hereunto
set my hand and affix the
seal of said Court this 2d
day of October 1863.

Pen Emmons Jr
Clk

John Baker
v
Jno. Stonebrakers
Attys

1

State of Missouri }
County of St. Charles }. Be it remembered that on the 7th. day of May 1859. a petition was filed in the office of the Clerk of the Circuit Court of St. Charles County Missouri in the words and figures following to wit:

Petition

John Baker, Plaintiff
against.
John Stonebraker, Defendant.
} In St. Charles Circuit Court, Missouri, June Term 1859.

The Plaintiff States that heretofore at a County Court of the Fifth Judicial District of the State of Maryland, begun and held at Hagerstown, in and for the County of Washington in the said State of Maryland, on the third monday, being the eighteenth day, of November in the year Eighteen Hundred and thirty nine, to wit: on the third day of February in the year Eighteen hundred and forty, one George McCollough, by his attorney, prosecuted and sued out of the said Court the writ of the said State of Capias ad respondendum to the Sheriff of Washington County aforesaid commanding the said Sheriff to take John Stonebraker, the Defendant herein above named, and have him before the said Court to answer unto the said George McCollough in a plea that he render unto him the sum of twelve hundred and thirty Dollars and seventy five cents, current money, which to him he owed and from him unjustly detained, to which writ the said John Stonebraker voluntarily appeared in the said County Court of Washington County in the State of Maryland on

the said third day of February 1840 and such proceedings were had in the said Court, in the said cause, as that, on the said third day of February 1840, by the consideration and judgment of the said Court, the said George McCallough recovered against the said John Stonebraker as well the sum of three thousand Dollars his damages sustained by the said George McCallough by reason of the said John Stonebrakers non performance of the promise made by the said Stonebraker to pay to the said McCallough the said sum of twelve hundred and thirty Dollars and seventy five cents, as also the sum of five Dollars and eighteen and one third cents for the said McCallough's costs and charges by him about the said suit in that behalf laid out and expended, the said damages to be released on the payment of the said sum of twelve hundred and thirty Dollars and seventy five cents, the amount of the original debt due from the said Stonebraker to the said McCallough, with interest thereon from the 16th day of October 1839 till paid, and of one Dollar and seventy five cents costs of protest and five Dollars and eighteen and a third cents costs. The Plaintiff further states that by the laws of the State of Maryland, then existing and in force, the said County Court of Washington County was a Court of competent jurisdiction to hear and determine the matter in controversy between the said McCallough and the said Stonebraker and render a

valid and binding judgment - that the said suit of the said McCollough against the said Stonebraker was lawfully instituted and prosecuted and the said judgment rendered therein according to the then existing laws of the State of Maryland - that the same has never been paid and satisfied nor any part thereof, but the same is still an existing judgment against the Defendant in the said County Court of Washington County in the State of Maryland, subsisting in full force and effect, not reversed, satisfied or otherwise vacated, as by the records and proceedings of the said Court, a copy whereof is now here to the Court shown duly authenticated, will fully appear.

The Plaintiff further states that the said judgment recovered as aforesaid against the Defendant in the County Court of Washington County has been regularly assigned to Plaintiff, for good and valuable considerations, and Plaintiff is now the owner and holder of the said judgment and has the right to receive from the Defendant the amount due thereon - Wherefore an action hath accrued to the Plaintiff to have and demand of and from the Defendant the aforesaid sum of twelve hundred and thirty Dollars and seventy five cents with interest thereon from the 16th day of October 1839, at the rate of Six per cent per annum, and the sum of One Dollar and seventy five cents costs of protest as herein above mentioned, and the sum of five Dollars and eighteen and one third cents costs by

4

the said McCallough expended as herein above specified, for all which and for costs herein Plaintiff asks judgment against the Defendant.

Lewis & Alexander.
Attorneys for Plaintiff.

State of Missouri }
County of St. Charles. } Joseph H. Alexander, one of the Attorneys for Plaintiff, makes oath and says that he believes the above Petition and the matters therein as stated are true. Jos. H. Alexander.

Subscribed and sworn to May Seventh 1859.

Ben. Emmons Jr. Clk.

And thereupon the Clerk issued a summons in the words and figures following to wit:

Summons

The State of Missouri. To the Sheriff of St. Charles County -- Greeting. We command you to summon the Defendant John Stonebraker to appear in the Circuit Court of St. Charles County, at the Court-House in the City and County of St. Charles, on the second Monday of June eighteen hundred and fifty nine, and answer the annexed petition of John Baker Plaintiff, and have you then and there this writ: Witness, Ben. Emmons, Jr., Clerk of said Court, with the seal of said Court hereto affixed, this Eleventh day of May 1859.

L. S.

Ben. Emmons Jr. Clerk.

And the Sheriffs return is in the words and figures following to wit: Executed the writ and petition on

Return

5

the within named Defendant by leaving a copy of the within writ and petition at his usual place of abode in St. Charles County Mo. on the 21st day of May 1859. with a free white person over the age of fifteen years and a member of his family. Elias C. Stewart Shff.

By S. A. Cunningham Deputy.

And afterwards in said Court on the thirteenth day of June 1859 the following proceedings were had in said cause to wit:

John Baker. Plaintiff.
v.
John Stonebraker. Deft.
} Suit on Judgment. Answer filed. Motion for security for costs filed.

Answer filed

And the said answer is in the words and figures following to wit:

John Baker. Plaintiff.
against.
John Stonebraker. Defendant.
} In the Circuit Court of St. Charles County June Term 1859.

Answer

Defendant for answer to Plaintiffs petition says that no suit was ever instituted or judgment obtained against him by George McCollough in the County of Washington & State of Maryland for the sum of twelve hundred and thirty Dollars and seventy cents as is set out in Plaintiffs petition and Defendant denies that there ever were any such proceedings had in the Court aforesaid to which this Defendant was a party and to which he entered his appearance as charged in the petition of Plaintiff and Defendant denies all knowledge of any agreement or understanding by which he

was to be released of all damages on the payment of the sum of twelve hundred and thirty Dollars and seventy five cents as is in Plaintiffs petition alledged & says that if such an agreement was ever made by any one he was not a party thereto and has no knowledge thereof. To the allegations contained in Plaintiffs petition of the existance of such a court as the one in which the alledged suit was brought & judgment obtained, of its jurisdiction & the proceedings therein Defendant responds by stating that he has no knowledge thereof nor sufficient information to form a belief and avers that he never was made a party to any of the proceedings in the petition set out so as to enable a court of competent jurisdiction ever to render a judgment against him and denies that ever any such was rendered against this Defendant as alledged. Answering that portion of Plaintiffs petition in which the assignment of the judgment and the right to have & collect the indebtedness is alledged this Defendant says that he has no knowledge thereof nor sufficient information to form a belief & asks that his denial of the existance of said judgment as against him already made in former parts of this answer may be taken as specially made to this last part of Plaintiffs petition & having fully answered he prays to be discharged with his judgment for costs. Kuykel atty. for Def.

John Stonebraker makes oath & says that he believes the above answer & the matters therein as stated to be true.

John Stonebraker.

6

Subscribed & sworn to before me this 6th day of June 1859. Theodore Brière
Notary Public.

L. S.

And the motion for security for costs is in the words and figures following to wit:

Motion for Security for Costs

John Baker. Plaintiff.
against.
John Stonebraker. Defendant } In the Circuit Court of St Charles County June Term 1859.

The Defendant in this cause moves the Court for an order directing said Plaintiff to give security for cost in his suit because he is not a resident of the State of Missouri.

John Stonebraker
By A. Krekel his atty.

And afterwards in said Court on the Twenty third day of June 1859 the following proceedings were had in said Cause to wit:

Continuance

John Baker
v.
John Stonebraker } Maryland Judgment Continued.

And afterwards in said Court on the Sixteenth day of September 1859 the following proceedings were had in said Cause to wit:

Death of deft Suggested

John Baker. Plaintiff.
v.
John Stonebraker. Deft. } Suit on Judgment.

Now at this day appears A. Krekel Attorney for Defendant and suggests to the Court the death of said Defendant and thereupon John Stonebraker and Alfred Stonebraker admini

trators of said deceased voluntarly enter their appearance as Defendants herein and the cause is continued to the next March term of this Court.

Adms appear

And afterwards in said Court on the Twenty second day of November 1859 the following proceedings were had in said cause to wit:

John Baker. Plaintiff
v.
Adms of John Stonebraker. } Maryland Judgment. Answer of Administrators Filed.

Ans of Adms

And said Answer is in the words and figures following to wit:

John Baker. Plff.
vs.
John Stonebraker Def. } In the Circuit Court of St. Charles County. September Term 1859.

Now this day come Alfred Stonebraker and John E. Stonebraker and say that John Stonebraker the Defendant since the institution of the suit & the answer filed therein by Defendant he has died and said John E & Alfred Stonebraker have become and now are the administrators of his said Defendants Estate and they as such administrators now come & enter their appearance in this cause and for plea & answer thereto say that they adopt as their own the answer filed by the Defendant John Stonebraker in his lifetime and ask that said answer may be taken as made & filed by them in this cause & ask that they may be relieved from further answering the same

A. Kreiker atty for John E. & Alfred Stonebraker

9

And afterwards in said Court on the Eighth day of March 1860 the following proceedings were had in said cause to wit:

John Baker.
v.
John Stonebrakers
adms.
} Suit on Foreign Judgment. Continued by Consent.

Continuance

And afterwards in said Court on the Tenth day of September 1860 the following proceedings were had in said cause to wit:

John Baker. Plaintiff.
v.
Adms. of John Stonebraker.
} Suit on Judgment. Continued to adjourned Term.

Continuance

And afterwards in said Court on the Sixth day of December 1860 the following proceedings were had in said cause. to wit:

John Baker.
v.
Adms of John Stonebraker.
} Maryland Judgment. Additional Answer filed.

And said Answer is in the words and figures following. to wit:

Additional Answer

John Baker. Plaintiff.
against.
John Stonebraker. Defendant.
} In the Circuit Court of St. Charles County. September Term 1860

Defendants by leave of Court first had & obtained for further answer to Plaintiffs petition say that Chew Schnebly the Attorney named in the record & Judgment declared on in this case had not any power or authority to enter the appearance of Defendant John Stonebraker in the cause in which the Judgment was obtained and these Defendants deny that said Court had any jurisdiction over the

person of Defendant John Stonebraker so as to render a valid & binding judgment against him and further deny that said suit was lawfully instituted & prosecuted & that said judgment is binding or of any force & that the debt whereon the same is founded has been paid.

And Defendants for further Answer say that the cause of action for which this suit is brought accrued more than five years prior to the institution of this suit and that on account thereof the Statutes of limitation which they invoke in their behalf and specially plead bars them from a recovery in this cause.

And Defendants for further answer say that the cause of action for which this suit is brought accrued more than ten years prior to the commencement of this suit and that on account thereof and on account of the Statute of limitation which they invoke & specially plead Plaintiff cannot recover in this cause.

And defendants for further answer say that the cause of action upon which this suit is brought accrued more than twelve years prior to the commencement of this action. and that Plaintiff is debarred from recovering in this cause on account of the Statute of limitation which they invoke and specially plead in this cause

A. Krekel atty for Def.

Makes oath & says that he believes the above answer & the matters therein stated he believes to be true.

A. Stonebraker.

11

Subscribed & sworn to before me this 6th day of December 1860. Ben Emmons Jr. Clk.

And afterwards in said court on the Tenth day of December 1860 the following proceedings were had in said cause. to wit:

John Baker.
v.
Adms of John Stonebraker. } Maryland judgment continued.

Continuance

And afterwards in said court on the Twenty fifth day of March 1861. the following proceedings were had in said cause. to wit:

John Baker
v.
Adms of John Stonebraker. } Maryland judgment. continued to adjourned term.

Continuance

And afterwards in said court on the Nineteenth day of April 1861. the following proceedings were had in said cause. to wit:

John Baker.
v.
Adms of John Stonebraker } Maryland judgment Amended Answer filed. continued to July Term.

And said amended answer is in the words & figures following to wit:

Amended Answer

John Baker. Plaintiff.
against.
John Stonebraker. Defendant. } In the Circuit Court of St. Charles County March Term '61.

A. Stonebraker & John E. Stonebraker administrators of the estate of John Stonebraker deceased who have been made parties to this suit by leave of Court first had & obtained file this their consolidated & amended answer and say that there never was any

such suit brought as is alleged in Plaintiffs petition against John Stonebraker to which he the deceased was made a party and of which he had notice, that said John Stonebraker deceased never did appear personally to said suit nor did he or any one for him authorise his appearance to said suit, that said deceased did not authorise or empower Chew Schnebly or any one else to appear for him, so as to give the County Court of Washington County State of Maryland jurisdiction over his person and that the proceedings had in said Washington County Court are void and of no effect as against him.
The Allegations made in Plaintiffs petition that the judgment obtained by George McCollough against John Stonebraker deceased was regularly assigned to Plaintiff for a valuable consideration and that he is now the owner thereof. Defendants answer by stating that they have no knowledge thereof nor sufficient information to form a belief and they ask for proof denying the legality of the alleged assignments & denying that by virtue thereof Plaintiff is or has become entitled to bring this suit and further denying that Plaintiff has a right to sue.
And Defendants for further answer say that the record exhibited with Plaintiffs petition purporting to be the examplification of the judicial proceeding of the Washington County Court in the State of Maryland is not a full record of the proceedings

13

had in the case but that the same is mutilated, defective and partial and not what it purports to be full record, and that this fact has come to Defendants Knowledge since the filing of their last amended answer and within the last two weeks.

And for further answer these Defendants say that by the laws of the State of Maryland in which the judgment suit on purports to have been obtained the said judgment had ceased to be good & pleadable and was not admissible in evidence against John Stonebraker deceased and could not be proceeded on in the courts of the State of Maryland an cannot be proceeded on in this State that said judgment was above twelve and more years of standing prior to the commencement of this action and that therefore & on account thereof this suit cannot be had & maintained against Defendant John Stonebraker or his estate.

And Defendants for further answer say that the cause of action for which this suit is brought has accrued more than ten years prior to the commencement of this suit and that Plaintiff on account thereof is barred by the Statute of limitation which he invokes in his behalf.

Orrick & Krekel attys for Plaintiff.

A. Stonebraker one of the Defendants makes oath & says that he believes the above answer &

the matters & things therein as stated to be true.

A. Stonebraker.

Subscribed and sworn to before me this 19th day of April 1861. Ben Emmons Jr. Clk.

And afterwards in said Court on the Twenty first day of January 1863. the following proceedings were had in said cause to wit:

John Baker.
v. } Maryland Judgment.
Continuance Admrs of John Stonebraker }. Continued.

And afterwards in said Court on the Third day of April 1863. the following proceedings were had in said cause, to wit:

John Baker.
v } Maryland Judgment.
Continuance Admrs of John Stonebraker }. Continued to adjourned term.

And afterwards in said Court on the Twenty second day of April 1863 the following proceedings were had in said cause, to wit:

John Baker
v. } Maryland Judgment.
Continuance John Stonebrakers Admrs. }. Continued till May 11. 1863.

And afterwards in said Court on the Eleventh day of May 1863 the following proceedings were had in said cause to wit:

John Baker
Continuance v. } Maryland Judgment
Admrs of John Stonebraker }. Continued.

And afterwards in said Court on the Twenty third day of July 1863 the following proceedings were had in said cause to wit:

15

John Baker, Plaintiff
v.
John E. Stonebraker and Alfred Stonebraker, Admrs. of the Estate of John Stonebraker, Deceased, Defendants.

Maryland Judgment.

Now at this day appear the said parties by their respective attorneys and waive the trial of this cause by a jury, and thereupon the cause is submitted to the Court for trial and after some progress made therein, the Plaintiff takes a non suit with leave to move to set the same aside. It is therefore considered by the Court that Plaintiff take nothing by his said suit, that the same be dismissed and that said Defendants have and recover against said Plaintiff their costs by them about their defence in this behalf incurred and that they have their execution.

Non Suit

And afterwards in said Court on the Fourteenth day of August 1863 the following proceedings were had in said cause, to wit:

John Baker
v.
Admrs of John Stonebraker.

Maryland Judgment.

Now at this day appear the said parties by their respective attorneys, and the motion of said Plaintiff to set aside the non suit in this case coming on to be heard it is considered by the Court that the same be overruled.

Motion to set aside overruled

And afterwards in said Court on the Twenty second day of August 1863 the following proceedings were had in said cause, to wit:

John Baker
v.
admrs of John Stonebraker. } Maryland

Judgment.

Bill of exceptions filed

Now at this day appear the said parties by their respective attorneys and the Plaintiff tenders his Bill of Exceptions to the Judgment and proceedings of the Court herein which is signed by the Court and made part of the record.

And the said Bill of Exceptions is in the words and figures following to wit:

17

John Baker vs John Stonebraker } In the Circuit Court St. Charles County. March Adjd. Term 1863.

Bill of Exceptions

Be it remembered that on the 23d. day of July 1863, this cause coming on for trial, and, neither party demanding a jury, the same was submitted to the Court sitting as a jury. And thereupon the Plaintiff offered the following evidence:

(1) Transcript, with certificates of authentication, of the record of a judgment rendered in the County Court of Washington County, State of Maryland, as follows:

State of Maryland, Washington County, towit:

Plfs transcript

At a County Court of the Fifth Judicial District of the State of Maryland, begun and held at Hagerstown, in and for the County aforesaid, on the third Monday of November, being the eighteenth day of the same month, in the year of our Lord One thousand eight hundred and thirty nine; Were present:

The Hon. John Buchanan — Chief Judges
" " Abraham Shriver
" " Thomas Buchanan } Associate Judges
John Newcomer Esquire, Sheriff
Otho N. Williams, Clk.

In the Record of Proceedings of the same Court,

amongst others is the following, towit:

George McCollough, use of John Baker, use of Thomas N. Fowler & Samuel J. Rogers vs John Stonebraker } Be it remembered that heretofore, towit, on the third day of February, in the year of our Lord, one thousand eight hundred and forty, the said George McCollough, by Alexander Neill Jr, his Attorney, prosecuted and sued forth out of the said Court here the writ of the State of Maryland of Capias ad respondendum to the Sheriff of Washington County directed, in the words and of the tenor following towit: Washington County, towit: The State of Maryland to the Sheriff of Washington County, Greeting. (Seal) We command you to take John Stonebraker, late of Washington County, Yeoman, if he be found in your bailiwick, and him safe keep so that you have his body before the Judges of our County Court, now being held at the Court House in Hagerstown, in said County, to answer unto George McCollough in a plea that he render unto him the sum of twelve hundred and thirty dollars and seventy five cents, current money, which to him he owes and from him unjustly detains, and so forth. Hereof fail not at your peril, and have you then and there

this writ. Witness the Hon. John Buchanan Chief Judge of our said Court, the 18th day of November 1839. Issued the 3rd day of February 1840. O. N. Williams, Clk.

And the Sheriff of Washington County aforesaid, to whom the said foregoing writ was in form aforesaid directed, makes no return to the Court here of the said writ, nor hath he done anything therein; nevertheless the said defendant voluntarily appears in Court here, by Chew & Schnebly his Attorney.

And thereupon, the said Plaintiff, by his Attorney aforesaid, declares against the said Defendant, in the plea aforesaid as follows, to wit:

Washington County ss. John Stonebraker, late of Washington County, Iowa, was summoned to answer unto George McCollough in a plea that he render unto him the sum of twelve hundred and thirty dollars and seventy five cents, which to him he owes and unjustly detains from him and so forth. And whereupon the said George McCollough by Alexander Neill Jr his Attorney says that the aforesaid John Stonebraker, on the sixth day of September in the year of our Lord One thousand eight hundred and thirty nine, at the County aforesaid, by his certain writing obligatory, commonly called a single bill, forty days after date promised to pay George McCollough or order the sum of twelve hundred and thirty

dollars and seventy five cents, at the Hagerstown Bank, for value received. Nevertheless, the aforesaid John Stonebraker the said sum of money above demanded or any part thereof to him the said George Mc Collough hath not satisfied or paid, although so to do the said John Stonebraker, afterwards, to wit, on the first day of November in the year of our Lord one thousand eight hundred and thirty nine and often afterwards, at the County aforesaid, was requested. But the same or any part thereof to the said George Mc Collough to render or pay has altogether refused and still doth refuse. Wherefore the said George Mc Collough is the worse and has damage to the value of three thousand dollars, current money of the United States, and so he brings suit &c, and brings here into Court the writing obligatory aforesaid, sealed with the seal of the said John Stonebraker, which the debt aforesaid Witnesseth &c, whose date is the day and year first aforesaid.

Alex. Neill Jr Attorney for Plaintiff

Here follows the writing obligatory or single bill mentioned and referred to in the foregoing declaration, to wit:

Forty days after date I promise to pay George Mc Collough or order the sum of twelve hundred and thirty dollars and seventy five cents at the Hagerstown Bank for value received. Witness

21

my hand and seal this 6th day of September 1839. John Stonebraker (Seal)

Endorsed on the back of the above single bill is the following towit: George McCollough, John Baker. Pay to Elie Beatty Esq, Cash. or order.

Accompanying the foregoing single bill is the following protest, towit:

United States of America, State of Maryland, towit: On this day, the nineteenth of October 1839, at the request of the President & Directors of the Hagerstown Bank bearers of the original promissory note whereof a true copy is on the other side written, I, John Gruber, Notary Public by Letters Patent under the great seal of the State of Maryland, commissioned and duly qualified, residing at Hagerstown, Washington County, in the State aforesaid, exhibited the said original promissory note at the Hagerstown Bank, the place where the same is made payable, and demanded payment thereof, the time limited for payment having duly expired, and was answered "there is no funds here to pay it" Wherefore, I, the said Notary, at the request aforesaid, have protested and by these presents do solemnly protest, as well against the drawer and endossers of the said promissory note as all others whom it may concern, for exchange, re-exchange and all costs, charges, damages and interests suffered and

to be suffered for the want of payment of the said promissory note, and addressed written notices thereof to the endorsers of the same, also informing them that they are held liable for the payment of said note. Notices directed to G. N. Bowman Esq Cash^r, Brownsville, Pa., and put them into the Post Office same day. Thus done and protested at Hagerstown, Washington County aforesaid. In testimony whereof I have hereunto set my hand and affixed my seal nota-
Seal rial, the day and year aforesaid.

John Gruber, Notary Public

And the said Defendant, by his attorney aforesaid, says that he cannot deny the action aforesaid of the said Plaintiff so as aforesaid against him brought, nor but that the aforesaid Plaintiff hath sustained damage to the sum of three thousand dollars, current money, by occasion of the non-performance of the promise and assumption aforesaid, in manner and form as the said Plaintiff above against him hath complained; therefore it is considered by the Court here, that the aforesaid Plaintiff recover against the said Defendant, as well the sum of three thousand dollars, current money, his damages aforesaid, in form aforesaid confessed to be sustained by occasion of the nonperformance of the promise and

assumption aforesaid, as also the sum of five dollars, eighteen and one third cents, by the Court hereunto the said Plaintiff on his assent adjudged, for his costs and charges by him about his suit in this behalf laid out and expended; and the said Defendant in mercy &c

Memorandum. Judgment was rendered in this cause on the 3rd day of February 1840, for the sum of twelve hundred and thirty dollars and seventy five cents debt, and three thousand dollars damages and costs. The damages to be released on the payment of the debt, with interest thereon from the 16th day of October 1839 till paid and $1.75 costs of protest and $5.18⅓ costs of suit; with a stay of execution for 12 months.

Test: Isaac Nesbitt, Clk

State of Maryland, Washington County, to wit:

I, Isaac Nesbitt, Clerk of the Circuit Court for Washington County and ex-officio Keeper of the Records of Washington County Court aforesaid, (the said County Court having been abolished by the Constitution of said State in the year 1850), do hereby certify that the foregoing is truly taken from the Record of Proceedings of the aforesaid County Court, being a full, true and perfect transcript of the same. In testimony whereof I hereunto subscribe my name and affix the seal of the said Circuit Court for Washington

County, this 15th day of April Anno Domini 1859. Isaac Nesbitt, Clk.

State of Maryland, Washington County, Sct:

I, Thomas Perry, Sole Judge of the Fourth Judicial Circuit of the State of Maryland, comprehending the Counties of Washington and Allegany, do certify that the foregoing attestation of Isaac Nesbitt, Clerk of the Circuit Court for Washington County, in the said Judicial Circuit, is in due form. Given under my hand this 16th day of April 1859. Thomas Perry

2. The Constitution of the State of Maryland, in a printed volume having the following title: "The Constitution of the State of Maryland, reported and adopted by the Convention of delegates assembled at the City of Annapolis, November 4th, 1850, and submitted to and ratified by the people on the first Wednesday of June 1851. With marginal notes and an appendix by Edward Otis Hinkley, Esq., of the Baltimore Bar. Baltimore: Printed and published by John Murphy & Co. No. 178 Market Street. Sold by booksellers generally. 1851." The 8th section of the 4th article of said Constitution being read in evidence, as follows:

Maryland Constitution Sec 8

Sec. 8. The State shall be divided into eight judicial circuits, in manner and form following, to wit: St. Marys, Charles and Prince George's Counties

shall be the first; Anne Arundel, Howard, Calvert and Montgomery Counties shall be the second; Frederick and Carroll Counties shall be the third; Washington and Allegany Counties shall be the fourth; Baltimore City shall be the fifth; Baltimore, Harford and Cecil Counties shall be the sixth; Kent, Queen Annes, Talbot and Caroline Counties shall be the Seventh; and Dorchester, Somerset and Worcester Counties shall be the eighth; and there shall be elected as hereinafter directed for each of the said judicial Circuits, except the fifth, one person from among those learned in the law, having been admitted to practice in this State, and who shall have been a citizen of this State at least five years, and above the age of thirty years at the time of his election, and a resident of the judicial Circuit to be judge thereof; the said judges shall be styled Circuit Judges, and shall respectively hold a term of their Courts at least twice in each year, or oftener if required by law, in each County composing their respective Circuits; and the said Courts shall be called Circuit Courts for the County in which they may be held, and shall have and exercise in the several Counties of this State, all the power, authority and jurisdiction which the County Courts of this State now have and exercise, or which may hereafter be prescribed by law, and the said judges in their respective Circuits, shall have and exercise all the

power, authority and jurisdiction of the present Court of Chancery of Maryland; Provided, Nevertheless, that Baltimore County Court may hold its sittings within the limits of the City of Baltimore, until provision shall be made by law for the location of a county seat within the limits of the said County proper, and the erection of a Court House and all other appropriate buildings, for the convenient administration of justice in said Court.

3. Laws of the State of Maryland, contained in a printed volume, having the following title: "The General Public Statutory Law and Public Local Law of the State of Maryland, from the year 1692 to 1839 inclusive: with annotations thereto, and a copious index. By Clement Dorsey, an associate Judge of the First Judicial District. In three volumes. Baltimore: Printed by John D. Toy, corner of Market and St. Paul Streets. 1840." From which said volume, the following laws and parts of laws were read in evidence, to wit:

Laws of Md. Chap. 55

November 1804. - Chapter 55. (Page 490)

An act to provide for the trial of facts in the several Counties of this State, and to alter, change and abolish, all such parts of the Constitution and form of government as relate to the General Court and Court of Appeals.

27

Sec 1. Be it enacted by the General Assembly of Maryland, That this State shall be divided into six judicial Districts, in manner and form following, to wit: St. Mary's, Charles and Prince George's Counties shall be the first district; Cecil, Kent, Queen Annes and Talbot Counties shall be the second district; Calvert, Anne Arundel and Montgomery Counties shall be the third district; Caroline, Dorchester, Somerset and Worcester Counties shall be the fourth district; Frederick, Washington and Allegany Counties shall be the fifth district; Baltimore and Harford Counties shall be the sixth district; And there shall be appointed, for each of the said judicial districts, three persons of integrity and sound legal knowledge, residents of the State of Maryland, who shall, previous to and during their acting as judges, reside in the district for which they shall respectively be appointed, one of whom shall be styled in the commission chief judge, and the other two Associate Judges, of the district for which they shall be appointed; And the chief judge, together with the two Associate judges, shall compose the County Courts in each respective district; And each judge shall hold his commission during good behavior, removable for misbehaviour on conviction in a court of law, or shall be removed by the Governor, upon the address of the General Assembly, provided that two-thirds of all the members of

each house concur in such address; And the County Courts, so as aforesaid established, shall have, hold and exercise, in the several Counties of this State, all and every the powers, authorities and jurisdictions, which the County Courts of this State now have, use and exercise, and which shall be hereafter prescribed by law; And the said County Courts established by this Act shall respectively hold their sessions in the several Counties at such times and places as the Legislature shall direct and appoint, and the salaries of the said Judges shall not be diminished during the period of their continuance in office.

Chap. 85

Chapter 85. (Page 926.)

A further supplement to the Act for the recovery of small debts out of Court, and to repeal the acts of Assembly therein mentioned.

Be it enacted by the General Assembly of Maryland, That the Judges of the Several County Courts within this State shall and may hold plea in said Courts, of any debt or damage whatsoever; Provided, it shall appear upon the record that the debt or damage really existing at the time of the commencement of the action exceeded fifty dollars; And provided also, that the provisions of this act shall be construed to extend only to cases of debt or damage existing in or growing out of Contract.

29

Chap 51

Chapter 51. (Page 975.)

An Act to authorize Equitable Assignees to sue in their own names.

Whereas equitable assignees have frequently sustained injuries and loss, by the death of the assignor or legal plaintiff; therefore,

Be it enacted by the General Assembly of Maryland That any assignee or assignees, bona fide entitled to any judgment, bond, specialty or other chose in action for the payment of money by assignment in writing, signed by the person or persons authorized to make the same, may, by virtue of such assignment, sue and maintain an action or actions, execution or executions, in any Court of law or equity in this State, as the case may require, in his, her or their name or names, against the obligor or obligors, debtor or debtors therein named, saving and reserving to the defendant or defendants, all such legal or equitable defence as might or could have been had and maintained against the assignor or assignors at the time, and before notice of such assignment, in the same manner and to the same extent as if no such assignment had been made.

Chap 69

Chapter 69. (Page 5)

An Act against excessive Usury.

Sec. 1. Be it enacted by the Queen's most

excellent majesty, by and with the advice and consent of her majesty's Governor, Council and Assembly of this Province, and the authority of the same, That no person or persons whatsoever, within this province, whether inhabitant or foreigner, upon any contract, from and after the end of this present session of assembly, shall exact or take, directly or indirectly, for loan of any moneys, wares or merchandises, or other commodities whatsoever, to be paid in money, above the value of six pounds for the forbearance of one hundred pounds for one year, and so after that rate for a greater or lesser sum, or for a larger or shorter time, nor shall any person or persons whatsoever, within this province as aforesaid, from and after the time aforesaid, exact and take, directly or indirectly, for loan of any tobacco, wares, merchandises, or other commodities for one year, to be paid in tobacco or other commodities of this province, above the value of eight pounds of tobacco for the forbearance of one hundred pounds of tabacco, and after that rate for a greater or lesser sum, or for a longer or shorter time

Chap 23

Chapter 23. (Page 9-10)

An Act for limitations of certain actions, for avoiding suits at law.

Sec 4. And, forasmuch as divers disputes

31

formerly arose, whether persons absenting the province, or wandering from County to County until the time by the late act, for the reasons and purposes aforesaid limited and allowed, were expired, should have any benefit thereby, and different judgments given thereon in the several and respective counties within this province, for that the said act was altogether silent, Be it therefore enacted, by the authority aforesaid, that from and after the publication hereof, no person or persons whatsoever, absenting themselves out of this province, or that shall remove from County to County, after any debt contracted, whereby the creditor or creditors may be at an uncertainty of finding out the said person or persons, or his or their effects, shall have any benefit by the limitation or restriction in this act specified.

Declaration of Rights. Md

The Declaration of Rights of the State of Maryland, as it now stands. (Page XXV)

The parliament of Great Britain, by a declaratory act, having assumed a right to make laws to bind the colonies in all cases whatsoever, and in pursuance of such claim endeavoured by force of arms to subjugate the United Colonies to an unconditional submission to their will and power, and having at length constrained them to declare themselves independent States,

and to assume government under the authority of the people, Therefore, We, the Delegates of Maryland, in free and full convention assembled, taking into our most serious consideration, the best means of establishing a good constitution in this State, for the surer foundation, and more permanent security thereof, declare,

1. That all government of right originates from the people, is founded in compact only, and instituted solely for the good of the whole.

2. That the people of this State ought to have the sole and exclusive right of regulating the internal government and police thereof.

3. That the inhabitants of Maryland are entitled to the common law of England, and the trial by jury according to the course of that law, and to the benefit of such of the English statutes as existed at the time of their first emigration, and which by experience have been found applicable to their local and other circumstances, and of such others as have been since made in England or Great Britain, and have been introduced, used, and practised by the Courts of law and equity; and also to all acts of assembly in force on the first of June, 1774, except such as may have since expired, or have been, or may be altered by acts of convention, or this declaration of rights; subject nevertheless to the revision of, and amendment or

repeal by the legislature of this State; and the inhabitants of Maryland are also entitled to all property derived to them from or under the charter granted by his Majesty Charles the first to Caecilius Calvert, baron of Baltimore.

Alexander Neill Jr

4. The deposition of Alexander Neill Jr, as follows:

Alexander Neill Jr, of lawful age, being sworn and examined on the part of the plaintiff, deposeth and saith, That he acted as Counsel for the Plaintiff, John Baker, in the case of George Mc Cullough use of John Baker, No. 256, Appearances, November Term 1839, in the then Washington County Court in the State of Maryland, and that the name of said Court has been changed in the new Constitution of the State to Circuit Court for Washington County, State of Maryland. That the cause of action in said suit was a sealed note for $1230 75/100 dated September 6th. 1839, payable forty days after date, signed and sealed by John Stonebraker, payable to George Mc Collough, assigned or endorsed by George Mc Collough in blank, by writing his name across the back of it. Deponent saith the note was handed him for collection by an officer in the Hagerstown Bank, for John Baker, who was the real party in interest and to whom

the money would have been paid had it been collected. That judgment in said cause was confessed by the defendant, John Stonebraker, by his counsel, Chew Schnebly, in favor of the plaintiff, John Baker.

2nd. Deponent saith that he is learned in the laws and adjudications of the superior Courts of the State of Maryland and the practice thereof, including the bringing of suits and entering of judgments. That he became so acquainted by study and practice, being a member of the bar and practising in said Courts for upwards of a quarter of a century. That the practice has been in said Courts, either to bring the suit in the name of the obligee of a sealed note or single bill, with the name of the obligee written across the back, against the obligor, regarding the name written across the back as an assignment, and then enter the judgment to the use of the holder of the note, he being the real party in interest; or bring the suit in the name of the assignee against the obligor. The practice most common is for the obligee's name to be used as Plaintiff against the obligor and then enter the judgment to the use of the assignee or holder of the note.

3rd. When the note was handed deponent, he was informed that John Baker was the holder and

assignee of the same, and as it was his duty he brought suit on it and by virtue of the blank assignment or endorsement on the note, he had the judgment entered to the use of John Baker according to the usage and practice of the Court, and that John Baker paid him for his services.

4th. Deponent further says that he was acquainted with the defendant in said cause, John Stonebraker, who resided for a long time about one and a half miles South of Funkstown, near the Antietam Creek, Washington Co. Maryland, and at the time of obtaining said judgment; that some years afterwards, he left the place he resided as aforesaid, and as the deponent was informed at the time and since, emigrated to the State of Missouri in the vicinity of St. Charles.

5th. Deponent saith that the said John Stonebraker had a son named Oliver, who resided in Hagerstown up to within a year or two, and also left for St. Charles, Missouri; that said Oliver is about forty years of age. Alex^r Neill

formerly Alex^r Neill Jr

Motion to exclude pt of depo^n

And thereupon Defendant moved the Court to exclude from the evidence for irrelevancy and incompetency so much of said deposition as refers to the appearance of John Stonebraker by his Attorney, Chew Schnebly, at the trial, and the

rendering of the judgment sued on. Which motion was sustained by the Court and that portion of said deposition was excluded. To which action of the Court and exclusion of testimony, the plaintiff then and there excepted.

Mo. Sustained

5. The deposition of Isaac Nesbitt, as follows:

Isaac Nesbitt

Isaac Nesbitt, of lawful age, being also sworn and examined on the part of the plaintiff, deposeth and saith:

1st. He is now, and has been, Clerk of the Circuit Court for Washington County, State of Maryland, for nine years, and was previously Clerk of said Court for seven years when it was called the Washington County Court; and that he is acquainted with the practice of instituting suits in said Court and entering up judgments.

2nd. That the general practice in bringing suits in said Court on single bills or notes of hand under seal and endorsed in blank, is to sue in the name of the obligee for the use of the holder; and a judgment entered on this form of action is always under the control of the holder of the note or endorsee; and he can as such equitable plaintiff in the case enforce the collection and receive the fruits of such judgment, and order it to be satisfied; in short, being the complete legal owner of such judgment, can do with it as he

pleases; All such actions in law where the suit is brought for another's use operate as a full assignment of the chose in action and the judgment thereon, as fully as if he were the original holder of the thing in suit, or the holder of a judgment may transfer for the use of another all his interest in the same, by a simple entry upon the docket; and such an entry upon the docket gives to the person for whose benefit it is made all the rights possessed by the original plaintiff in such judgment.

3rd. That the practice was as stated above in the County Court, which remains the same under the new style of the Court, there being only a change in the name but not in the practice.

Isaac Nesbitt

6. The deposition of Samuel Bowser, as follows:

Samuel Bowser

Samuel Bowser, of lawful age, being sworn and examined on the part of the plaintiff, deposeth and saith, That he was born in Funkstown, Washington County, State of Maryland, in the year 1824 and has resided there nearly all the time since the day of his birth; that he was intimately acquainted with the John Stonebraker mentioned in the depositions of Alex. Neill Jr; that the said John Stonebraker resided about one and a half miles south of Funkstown, Washington County,

State of Maryland, which place he left either in the years 1843-1844 or 1845 and removed near Hagerstown, where he resided a short time and left for the west; that sometime in the summer or fall of 1859, the said John Stonebraker made a visit to Hagerstown, Maryland, where the deponent saw him and heard him say that he resided in the State of Missouri; Deponent further says that he was well acquainted in the neighborhood of Funkstown, Washington County, State of Maryland, where the said John Stonebraker formerly resided, and knew all the land-holders for several miles around, and that there was no other John Stonebraker living in said neighborhood - that the said John Stonebraker had a son named John E. Stonebraker, and also Garret Stonebraker had a son named John W. Stonebraker; that he was well acquainted with the said John E. Stonebraker and John W. Stonebraker, having attended the same school with them, and that in the winter of 1839 and 1840 all three of them - the deponent and the said John E. Stonebraker and John W. Stonebraker - were school boys together, neither of them carrying on any business, the said John E. Stonebraker living at the time with his father on the farm, and the said John W. Stonebraker living with his father Garret on his farm; Deponent says he knew all the children of John Stonebraker as follows: Oliver, Perry, Alfred,

John E., Morris, Grafton, Urilla and Cynthian, and that one of the girls was married to a Mr Crick; that he became so acquainted by calling at the house of John Stonebraker, living within one and a half miles of him, and by going to school with the children; Deponent further says that the said Oliver Stonebraker resided in Washington County, State of Maryland, up to some time in the year 1859, and then left as he has been informed for the State of Missouri. Saml. Bowser.

7. The deposition of Richard Sheckels, as follows:

Richard Sheckels, of lawful age, being sworn and examined on the part of the plaintiff, deposeth and saith: That he was intimately acquainted with the John Stonebraker mentioned in the deposition of Alexander Neill Jr, and knew him for nearly 20 years; That he resided one and a half miles South of Funkstown from whence he removed, but at what precise time witness cannot say. Deponent further says that said John Stonebraker appeared in Hagerstown, Maryland, in the summer or fall of 1859, where witness saw him and had a conversation with him; that the said John Stonebraker told witness that he had left Washington County, Maryland, either 13 or 15 yrs before, and then at the time of the conversation resided about 20 miles from St. Louis, Missouri,

where he had 900 acres of land; that he wanted his son Oliver, who was then living in Hagerstown, Maryland, to come to Missouri, and that he desired to divide his land between his children; Deponent further states that he knew Oliver Stonebraker who resided in Hagerstown, Md., when his father visited said town, and Oliver moved to the west about one year ago; Deponent says he is well acquainted in the neighborhood of Funkstown, Maryland, where said John Stonebraker resided, and was so acquainted in 1839, and that there was no other John Stonebraker residing in said neighborhood to the deponent's knowledge; that there is now a John W. Stonebraker residing in Hagerstown, Maryland, who is a son of Garret Stonebraker, but in 1839 he was too young to be engaged in business, being a man of only 36 or 38 years of age now. Deponent further says that he thinks it was in the summer of 1859 that he saw John Stonebraker in Washington County, Maryland, and had the conversation with him above referred to.

R. Shekles.

8. The deposition of William S. Williamson, as follows:

Wm S. Williamson } Wm. S. Williamson, of lawful age, being sworn and examined on the part of the plaintiff, deposeth and saith: That he became acquainted with the John Stonebraker mentioned in the depo-

41

sition of Alexander Neill Jr in 1836, and knew him well afterwards until he left for the west; that when he became so acquainted, the said John Stonebraker resided about one mile and a half south of Funkstown, Washington County, Maryland, where he continued to reside until 1840 or 1844, when he left and removed nearer Hagerstown, Maryland, and from thence he left for the west; Deponent says that he was then engaged in making saddles, and that the said John Stonebraker called at the shop and engaged one to take with him to the west; that in the summer of 1859, the said John Stonebraker again appeared in Hagerstown, Maryland, when the Witness saw him and had a conversation with him; that the said John Stonebraker then informed the Witness that he was then residing about 18 or 20 miles from St. Louis, Missouri, where he said he was engaged in raising grain and raising stock &c. Deponent says further that he was the father of Oliver Stonebraker, well known to deponent, who then resided in Hagerstown, Maryland; that Oliver is aged about 40 years, and left for the west about one year ago; that the said John Stonebraker had other children younger than Oliver, but that he remembers the names of only two, Alfred and Perry.

W. S. Williamson

Daniel Weisel }

9. The deposition of Hon. Daniel Weisel, as follows:

The Hon. Daniel Weisel, of lawful age, being sworn and examined on the part of the plaintiff, deposeth and saith: He is an Attorney at law, having been a member of the Bar of Maryland since the year 1827, and has been engaged in the practice of his profession more particularly since the year 1832, with the exception of four years, when he was upon the bench as one of the Judges of the Western Judicial Circuit of Maryland composed of Frederick, Washington and Allegheny Counties. He has also attended for many years the Court of Appeals of Maryland, and argued causes there, and that from his practice he has acquired a fair knowledge of the laws and adjudications of the Courts of Maryland, and the practice thereof. Deponent further says that since the year 1829, any one who is the bona fide assignee of a bond or single bill or sealed note (the assignment being in writing and signed by the person making the same, and holding or entitled to said bond &c) can bring a suit on it in his own name. This is by virtue of an act of Assembly of Maryland passed in the year 1829, Chapter 51; that before the passage of that act, the holder of such an instrument, assigned in full in writing or in blank, was obliged to bring suit in the name of the payee or obligee (or his

executors or administrators, if dead) but in all such cases it was the invariable practice to enter a use on the docket for the person holding the note as assignee or entitled to the fruits of the action; that this practice can still be pursued under the act of 1829, in cases covered by that act, at the option of the parties suing; and that in all cases, then, since and now, where a bond or note under seal is endorsed or assigned in blank, the invariable practice has been, and is, to bring the suit in the name of the payee (or his executors &c, if dead) and at the same time to enter on the docket a use in favor of the person holding or entitled to the bond or note; that in such cases the judgment was and is entered up in the name of the legal plaintiff, that is, the person in whose name the suit is brought, not in the name of the cestui que use, but the entry of the use controlled the ownership of the judgment, and the person for whose use the suit was entered had and has the right to demand and receive the payment and release for it, and the Courts have protected the rights of the cestui que use in such cases; he is regarded as the one really and only entitled to the avails, the legal plaintiff standing to him in the relation of trustee, and authorising his name to be used to collect the proceeds; the cestui que use is regarded as the real plaintiff in the case. Deponent further says that the law

Court of Washington County, Maryland, in 1839, was styled The Washington County Court. It was a Court of Record. Since the year 1851 the same Court has been and is styled the Circuit Court for Washington County, the name having been changed by a provision of the new Constitution of Maryland, adopted in that year. It is also a Court of Record. Deponent further says that the practice in bringing suits upon sealed instruments, endorsed in blank, is the same in the Circuit Court for Washington County as in the former Court, called the Washington County Court, the present Constitution of Maryland or the laws enacted under it having made no change in this respect; that it is the practice when ~~suit~~ is brought for another person in the name of the obligee in a sealed note, to enter the use in the caption or docket entry of the case and also on the back of the writ which is sufficient to control the case & show the ownership of the judgment as that of the assignee.

D. Weisel

10. The deposition of Jacob Shaneberger, as follows:

Jacob Shaneberger } Jacob Shaneberger, of lawful age, being sworn and examined on the part of the plaintiff, deposeth and saith, That he knew the John Stonebraker mentioned in the deposition of Alexander Neill Jr, and has been intimately acquainted with

him for 40 years; that for many years the deponent resided in Funkstown, Washington County, Maryland, and the said John Stonebraker resided about one and a half miles south of Funkstown, and whilst so living there saw him nearly every day in the week. Deponent says that he visited the house of said John Stonebraker frequently and became well acquainted with John Stonebraker's family, and that the said John Stonebraker had the following children, viz: Oliver, Perry, Alfred, John E., Morris, Grafton, Urilla and Cynthia, and that one of said daughters has since become the wife of a Mr Orick. Deponent further says that he was acquainted long before, and since 1839, at the place where John Stonebraker resided viz: South of Funkstown, and for some miles around him, and that there was no other John Stonebraker in said neighborhood, excepting his son John E. and also Garret Stonebraker's son John W. Stonebraker, who were both school boys in 1839, doing no business at the time; that said John Stonebraker left his place of residence aforesaid, between the year 1840 and 1843 or 1844, and moved near Hagerstown, Maryland, where he resided a short time, and from thence removed to the State of Missouri. Deponent further says that in May 1854 he visited said John Stonebraker at his house and home in the State of Missouri, and that he the said John Stonebraker resided about 12 miles from St. Charles, in St. Charles

County, in the State of Missouri, where he found him engaged in farming and raising cattle. Deponent further says that the said John Stonebraker told him at the time of deponents visit as aforesaid, that he owned about 600 acres of land in St. Charles County, Missouri. Deponent further says that the said John Stonebraker returned to Washington County, Maryland, on a visit in June 1859, and that he saw him in Hagerstown, Maryland, at which time he the said John Stonebraker told the Witness that he still resided at his old home 12 Miles from St. Charles, Missouri, as aforesaid and that he owned 900 acres of land, and spoke of the price of land &c and said every acre of land he owned was worth $100 00/100 per acre and that he was able to pay every dollar that he owed. Deponent further says that he was well acquainted with Oliver Stonebraker, who was one of the sons of said John Stonebraker, and that he Oliver Stonebraker resided for several years in Hagerstown, Maryland, and left that place for the State of Missouri about one year ago. Deponent further says that he was well acquainted with John C. Stonebraker and Alfred Stonebraker, who were the sons of the said John Stonebraker now dead, and that he saw them in St. Charles County, State of Missouri, whilst on his visit to that place.

Jacob Shaneberger.

47

Thos H Fowler

11. The deposition of Thomas H. Fowler, with a paper exhibit attached thereto, purporting to be, and referred to in said deposition as the original re-assignment from Thomas H. Fowler and Samuel J. Rogers to John Baker, dated October 27th 1848, as follows:

Geo. McCollough for use of Jno Baker vs Jno Stonebraker } judgt obtained by confession on the prothonotary's docket in Hagerstown, Md, in 1839 or 1840 for the sum of $1230. or thereabouts & assigned by sd Baker to Saml J. Rogers & Doctr Thos H. Fowler in June 1840.

We do reassign over all our right, title & interest of the above judgt to the sd Jno Baker without recourse for value recd as Witness our hands & seals this Octr 27th 1848.

Thos H. Fowler (Seal)
Samuel J. Rogers (Seal)

Witness
Franklin Bennington.

Thomas H. Fowler, of lawful age, being sworn & examined on the part of the plaintiff, deposeth & saith, That he is acquainted with John Baker the Plaintiff & has been acquainted with him for a number of years, That he was only acquainted with John Stonebraker in his lifetime time from reputation. I am not acquainted with his administrators. The assignment of the

judgment here attached & marked (A.) & made part of this deposition in favor of George McCollough for the use of John Baker & against John Stonebraker was written by me in my own handwriting & signed by myself & Samuel J. Rogers on the day it bears date in the presence of each other & in the presence of John Baker, also the subscribing Witness Franklin Bennington, All three of us signed in the presence of each other and said paper is the identical instrument we then signed conveying or assigning all our interest in said judgment to said John Baker. I am informed & verily believe that Samuel J. Rogers, also the subscribing Witness to said paper, are both dead, When they died I do not know. About the time or a short time after the assignment of said judgment was made from John Baker to myself & Samuel J. Rogers, the Sheriff levied on John Stonebrakers goods & chattels, but he John Stonebraker having made an assignment of his effects, his assignees wrested the property levied on out of the Sheriffs hands by virtue of said assignment & left it in the hands of the assignees of the said John Stonebraker, which left the said judgment unpaid, but the said assignees of John Stonebraker expected to pay said judgment as soon as the_ coned get the means from the effects of Stonebraker assigned to them, and afterwards stated that they coned not pay it & never did. I examined the assignment

of McCollough to Baker of this judgment & found it all right on the docket at Hagerstown, Maryland. John Stonebraker, the same man that this judgment was against, left his residence near Hagerstown, Maryland, within some two or three years after the assignment of said judgment from Baker to Thomas N. Fowler & Samuel J. Rogers and as report then said removed to the State of Missouri and as I am informed afterwards died in the State of Missouri. Further the deponent saith not.

Thos N. Fowler.

In proceeding to read the said deposition of Thomas N. Fowler, Plaintiff's attorney stated that he offered in evidence only so much thereof as included the assignment to John Baker and the execution and delivery of the same by said Fowler & Rogers, and declined reading any other portion of said deposition. Whereupon the Defendant's attorney requested and insisted that all the remainder of said deposition should be read. And the Plaintiff's attorney, protesting that he did not offer the same as a part of Plaintiff's testimony, but acted only in compliance with the request above mentioned of Defendant's attorney, thereupon continued to read the whole of said deposition. And thereupon Defendant moved the Court to exclude from the evidence, as irrelevant and incompetent, the whole of said deposition of

Thomas N. Fowler, together with the said exhibit thereto attached, which motion was sustained by the Court, and the deposition and exhibit were excluded. To which action of the Court and exclusion of testimony, the Plaintiff then and there excepted.

Fowlers depo. excluded

12. The deposition of Israel D. Crabb, as follows:

The Witness being duly sworn deposeth as follows: Some time during the fall of Eighteen hundred and thirty nine, John Baker sold a drove of Sheep to George McCollough and took a note on John Stonebraker for twelve hundred and thirty dollars in part pay, payable in the Hagerstown Bank. The note at maturity was protested. Baker or his assignees, Fowler & Rogers, brought suit in the Hagerstown Court and got judgment on the same. Further the deponent saith not.

I. D. Crabb.

Israel D Crabb

Defendant thereupon moved the Court to exclude the said deposition of Israel D. Crabb from the evidence, for irrelevancy and incompetency. Which motion was sustained by the Court and the deposition was excluded. To which action of the Court and exclusion of testimony, the Plaintiff then and there excepted.

Crabbs deposition excluded

The Plaintiff here rested his case,

Whereupon, the Defendant introduced testimony as follows:

1. Transcript from Record, with certificates of authentication, of proceedings and judgment in the County Court of Washington County, State of Maryland, as follows:

Defendants Transcript

State of Maryland, Washington County, towit:

At a County Court of the Fifth Judicial District of the State of Maryland, begun and held at Hagerstown, in and for said County, on the third Monday of November, being the eighteenth day of the same month, in the year of our Lord One thousand eight hundred and thirty nine:

Were Present:

The Hon John Buchanan, Chief Judge
" " Abraham Shriver } Associate
" " Thomas Buchanan } Judges
John Newcomer, Sheriff
O. N. Williams, Clerk

In the record of proceedings of the same Court, amongst others, is the following, towit:

Nisi.
256 Appearances
November Term
1839
Schnebey

George McCollough, use of
John Baker, use Thomas N.
Fowler & Samuel J. Rogers
vs
John Stonebraker

Be it remembered, that heretofore, towit, on the third day of February in the year of our Lord

One thousand eight hundred and forty, the said George Mc Collough, by Alexander Neill Jr, his Attorney, prosecuted and sued forth out of the County Court here, the writ of the State of Maryland of Capias ad respondendum, to the Sheriff of said County directed, in the words and of the tenor following, towit:

Washington County towit: The State of Maryland, to the Sheriff of Washington County, Greeting: (Seal) We command you to take John Stonebraker, late of Washington County, Yeoman, if he be found in your bailiwick, and him safe keep so that you have his body before the Judges of our County Court, now being held at the Court House, in Hagerstown, in said County, to answer unto George Mc Collough, in a plea that he render unto him the sum of twelve hundred and thirty dollars and seventy five cents, which to him he owes, and from him unjustly detains, &c so forth. Hereof fail not at your peril, and have you then and there this writ. Witness The Hon. John Buchanan, Chief Judge of our said Court, the 18th day of November, 1839. Issued the 3rd day of February 1840.

O. H. Williams, Clerk.

And the Sheriff of said County, to whom the said writ was in form aforesaid directed, makes no return to the Court here, of the said writ, nor hath he done any thing therein; Nevertheless the said

53

Defendant voluntarily appears in Court here, by Chew Schuebly his Attorney: And thereupon the said Plaintiff by his Attorney aforesaid, declares against the said Defendant in the plea aforesaid as follows, towit:

Washington County ss. John Stonebraker, late of Washington County, Yeoman, was summoned to answer unto George Mc Collough in a plea that he render unto him the sum of twelve hundred and thirty dollars and seventy five cents which — him he owes and unjustly detains from him and so forth. And Whereupon the said George Mc Collough, by Alexander Neill Jr his Attorney, says that the aforesaid John Stonebraker on the sixth day of September in the year of our Lord one thousand eight hundred and thirty nine at the County aforesaid by his certain writing obligatory commonly called a single bill forty days after date promised to pay George Mc Collough or order the sum of twelve hundred and thirty days and seventy five cents at the Hagerstown Bank for value received. Nevertheless, the aforesaid John Stonebraker the said sum of Money above demanded or any part thereof to him the said George Mc Collough hath not satisfied or paid, although so to do the said John Stonebraker afterwards towit on the first day of November in the year of our Lord one thousand eight

hundred and thirty nine and often afterwards at the County aforesaid was requested. But the same or any part thereof to the said George Mc. Collough to render or pay has altogether refused and still doth refuse. Wherefore the said George Mc. Collough is the worse and has damage to the value of three thousand dollars, Current money of the United States, and so he brings suit &c and brings here into Court the writing obligatory aforesaid, sealed with the seal of the said John Stonebraker which the debt aforesaid Witnesseth &c whose date is the day and year first aforesaid.

Alex. Neill Jr
Attorney for Plaintiff

Here follow the writing obligatory mentioned and referred to in the foregoing declaration, and the protest annexed to it, towit:

$1230.75 Forty days after date I promise to pay George Mc. Collough or order the sum of twelve hundred and thirty dollars and seventy five cents at the Hagerstown Bank for value received. Witness my hand and seal this 6th day of September 1839. John Stonebraker (Seal)

Endorsed thus: "George Mc. Collough, John Baker, pay to Elie Beatty Esq Cash or order"

United States of America. State of Maryland towit: On this day, the nineteenth of October in the

year of our Lord Eighteen hundred and thirty nine at the request of President & Directors of The Hagerstown Bank, bearers of the original promissory note whereof a true copy is on the other side written, I, John Gruber, Notary Public, by Letters Patent under the great seal of the State of Maryland, commissioned and duly qualified, residing at Hagerstown, Washington County, in the State aforesaid, exhibited the said original promissory note at the Hagerstown Bank, the place where the same is made payable, and demanded payment thereof, the time limited for payment having duly expired, and was answered "there is no funds here to pay it". Wherefore I, the said Notary, at the request aforesaid, have protested and by these presents do solemnly protest, as well against the Drawer & Endorsers of the said promissory note as all others whom it may concern, for exchange, re-exchange, and all costs, charges, damages and interests, suffered or to be suffered for the want of payment of the said promissory note, and addressed written notices thereof to the Endorsers of the same, also informing them that they are held liable for the payment of said note. Notices directed to G. N. Bowman Esq, Cash. Brownsville Pa., and put them into the Post Office same day. Thus done and protested, at Hagerstown, Washington County aforesaid. In testimony

Notarial Seal

whereof, I have hereunto set my hand and affixed my seal notorial, the day and year aforesaid.

John Gruber, Notary Public

Here follows the endorsement on said protest, to wit: $1230.75 Forty days after date I promise to pay George McCollough or order the sum of twelve hundred and thirty dollars and seventy five cents at the Hagerstown Bank for value received. Witness my hand and seal this 6th day of September 1839. John Stonebraker (seal)

(Endorsed) George McCollough, John Baker, Pay to Elie Beatty Esq. Cash or order.

And the said Defendant says, that he cannot deny the action aforesaid of the said Plaintiff, so as aforesaid against him brought, nor can he deny but that he owes unto the said Plaintiff the aforesaid sum of twelve hundred and thirty dollars and seventy five cents, current money, in manner and form as the said Plaintiff above against him has complained; therefore it is considered by the Court here, that the said Plaintiff recover against the said Defendant as well the said sum of twelve hundred and thirty dollars and seventy five cents, current money, his debt aforesaid, in form aforesaid acknowledged, as the sum of three thousand dollars for his damages which he has sustained by occasion of the

detention of the said debt, as also the sum of five dollars eighteen and one third cents, by the Court here unto the said Plaintiff, by his consent, adjudged, for his costs and charges about his suit in this behalf laid out and expended, and the said Defendant in mercy &c

Memorandum: Judgment was confessed in this action on the 3rd day of February, 1840, for $1230.75, debt, and $3000., damages, and costs of suit; To be released on the payment of the debt, with interest thereon from the 16th day of October, 1839, till paid, and $1.75 costs of protest, and $5.18⅓ costs of suit.

Test: Isaac Nesbitt, Clerk.

And afterwards, to wit, on the 31st day of July, 1840, the following assignment was filed in Court here, to wit: For value recd I do assign over all my right to the above judgment to Thos N. Fowler & Saml. J. Rogers this July 20th 1840.

John Baker.

And afterwards, to wit, on the 26th day of February, 1841, the following paper was filed in Court here, to wit:

George McCollough use of John Baker use of Fowler & Rodgers
-vs-
John Stonebraker

Judt. $1230.75

Let an execution issue in the above cases, the money if

made to abide the future order of the Court.
Feb. 26th/41 Alex^r. Neill Jr J. Spencer.

Neill George McCulloch use of Thos. N. Fowler & Sam. J. Rodgers
vs
John Stonebraker

No. 129. Judicials. March Term 1841.
Fifa. D $1230.75 Dam^s. $3000. - Costs $5.18
Add^l. Co 75.

Be it remembered that heretofore to wit, on the 26th day of February, 1841, the said Plaintiff, by his Attorney aforesaid, prosecuted and sued forth upon the judgment aforesaid, the Writ of the State of Maryland, of Fieri Facias, directed to the Sheriff of the County aforesaid: And the said Sheriff of the County aforesaid, to whom the said writ of Fieri Facias was delivered, has made no return thereof to the Court here.

Test: Isaac Nesbitt, Clerk

State of Maryland, Washington County, to wit:

I, Isaac Nesbitt, Clerk of the Circuit Court for Washington County, and ex officio Keeper of the Records of Washington County Court aforesaid (the said County Court having been abolished by the Constitution of the said State in the year 1851) do hereby certify, that the foregoing is a full, true and perfect transcript of the Record of Proceedings of

the County Court aforesaid. In testimony whereof, I hereunto subscribe my name and affix the seal of the said Circuit Court for Washington County, this 21st day March A.D. 1861. Isaac Nesbitt, Clerk

State of Maryland, Washington County, to wit:

I, Thomas Perry, sole Judge of the Fourth Judicial Circuit of the State of Maryland, comprehending the Counties of Washington and Allegany, do certify that the foregoing Attestation of Isaac Nesbitt, Clerk of the Circuit Court for Washington County aforesaid, and ex officio Keeper of the Records of said Washington County Court, is in due form. Given under my hand this 22nd day of March 1861. Thomas Perry.

Motion to exclude transcript overruled

To the introduction of which said transcript the plaintiff objected for irrelevancy and incompetency, and moves the Court to exclude the same from the evidence. Which objections and motion were overruled by the Court, and the testimony was admitted. To which said overruling by the Court and admission of said testimony, the Plaintiff then and there excepted.

Stonebrakers Assignment

2. Deed of Assignment from John Stonebraker to Chew Schnebly and Eli Beatty,

dated April 20th 1841, as follows:

This Indenture made this twentyeth day of April in the year of our Lord One thousand eight hundred and forty one between John Stonebraker of Washington County and State of Maryland of the one part, and Elie Beatty and Chew Schnebly of the same County and State of the other part,

Whereas the said John Stonebraker is indebted in various sums of money and is desirous to make adequate provision for the early payment of the same in full, and Whereas the said John Stonebraker has requested the said Elie Beatty and Chew Schnebly to act as Trustees in the premises and they have agreed to assume upon themselves the burthen of the execution of the said trust, Now therefore this Indent-Witnesseth that the said John Stonebraker in consideration of the premises and also in consideration of the sum of ten dollars to him in hand paid by the said Elie Beatty and Chew Schnebly have granted, bargained, sold, aliened, enfeoffed and conveyed, and by these presents do grant, bargain and sell, alien, enfeoff, convey and confirm unto the said Elie Beatty & Chew Schnebly, their heirs and assigns forever, the following described real estate and personal property, that is to say, Part of Kelly's Delight containing two hundred and twelve and one eighth of an acre of land, conveyed by Garrett Stonebraker to the said John Stonebraker by deed bearing date the

seventeenth day of January eighteen hundred and eleven and recorded among the Land Records of Washington County in Liber W. folios 378 & 380 by reference to which will more fully and at large appear; Also a part of Kelly's Delight containing eighteen acres and one fourth of an acre more or less conveyed by George Breather to the said John Stonebraker by deed bearing date the first day of October eighteen hundred and twelve and recorded among the land records of Washington County in Liber Y. folios 519 & 550, by reference to which will more fully appear, And also part of a tract of land called Clagett's Luck containing one hundred and forty three and one half acres of land more or less, conveyed by John Knode and Peter Seibert to the said John Stonebraker by deed bearing date the sixteenth day of December eighteen hundred and thirty four and recorded among the land records of Washington County in Liber P. P. folios 523 by reference to which will more fully appear, Also that part of a tract of land called the Summit of Peliez, containing ten acres of land more or less conveyed by John Knode & Peter Seibert to the said John Stonebraker by deed bearing date the sixteenth day of December 1834 and recorded among the land records of Washington County in Liber P. P. folio 522 by reference to which will more fully and at large appear, Also the Mill and Property containing about twelve acres of land more

or less purchased from Christian and Daniel Boestater by the said John Stonebraker situated upon the Antietam Creek and adjoining the lands of Messrs Clagetts, being the said lots or parcels of land conveyed by the said Christian and Daniel Boestater to the said John Stonebraker by deed bearing date the first day of August 1832 and recorded amongst the land records of Washington County in Liber N. N. folio 478, 479, Also the Booth Farm containing about one hundred and thirty six acres of land being the property purchased from John Booth by the said John Stonebraker and adjoining the lands of Elias Chaney and Philip Shindle lying on the Antietam Creek about three miles from Funkstown, Also about twelve acres of land more or less situate, lying and being about one fourth of a mile South West of Hagerstown on the Sharpsburg and Williamsport roads and adjoining the lands of Theobald Eichelberger & Jacob Bragonier being the land lately purchased by the said John Stonebraker from Thomas Ringer and conveyed to the said Thomas Ringer by John Reynolds, Also one hundred and sixteen acres of Mountain land lying and being in Frederick County and purchased from John Hershey and adjoining the lands of Letherman & John Smith, Also all his interest in Coersole's Establishment being the property purchased by the said John Stonebraker from James Grimes and Henry Fiery and conveyed by the said

James Grimes to the said John Stonebraker by deed bearing date the ~ day of ~ eighteen hundred and ~ and recorded among the land records of Washington County in Liber ~ folio ~ by reference to which will more fully and at large appear, containing two hundred and fifty eight acres more or less, and all the houses, buildings, improvements and appurtenances whatsoever belonging or in any wise appertaining of, in and to the said premises hereby bargained and sold or intended to be sold, situate, lying and being in Washington County aforesaid, and all my right, title, claim, interest and demand at law or in equity in and to the above described property and all property real or personal that I may have or be in any wise entitled to situate, lying and being in Washington County and not already particularly mentioned, described and conveyed or intended so to be, Also all the following goods, chattels and personal property in the Schedule hereunto annexed to wit: Twenty five slaves, men, women and children, viz Joseph Woodland La Henry Alexander, Joseph, Wage, Caroline, Priscilla, Margaret, Ann Cecelia, Phiss, Jacob, Samuel, Mose, Andrew, Joseph, Doogs, Lord, Ainns, John Bell, Alexander, Susan, Mary Ann, 100 Head of Cattle, 34 Head of Horses, 150 Head of Hogs, 140 Head of Sheep, five wagons and geers, One threshing Machine, two carts, twelve plows, two harrows, seven stoves, side board, six tables, two dozen

chairs, household and kitchen furniture, about 300 acres of grain in the ground, also all the farming utensils and other implements of husbandry belonging to the said John Stonebraker upon the said tracts of land, all of which said goods, chattels and other personal property are now being, standing and remaining in and upon the said real estate hereby conveyed in Washington County aforesaid, To have and to hold the said real estate above described and hereby conveyed or intended so to be together with all the improvements and appurtenances thereunto belonging or in any wise appertaining and all the goods, chattels and personal property hereby conveyed to the said Elio Beatty and Chew Schnebly, their heirs and assigns and the survivor of them and the heirs and assigns of such survivor, In trust nevertheless for the following uses, intents and purposes hereinafter expressed and declared of and concerning the same, that is to say, In trust to sell and dispose of the same or of such parts thereof as may be necessary for the fulfillment of all the trusts and purposes of this deed, at such time or times at any time after the first day of November next as they may deem expedient, at public or private sale for Cash or for credit, and upon such terms and conditions as to them may seem right and expedient, and upon payment of all the purchase or upon payment of part thereof and a satisfactory security of the residue, to

convey the same to the said purchaser or purchasers, their heirs and assigns forever, provided nevertheless that until such sales are made the said John Stonebraker is hereby allowed and permitted to use, occupy and have full control over the same and to receive the rents and profits and issues of the same, but without any right or power to alien or incumber the same, and provided also that any crops which may be growing on the same or any part thereof at the time or times of the sales of the same or any part thereof, the said John Stonebraker shall have full power, right and authority to gather and secure the same, with the right of ingress, egress and regress for that purpose and that out of the avails or proceeds after payment of all the domestick expenses and after payment of all accounts and charges of every description, touching and concerning the farming operations on the said trust property or any part thereof, to hand over the net proceeds from time to time to the said Trustees and the said Elie Beatty & Chew Schuebly shall apply all proceeds and sales coming into their hands in the execution of the said trust, First to the payment of all expenses they may incur in prosecuting this trust by printing, surveying or counsel fees or such other expenses as may be incident to the same and to the payment of their commission of eight per cent upon all proceeds of real or personal

estate, arising in the execution of this trust, Secondly to apply the proceeds of the said real estate to the payment of the debts of the said John Stonebraker without priority or preference except as the same exists by law, and to apply the proceeds of the personal property in like manner without priority or preference except as the same exists by law, Thirdly, in case of advances made by the said Elie Beatty & Chew Schnebly to meet any pressing demands they are to stand in respect of such advances by substitution, in the stead of the persons so paid and to receive payment with interest in the same manner as the persons so paid would have been entitled to, if their debts had still remained unpaid, Fourthly, the said Elie Beatty & Chew Schnebly shall not be liable for any loss or deterioration of property real or personal without actual and wilful default or misconduct of theirs.- Fifthly, the surplus of all real and personal property and of bonds, notes, money or other assets which shall remain after payment of all his said debts, shall be paid, reconveyed and handed over and delivered by the said Elie Beatty & Chew Schnebly to the said John Stonebraker, his heirs, executors, administrators or assigns.- In testimony whereof the said John Stonebraker hath hereunto subscribed his name and affixed his seal the day and year first hereinbefore written.

Signed, sealed and delivered in presence of N. C. Schnebly, Wm. N. Handy — John Stonebraker (Seal)

State of Maryland,

Washington County, to wit: On this twentyeth day of April eighteen hundred and forty one before us the subscribers two Justices of the Peace of the State of Maryland in and for Washington County personally appears John Stonebraker, who the subscribers are satisfied of their own knowledge is the person who is named and described as and professing to be the party grantor in the annexed conveyance, and acknowledged the same to be his act and deed for the purposes therein mentioned. Acknowledged before and certified by N. C. Schnebly, Wm N. Handy.

State of Maryland,

Washington County, to wit: I, Isaac Nesbitt, do hereby certify that the foregoing is a true, correct and complete copy taken from Liber G. G. folios 200, 201, 202 & 203, one of the Land Record Books of Washington County aforesaid. In testimony

L. S.

whereof I hereunto subscribe my name and affix the seal of the Circuit Court for said County, this twentyeth day of February A. D. 1861. Isaac Nesbitt, Clk.

To the introduction of which said deed of assignment the Plaintiff objected for irrelevancy

Motion to exclude transcripe overruled

and incompetency, and moved the Court to exclude the same from the evidence. Which objections and motion were overruled by the Court, and the testimony was admitted. To which said overruling by the Court and admission of testimony the Plaintiff then and there excepted.

Oliver Stonebraker

3. Oliver Stonebraker, a Witness on the part of Defendant, testified in substance as follows: I am a son of John Stonebraker, deceased, and was living with him in Washington County, Maryland, in the year 1841. I was acquainted with his property at that time. He had a farm called "Kelly's Delight", about 130 acres - the Clagett farm of 320 acres - Mill property in Funkstown, 10 acres - the Booth farm about 130 acres. He also owned some mountain land, about 50 negro slaves and a large quantity of stock and farming utensils. I cannot tell how much it was all worth, but I suppose that John Stonebraker, in 1841, was worth $80,000. I do not know how much he owed. Everybody thought he had enough to pay his debts. I saw the Clerk's docket and an entry therein showing that an execution on the judgment upon which this suit is founded had been issued but never returned. I do not know of any levy being made under that or any other execution

To all of which testimony of the said Oliver

69

motion to exclude overruled

Stonebraker the Plaintiff objected for irrelevancy and incompetency, and moved the Court to exclude the same from the evidence. Which objections and motion were by the Court overruled, and the testimony was admitted. To which overruling by the Court and admission of testimony, the Plaintiff then and there excepted.

4. Defendant then read in evidence from the same volume of laws introduced by Plaintiff the following Statutory enactments of the State of Maryland:

Laws of Md. Chap 23

Chapter 23.— (Page 9. – 11.)

An Act for limitation of certain actions, for avoiding suits at law.

Sec. 1. And be it further enacted, by the authority aforesaid, by and with the advice and consent aforesaid, That no bill, bond, judgment, recognizance, Statute merchant, or of the staple, or other specialty whatsoever, except such as shall be taken in the name or for the use of our sovereign lord the King, his heirs and successors, shall be good and pleadable or admitted in evidence against any person or persons of this province, after the principal debtor and creditor have been both dead twelve years, or the debt or thing in action above twelve

years standing; saving to all persons that shall be under the aforementioned impediments of infancy, coverture, insanity of mind, imprisonment, or being beyond the sea, the full benefit of all such bills, bonds, judgments, recognizances, statutes merchant, or of the staple, or other specialties, for the space of five years after such impediment removed, any thing in this act before mentioned to the contrary notwithstanding.

Chap 23

Chapter 23. - (Page 105 - 107, 108)

An act for the advancement of Justice.

Sec. 8. And be it enacted, That where any person or persons hath recovered, or shall recover, any judgment against the principal debtor and surety, and such judgment hath been or shall be satisfied by sureties, that the creditor shall be obliged to assign judgment to the surety satisfying the same, and that the assignee shall be entitled unto and have in his own name, as assignee, the same execution against the principal debtor, by virtue of such assignment and this act, as the creditor might or ought to have had, the said assignment being first recorded in the same Court wherein the judgment shall have been rendered or obtained; and that where any judgment hath been or shall be rendered against several sureties,

and one of them hath satisfied or shall satisfy the whole, the plaintiff or creditors shall be obliged to assign such judgment to the surety satisfying the same, and that the assignee shall have and be entitled to ~~an~~ execution against the other sureties against whom judgment hath been or shall be obtained by the principal creditor, for a proportionable part of the debt or damage paid by such assignee, any law, usage or custom, to the contrary notwithstanding; provided always, that no defendant or defendants shall be precluded or debarred of his or their remedy against the plaintiff by audita querela, or other equitable course or proceeding whatsoever, anything in this act to the contrary notwithstanding.

Sec. 9. And be it enacted, by the authority aforesaid, That upon all bonds, or other obligations under seal, that have or shall be assigned under hand and seal, the assignee shall and may, by virtue of such assignment, maintain an action or actions in his or her name against the obligor or obligors therein named, and if it shall happen that such obligor or obligors shall be unable to pay the debt mentioned in such obligation, or cannot be found in the place or County of his usual abode, or any other thing or casualty shoud happen whereby the assignee shall not be able to receive or recover his debt from such

obligor or obligors, that then and in every such case the like action shall and may be maintainable by such assignee against the obligee or obligees in such obligation mentioned, in case the said assignee hath not been, nor shall be, a surety in the bond or obligation assigned to him as aforesaid, any law, usage or custom, to the contrary notwithstanding; provided, that where any debt shall be lost by the negligence or defaut of the assignee or assignees, that the assignor or assignors shall not be liable, any such assignment notwithstanding.

Sec. 10. Provided also, that no action or actions shall be maintained in the name or names of any assignee or assignees upon any assignment wherein the obligee or obligees may be liable under this act, upon the default of the obligor or obligors as aforesaid, unless the assignor or assignors have made or shall make oath (or affirmation if a quaker) before some Magistrate "that he, she or they hath or have received no part of the sum mentioned in such obligation, or but such part thereof as shall be mentioned in such oath or affirmation, at the time of making any such assignment"; to be endorsed on such bond or obligation

Defendant here closed his evidence,

73

Whereupon the Plaintiff introduced in rebuttal the following:

(1) The deposition of Alexander Neill, as follows:

Alexander Neill Jr

Alex Neill, then Alex Neill Jr, of lawful age, being sworn and examined on the part of the Plaintiff, deposeth and saith that on the 3rd day of February 1840 he instituted suit in the then Washington County Court, now Circuit Court for Washington County, Maryland, against John Stonebraker, to recover $1239.75 the amount of a single bill drawn by said John Stonebraker in favor of George McCullough, upon which the Defendant by his counsel confessed judgment with a stay of execution for twelve months. That a short time subsequent to the limit of said stay an execution was issued in said suit and placed in the hands of John Carr, then Sheriff of said County.

Deponent further says that on the 23rd day of April 1841, the said John Stonebraker executed a deed of trust, conveying all his property, both real and personal, to Eli Beatty and Chew Schnebly for the benefit of his creditors. That said trustees took possession of said property, sold the same and, as this deponent supposes, paid out the money. That Chew Schnebly left the State of Maryland before the closing of said Estate; which was settled

up by Eli Beatty his co-trustee, and who departed this life several years ago - that said deceased Beatty has no administration upon his effects.

Deponent further states that he, acting as counsel for the Plaintiff aforesaid in the cause against said John Stonebraker, made enquiry into the condition of said estate in the usual mode of doing business in his profession to ascertain whether or not any thing could be realized on the execution aforesaid; and was also informed by Eli Beatty, the acting trustee, that there were claims against said Stonebraker sufficient, having priority, to exhaust the whole of the proceeds of said estate and that he did not suppose that any thing could be made on said execution. Witness further states that he became acquainted with the foregoing facts from being counsel for the Plaintiff. And he further says that no money was ever made upon said execution that came to his knowledge. That John Carr, the Sheriff to whom said execution was directed, has since died, and Witness does not know what has become of said fi. fa. Deponent further says that the suit spoken of is the same mentioned in his deposition taken in this cause on a former occasion and stands No 251 Appearances Nov. Term 1839, on the Docket of

Whereupon defendant objected, for irrelevancy and incompetency, to so much of said deposition as relates to the appearance of John Stonebraker by his Counsel and confession of judgment, and moved the Court to exclude the same from the evidence. Which objections and motion were sustained by the Court, and the testimony was excluded. To which action of the Court and exclusion of testimony, the plaintiff then and there excepted.

Part of dep. excluded

2. The deposition of Isaac Nesbitt, as follows:

Isaac Nesbitt

Isaac Nesbitt, of lawful age, being sworn and examined on the part of the Plaintiff, deposeth and saith – That he is now Clerk of the Circuit Court for Washington County in the State of Maryland at Hagerstown and has charge of the papers and effects of said office. That he has made diligent search in said office for the execution issued in the case of George McCullough use of John Baker against John Stonebraker No. 251, Appearances November Term 1839, and could not find the same. That he has been first as deputy and since principal Clerk in said office for upwards of twenty years, and that it is the duty of said officer, when an execution has been returned by the Sheriff, to make an

entry of said return on the docket to show that the same has been returned - That in the case referred to no entry has been made on the docket, from which deponent believes (and from the fact of his not being able to find it) that said execution has never been returned by the then Sheriff to whom it was directed - But that said execution was issued before deponent had any connection with said office

Isaac Nesbitt

3. The deposition of James Dixon Roman, as follows:

James Dixon Roman

James Dixon Roman, of lawful age, being sworn and examined on the part of the Plaintiff, deposeth and says - That he knew John Carr formerly Sheriff of Washington County in the State of Maryland - that said Carr died in 1842, and that he, deponent, was appointed his executor. Deponent further states that after letters testamentary were granted to him upon the personal estate, he gave possession of his (the deceased papers relative to his office as Sheriff) to John D. Ridenour for final settlement - that the said Ridenour had been previously acting as deputy for said Carr. Deponent further says that the said Ridenour died several years ago & is informed that William B. McAtee became his administrator. Witness says he knows nothing of the whereabouts of the

77

execution in the case of Mc Cullough use of Baker against Stonebraker, No 256, Appearances, Nov. Term 1839.

J. Dixon Roman

4. The deposition of Wm. B. McAtee, as follows:

Wm. B McAtee

William B. McAtee, of lawful age, being sworn and examined on the part of the plaintiff, deposeth and saith – That he knew John D. Ridenour, who died in Washington County, Maryland, about three years since, and that deponent was subsequently appointed his administrator. Witness says he received all such papers and effects of said deceased as he deemed of any importance that came to his knowledge, and that at the request of D. H. Wiles he made search among the papers yet in his possession for an execution directed to John Carr, late Sheriff of Washington County, at the suit of George McCullough use of Baker against John Stonebraker, but could not find the same – that he does not know what has become of said execution. Deponent further states that he made the search spoken of this day among the papers of said deceased Ridenour.

W. B. McAtee

5. The deposition of Thomas N. Fowler, as follows:

Thos N Fowler

Thomas N. Fowler, of lawful age, being sworn & examined on the part of the Plaintiff, deposeth

faith - That in my former deposition I stated the facts & circumstances in reference to the Stonebraker judgment as I then recollected & understood them. As to my statement about wresting the property levied on from the Sheriff was as follows, to wit, The assignment to the assignees was made previous to the levy by the Sheriff, and they the assignees claimed the right to the property & thus wrested it from the Sheriff by claiming that they had the legal right to it, to which claim our attorneys yielded. I do not recollect that I ever saw a record of the levy or of the execution having been returned. So far as I recollect I made an examination for that purpose and found no record of the levy or of the execution or of its having been returned. The assignees claimed & satisfied me that there was prior & older judgments against Stonebraker, to which they must apply the proceeds of the property, but said they thought there would be property sufficient to reach & pay this judgment at that time. Sometime afterwards they insisted that there was nothing in their hands to pay it, and it never was paid to my knowledge nor any thing applied to the payment of it. Samuel J. Rogers & myself had an assignment of the judgment in favor of John Baker & against John Stonebraker

19

which judgment we afterwards reassigned to the said John Baker. Further the deponent saith not. Thos H. Fowler.

Fowlers dep. excluded

To which deposition of the said Thomas H. Fowler, the defendant objected for irrelevancy and incompetency, and moved the Court to exclude the same from the evidence. Which objections and motion were by the Court sustained, and the testimony was excluded. To which action of the Court and exclusion of testimony, the plaintiff then and there excepted.

This was all the testimony offered in the cause.

The Plaintiff thereupon asked the Court to declare the law, by way of instructions, as follow:

Plaintiffs Instructions

Refused

1. The transcript of the record introduced by Plaintiff, being duly authenticated, together with the Statutes of the State of Maryland, furnish sufficient evidence of the rendition of the judgment against Defendant by a Court of competent jurisdiction, as stated in Plaintiff's Petition.

2. The written assignment from Fowler

and Rogers to plaintiff, as proven, together with the laws and statutes of the State of Maryland introduced and shown on the part of plaintiff, constitute prima facie evidence that plaintiff is the owner of said judgment, and entitled to sue thereupon.

Refused

3. The transcript offered in evidence by defendant cannot be received or considered in evidence for the purpose of impeaching the record shown by plaintiff, nor for the purpose of showing that the same is not a true, perfect and complete transcript of the record, as certified by the proper officers.

Refused

4. The entry in the record shown by plaintiff of the voluntary appearance of Defendant to the action by Chev Schnebly, his attorney, is sufficient prima facie to establish the jurisdiction of the Court over the person of defendant, and to fix his liability upon the judgment in the Courts of this State, so far as his notice of the proceedings might affect the same.

Refused

5. The Defendant, has not, in his answer or in his proofs, set up or established any sufficient defence under the statute of limitations.

Given

81

6. No plea of payment or satisfaction being set up in defendant's answer, the evidence offered for the purpose of showing that the judgment was satisfied by execution and levy, or otherwise, is inadmissable and cannot be considered by the Court for that purpose.

Given

7. Even if it be considered proven that there was an execution issued upon the judgment and a levy upon property, yet that cannot avail the defendant as a defence, if it also appear that by the act or procurement of defendant, or of his assignees in the deed of assignment shown by defendant acting under and by virtue of said deed, the said levy was removed and rendered unavailable for the satisfaction of said execution.

Given

8. The material allegation in Plaintiff's petition, that the said judgment has never been paid or satisfied, nor any part thereof, but that the same is still subsisting in full force and effect, not being denied in defendant's answer, the same will be taken as true, and defendant cannot defeat the claim of plaintiff upon any ground of payment or satisfaction, actual or implied.

Refused

9. Even if the defence of payment or satisfaction

Given

were admissible under the pleadings, yet the defendant has introduced no competent evidence to prove such payment or satisfaction.

Of which said instructions, the Court gave those numbered 5, 6, 7 and 9, and refused those numbered 1, 2, 3, 4 and 8. To which action of the Court in refusing the 1st, 2d, 3d, 4th and 8th instructions aforesaid, the plaintiff then and there excepted.

The defendant thereupon asked the Court to declare the law, by way of instructions, as follows:

Defendants Instructions

Given

1st The transcript of the judgment sued on failing to show that the Court rendering the judgment has jurisdiction over the person of Jno Stonebraker, the same is insufficient upon which to render a judgment in this Court. The statement in the transcript that Jno Stonebraker appeared by attorney did not give the Court jurisdiction, so as to render such a judgment as would authorize the Court here to render a judgment thereon.

Refused

2d. The plaintiff must recover, if at all, on the transcript sued on and if said transcript has been shown to the satisfaction of the Court not to be a full transcript, plaintiff cannot recover thereon.

83

3rd If the Court shall find from the transcript introduced by Defendants that an execution had issued on the Maryland judgment against Jno Stonebraker, and the transcript filed by Plaintiff as the foundation of their suit fails to show the issuing of such execution, then Plaintiffs transcript is not a full record of the proceedings had in the cause in Maryland, and Plaintiff cannot recover on such mutilated, partial and defective transcript.

Refused

4th There is not sufficient evidence showing an assignment of the judgment of Fowler & Rogers to Baker to entitle the latter to bring suit thereon.

Given

5. The judgment sued on, not being good and pleadable or admissable in evidence against defendants in the State of Maryland after twelve years standing, no judgment can be rendered thereon here, if the evidence in the cause shall show that the suit here was instituted twelve or more years after the rendition of the judgment in Maryland.

Refused

6th The judgment sued on, having been obtained more than ten years prior to the institution of this suit, Plaintiffs are barred from recovering thereon

Refused

7th The judgment sued on, having been obtained more than five years prior to the institution

Withdrawn

of this suit, Plaintiffs are barred from recovering thereon.

Of which said instructions, that numbered 7 was withdrawn by Defendant, those numbered 1 and 4 were given by the Court, and those numbered 2, 3, 5 and 6 were refused. To which action of the Court in giving the said 1st and 4th instructions, the Plaintiff then and there excepted.

The Court thereupon, of its own motion, declared the law, by way of instructions, as follows:

Declarations of law

1. Although the transcript of record sued on may not be a complete record of all the proceedings had in the case, yet it contains sufficient to maintain this action, provided the proceedings of the Court in rendering said judgment were legal and binding on the defendant. Therefore, there being no fatal conflict between the transcript sued on and the transcript offered in evidence by defendant, they should stand together, being entitled to equal faith and credit.

Given

2. There being no evidence tending to show that said Chew Schnebly was authorized by defendant to confess the judgment sued upon, against him and in favor of Plaintiff, therefore said

Given

judgment is not binding on defendant, and the plaintiff cannot recover in this action.

3. The assignment of the judgment by Fowler and Rogers to Baker, the plaintiff, should appear of record in the transcript sued on, to entitle the plaintiff to recover.

Given

To the giving of which said instructions numbered 2 and 3, the plaintiff then and there excepted.

Nonsuit

The Plaintiff thereupon took a nonsuit, with leave to move to set the same aside, which being duly entered of record, the plaintiff afterwards, on the same day, filed his motion in writing for a setting aside of said nonsuit, which said motion is as follows:

John Baker
vs
John Stonebraker } In the St. Charles Circuit Court

Motion to Set aside Non Suit

Plaintiff, by leave of Court, moves the Court to set aside the nonsuit entered herein, for that the plaintiff was erroneously compelled thereto by the action of the Court in the matters following, to wit:

1. The Court erred in the giving of instructions

asked for by defendant, which ought to have been refused.

2. The Court erred in the refusing of instructions asked for by plaintiff, which ought to have been given.

3. The Court erred in giving instructions of its own motion, which ought not to have been given.

4. The Court erred in the admission of testimony on the part of defendant, which ought to have been rejected.

5. The Court erred in the rejection of testimony on the part of plaintiff, which ought to have been admitted.

Lewis & Alexander
Attorneys for Plaintiff

Motion Overruled

Which said motion, being heard and considered, was by the Court overruled. To which action of the Court and overruling of said motion, the plaintiff then and there excepted, and tendered this his bill of exceptions, praying that the same be signed and made part of the record, which is done.

A. King
Judge.

State of Missouri
County of St. Charles } I Ben Emmons Jr. Clerk of the Circuit Court of St. Charles County Missouri certify the foregoing to be a full and correct transcript of the record and proceedings in the above entitled cause as the remains of record in my office

In Witness Whereof I hereto set my hand and affix the seal of said Court this 2nd day of October 1863.

Ben. Emmons Jr. Clk

SEAL OF THE CIRCUIT COURT ST. CHARLES COUNTY

Index

Petition. 1.
Summons. 4.
Return. 4.
Answer Filed 5.
Answer 5.
Motion for Security for Costs. 6.
Continuance 6.
Death of Deft Suggested. 7.
Admrs. Appear. 8.
Answer of Admrs. 8.
Continuance 9.
Additional Ans. 9.
Continuance 11.
Ammended Ans. 11.
Continuance 14.
Non Suit 15.
Motion to set aside overruled. 15.
Bill of Exeptions Filed. 16.
Bill of Exceptions 17.
Plffs. Transcript. 17
Maryland Constitution Section 8. 24
Laws of Maryland Chapter 55. 26.
Chapter 85. 28.
Chapter 37. 29.
Chapter 69. 29.
Chapter 23. 30
Decleration of Rights Md. 31.
Dep. of Alex. Neill Jr. 33.
Motion to exclude part of Deposition. 35.
Motion sustained 36.
Dep. of Isaac Nesbitt 36.
" Samuel Bowser. 37.
" Wm. S. Williamson. 40.
" Daniel Weisel. 42.
" Jacob Schneberger. 44.
" Thos. H. Fowler. 47.
Fowlers Dep. Excluded 50.
" Israel D. Crabb. 50.
Israel D. Crabbs Dep Excluded. 50.
Defts Transcript. 51.
Motion to Exclude Transcript overruled. 59.
Stonebrakers Assignment. 59.
Motion to exclude Transcript overruled. 68.

Dep of Oliver Stonebraker. 68.
Motion to exclude Stonebrakers testimony overruled. } 69.
Laws of Md. Chap 23. 69.
Chapter 23. 70.
Dep. of Alex Neill Jr. 73.
Part of Dep excluded. 75.
Dep. of Isaac Nesbitt. 75.
" Jas Dickson Roman. 76.
" William B. McAtee 77.
" Thos H. Fowler. 77.
" Fowler excluded 79.
Pltffs. Instructions 79
Defts " 82.
Declarations of law by the Court. } 84
Non Suit 85
Motion to set aside. 85
Motion Overruled 86.

(12) # 33.

October Term 1863

John Baker
Plff in Error
vs
John E & Alfred Stonebraker
Admrs of John Stonebraker
Defts in Error

Error
to St Charles Circuit Court

M. E

Filed October 3d 1863
A.W. Mead
Clerk

Lewis & Alexander
atty for P. E.

A. Krekel
atty for D. E

Clerks fee $20.00

10$ paid

Apr.
1863 Nov 16. Argued & submitted
1863 December 21. Reversed, Remanded nonsuit set aside
Opinion filed
Op 214

20
10
3.25
30
33.55

John Baker, Plff. in Error
vs.
Jno. E. & A. Stonebraker, Admrs. &c.
Defts. in Error

IN SUPREME COURT,
October TERM, 1863.

AND now comes the said Plaintiff in Error and says, that in the record and proceedings of the Court below, in the above entitled cause, there is manifest error, and for error said Plaintiff in Error assigns the following, to wit:

1. That said Court admitted improper and illegal testimony offered by Deft. in Error
2. That said Court rejected proper and legal testimony offered by Plff. in Error
3. That the Court gave ~~to the Jury~~ improper and illegal instructions.
4. That the Court refused to give ~~to the Jury~~ proper and legal instructions offered by Plaintiff in Error
5. That the verdict was against the evidence.
6. That the verdict was against law.
7. That the verdict was against both law and evidence, and against the law under the evidence.
8. That the verdict was against the weight of evidence.
9. That the judgment was rendered in favor of the Defendant in Error when it should have been rendered for the Plaintiff in Error.
10. That said Court overruled the motion ~~for a new trial, made by~~ to set aside the non-suit, made by Plff. in Error.

E. A. Lewis, for Plff. in Error.

And now comes the said defendants in error and for joinder in error say, that there is no error in the record and proceedings of said John ~~Stonebraker~~, Baker vs. John Stonebraker in said cause, as assigned by said appellant

Orrick & Kiekel
attys for appellees

48

John Baker, P. E.,
v. } Assignment of Errors.
Jno. E. & A. Stonebraker,
admrs, &c. – D. E.

Filed Oct 15, 1863
A. W. Mead
Clk

John Baker
vs.
John Stonebraker's adm.

In the St. Charles Circuit Court.

To the defendants above named, or their attorneys of record.

Take notice, that a writ of error on the judgment and proceedings in the above entitled cause, returnable to the October Term, 1863, of the Supreme Court of Missouri, at St. Louis, has been issued from the office of the Clerk of said Supreme Court and duly delivered to the Clerk of the Circuit Court aforesaid - said writ having been sued out and obtained by the plaintiff in said cause.

Lewis & Alexander,
Attorneys for Plaintiff.

48.

John Baker

vs. } Notice of Writ of Error.

Jno. Stonebraker.

Filed Oct 15, 1863

A. W. Mead

Clk

Filed October 2 1863.

Service of the within notice is hereby acknowledged, and further notice waived.

Sickel & Orrick

Attys for Defts.

John Baker — P. E.
vs.
John E. & Alfred Stonebraker, admrs. of Jno. Stonebraker, decd. D. E.

In the Supreme Court. October Term, 1863. — Error to St. Charles Circuit Court.

Statement, by Plff. in Error.

Plaintiff in error sued the defendants' intestate on a Maryland judgment rendered in the Washington County Court on the 3d day of February, 1840. Suit was instituted here on the 7th May, 1859. The transcript used in evidence shows that the defendant was not served with process, but that he "voluntarily appeared" to the action, "by Chew Schnebly his attorney." (Record, page 19.) Judgment by nil dicit was thereupon rendered against defendant, for $1.230.75/100 (Record, page 22.)

The "consolidated and amended answer" of defendants in error — superseding several previous ones — denies that there ever was such a suit or proceeding, to which their intestate was made a party, by service, personal appearance or otherwise. Denies that he ever authorized Chew Schnebly, or any one else, to appear for him, "so as to give the Court jurisdiction over his person." Ignores the assignment of the judgment to plaintiff, and says that the alleged assignment is illegal and invalid. Charges that the transcript

filed with plaintiff's petition is "not a full record," but is mutilated, defective and partial. Alleges that the judgment sued on, being of more than twelve years standing, has, by the laws of Maryland, ceased to be good and pleadable, and could not be enforced in that state. Concludes with the plea of the statute of limitations, stating the period at "more than ten years." (Record, pages 11, 12, 13.)

No controversy is raised as to the jurisdiction of the Maryland Court over the subject matter of the action. Nor is there any as to the proper authentication of the transcript. The judgment, when rendered, was the property of Thomas H. Fowler and Samuel J. Rogers, as appears from the transcript. (Record, page 18.)

In the course of the trial, plaintiff undertook to prove an assignment of the judgment, in writing, under seal, by Fowler and Rogers to him. (Record, page 47.) The testimony was objected to by defendants, for incompetency, their objection was sustained and the whole testimony offered on that point was ruled out — to which plaintiff excepted. (Record, pages 49, 50.)

The defendants introduced another transcript of the same judgment, to which were appended sundry memoranda by the clerk and attorneys, touching the issuing of execution — to which plaintiff objected for irrelevancy and incompetency.

His objections were overruled, and the testimony was admitted - to which plaintiff excepted. (Record, pages 57, 58.)

Defendants introduced a deed of assignment executed by their intestate shortly after the date of the judgment, and a witness, Oliver Stonebraker, to prove the quantity and value of intestate's property at that time, and certain entries on the Clerk's docket touching an execution. All of which was objected to by plaintiff for irrelevancy and incompetency - but his objections were overruled and the testimony was admitted, to which plaintiff excepted. (Record, pages 60 to 69.)

Plaintiff offered, among other testimony in rebuttal, the deposition of Thos. H. Fowler, for the purpose of explaining part of his former deposition which plaintiff's counsel had read in response to the call of defendants' counsel, and not as evidence for the plaintiff. (See Record, page 49.) Defendants objected thereto for irrelevancy and incompetency - their objections were sustained and the deposition was excluded, to which plaintiff excepted. (Record, page 79.)

Upon the conclusion of the testimony, the Court, in the giving and refusing of instructions or declarations of law, announced, in effect, the following as the legal propositions which were to govern in the determination of the cause, to wit:

1. That the transcript introduced in evidence was insufficient to prove the rendition of the judgment sued on.

2. That the written assignment from Fowler & Rogers to plaintiff was insufficient to show prima facie plaintiff's ownership of the judgment — it being necessary, in law, that the assignment of a judgment "should appear of record in the transcript."

3. That the entry in the record of defendant's appearance by attorney is not sufficient to show, prima facie, that the Court had jurisdiction of his person.

4. That it devolved on plaintiff to show by evidence, other than that contained in the record, that the attorney was authorized by defendant to confess the judgment sued on, — otherwise, the plaintiff is not entitled to recover.

Other propositions were embraced in the instructions, which did not, like the foregoing, necessitate a finding against the plaintiff. (Record, pages 79 to 85.)

Plaintiff excepted to the giving and refusing of instructions and took a non-suit, with leave to move to set the same aside. This motion was made and overruled and plaintiff brings up the case by writ of error

Points and Authorities.

1. The written assignment of the judgment by Fowler and Rogers to plaintiff was valid, and sufficient to authorize plaintiff to sue thereupon.

It is not affected by the statute of this State. (Rev. Stat. '55, p. 907, § 38.) That statute was first enacted, Dec. 1, 1855. The assignment bears date, Oct. 27, 1848. (Record, page 47.) Nor is it affected by the statute of Maryland. (Record, page 70.) That statute is to compel assignments of judgments in a certain class of cases. It has no reference to voluntary assignments of them in any other sort of cases. The assignability of the judgment, — like that of any other chose in action, — being thus left, as at common law, in the shape of an equitable transfer of the right to control it, there remains no tenable objection to the sufficiency of the instrument offered in evidence, with the proof of its execution.

Laughlin v. Fairbanks, 8 Mo. R. 367
Love v. Fairchild, 13 Mo. R. 300, 305
Garland v. Harrison, 17 Mo. R. 282, 284
Ford v. Stewart, 19 Johns. 342
Clark v. Moss, 11 Ark. 736
Weir v. Pennington, Do. 745
Becton v. Ferguson, 22 Ala. 599

The competency as a witness, of Fowler, the assignor, to prove the assignment itself, is unquestionable.

Caldwell v. Garner, 31 Mo. R. 131, 136.

The assignment of the judgment being established, it was necessary, under our Practice, for the assignee to sue thereon in his own name.

Rev. Stat. '55, p. 1217, § 1
Walker v. Mauro, 18 Mo. R. 564
Smith v. Schibel, 19 Do. 140
Van Doren v. Kelfe, 20 Do. 455.
Burson v. Blair, 12 Ind. 371, 373.

2. The entry in the record of defendant's appearance by attorney is sufficient, prima facie, to show that the Court had jurisdiction of his person. This is all that is required in the present case, since the defendant offered no proof whatever to rebut the presumption.

There is some conflict among the authorities as to whether such an entry is conclusive and may not be disproved - or whether it may be met by the defendant with proof to the contrary. But all agree that, if not disproved, it is conclusive of the Court's jurisdiction over the person of the defendant.

Warren v. Luck, 16 Mo. R. 102.
Field v. Gibbs, 1 Pet. C.C.R. 155.

Newcomb vs. Brown, 17 Vt. 302, 310
Bennet vs. Stickney, Do. 532
St. Albans vs. Bush 4 Vt. 58
Shumway vs. Stillman, 6 Wend. 447
Edmonds vs. Montgomery, 1 Clarke (Iowa) 143
Whittaker vs. Murray, 15 Ill. 293
Thompson vs. Emmert, Do. 415
Bimeler vs. Dawson, 5 Ill. 536
Welch vs. Sykes, 8 Ill. 197
Wilcox vs. Kassick, 2 Mich. 165
Beckley vs. Newcomb, 4 Foster, 359
Boylan vs. Whitney, 3 Ind. 140
Stubbs vs. Leavitt, 30 Ala. 352
Hall vs. Williams, 6 Pick. 232
Holmes vs. Rogers, 13 Cal. 191
Houston vs. Dunn, 13 Texas, 476

3. The defendant being in court by his attorney, the latter had a right, as such attorney, to consent to a judgment by nil dicit or confession.

Denton vs. Noyes, 6 Johns. 295
Kellogg vs. Gilbert, 10 Johns. 220, 221
Cyphert vs. McClune, 22 Penn. (10 Harris) 195
Henck vs. Todhunter, 7 Har. & Johns. 275
Talbot vs. McGee, 4 Monroe, 375, 377
African Church vs. Carmack, 2 Md. Ch. Dec. 143
Lawson vs. Bettison, 12 Ark. 401, 417
Kent vs. Ricards, 3 Md. Ch. Dec. 392
Stewart vs. Goode, 29 Ala. 476
Holmes vs. Rogers, 13 Cal. 191

4. But, independently of the special powers of the attorney, when it is found that the Court had jurisdiction of the subject matter and of the person of the defendant, its judgment will be deemed regular, and cannot be questioned in a collateral proceeding.

See authorities above cited.

Marion vs. Titsworth, 18 B. Mon. 582.

The foregoing points embrace the errors complained of, upon which a reversal is sought. But, in view of the facts, that this suit has now been pending for more than four years — that the final administration of a large estate must necessarily be deferred until its ultimate decision, and that this Court may therefore think proper to render a final judgment in the cause — the plaintiff in error respectfully submits the following views upon the points which were ruled in his favor below — thus covering all the matters of defence which have been raised in the progress of the cause.

5. As to the mutilation, imperfections &c. of the record. The transcript being certified in exact accordance with the act of Congress, as a "full, true and perfect transcript," (Record, page 23) imports absolute verity, and cannot be impeached by the production of another transcript, or any other means. The 1st instruction given by the Court of its own motion, (Record, page 84) contains, substantially, the law in this connection.

Miles vs. Collins, 1 Met. (Ky.) 308
Mandeville vs. Stockett, 28 Miss. 398
Mitchell vs. Osgood, 4 Greenl. 124
Shirley vs. Fearne, 33 Miss. 653

6. The additional entries in defendants' transcript, which were sought to be used in impeaching that offered by plaintiff, (Record, pages 57, 58) can have no application other than to raise the presumption of payment by defendant, after the rendition of the judgment. But were they otherwise admissible or sufficient for such a purpose, the defendants are barred from so employing them, by the fact that no plea of payment is set up in their answer. (Record, page 11.)

Winston vs. Taylor, 28 Mo. R. 82.
Stevens vs. Hewitt, 30 Vt. 462.
Stephens vs. Roby, 27 Miss. 744
Rathbone vs. Rathbone, 10 Pick. 1.

Nor are those entries competent to show that an execution was in fact issued.

Cornelison vs. Browning, 9 B. Monroe, 50
Drake vs. Merrill, 2 Jones, Law (N. C.) 368
Barry vs. Rhea, 1 Overt. 345.

Nor is there any competent proof of the levy of an execution. This can only be shown by the return of the officer. The testimony which appears to have come from the plaintiff on this point, was forced from him by way of rebuttal of the improper evidence which the court had admitted on the part of defendants. In fact, the testimony of Fowler, the only witness to a levy, was excluded by the Court upon the application of defendants themselves. (Record, pages 50, 79.)

Nor would the levy, if proven, under the circumstances, raise the presumption of satisfaction. For the testimony shows that the levy, if any, was removed and rendered ineffectual by the act of the defendant himself, both in the deed of assignment and in the claim of the property by his assignees.

Blackburn vs. Jackson, 26 Mo. R. 308.
Thomas vs. Cleveland, 33 Mo. R. 126
Williams vs. Boyce, 11 Mo. R. 537
Nelson vs. Rockwell, 14 Ill. 375
Williams vs. Bowdon, 1 Swan (Tenn.) 283.

7. No defence is shown under the statute of limitations. That defence is controlled by the lex fori.

King vs. Lane, 7 Mo. R. 241

No lapse of time short of twenty years will bar suit on a judgment of a sister state.

Rev. Stat. '55 p. 1053, § 16

Manning vs. Hogan, 26 Mo. R. 571.

But even could the defendants invoke the Maryland statute of twelve years, (Record, page 69) it would not avail them, by reason of the 4th section of the same act. (Record, pages 30, 31.) The depositions all show the defendant's continued absence from the state of Maryland since about five years after the rendition of the judgment.

E. A. Lewis,
for Plff. in Error.

48

Jno. Baker, P. E.

v.

Stoutbraker's Admrs.
D. E. –

Brief for Plff. in Error
E. A. Lewis.

Filed Novem^r. 13/43
A.W. Mead
Clerk

John Baker Plaintiff in error
vs -
Alfred & John E. Stonebraker Admrs.
of Jno. Stonebraker Deceased. Defts in error

In the Sup. Ct
Oct. Term
1863.

Statement of the case by Defts in error.

This is a suit brought to the June Term 1859 of the Saint Charles Circuit Court, on a judgment, rendered on the 3d day of February 1840, in the County Court of Washington County and State of Maryland, in favor of George McCullough to the use of John Baker, use of Thomas H. Fowler and Samuel J. Rogers, for Twelve Hundred and Thirty and 75/100 Dollars. — Which judgment Plaintiff contends was assigned to him by a parol instrument of writing October 7th 1848 A transcript of the record of the Washington County Court is brought here and suit instituted thereon in the St Charles Circuit Court June Term 1859. — by the Plaintiff John Baker, who claims to be the assignee of the judgment in question. — To this judgment it is objected, by the Defendants, that the Court rendering the judgment, had no jurisdiction of the person of the Defendant John Stonebraker. That the Attorney Chas. Schnebly had no power or authority to confess judgment. — That the transcript upon which suit is brought, is not a full transcript of the proceedings had in the cause in the State of Maryland — That the assignment is invalid in law and that no suit can be sustained thereon by the present Plaintiff — That the non-return of the Execution, which was issued on the said judgment presumes its satisfaction — That the same is barred by the statute of limitations — In the Court below

judgment was rendered for the Defendants — & now Plaintiff ~~comes~~ brings the case to this Court by writ of error —

Krekel & Orrick
Attys for Defts in error

C

John Baker Off

A & J^ns E Strowbraker
Defts

Statement of the
case on the
part of Defts

Filed Nov 14. 1863
A. W. Mead
Clk

Jno. Baker Aff. in error
vs
A. & J. C. Stonebraker Deft. in error

In the Supreme Court.
Oct. Term 1863.

This is a suit upon foreign judgment, more properly speaking a suit upon a judgment of a Sister State - The statement filed by ~~Plaintiff~~ Defts in error, we think sufficiently states the facts, and indicates the issues, without repeating them here - In the first place, we shall speak of the judgments of sister states as if they were entirely foreign and thereby if we can, go to the foundation of the law pertaining to this subject of foreign judgments - Every judgment order or decree of any Court in any foreign state is attended and enforced in that foreign state, by virtue of the sovereignty of that foreign state within its own limits — and the effect of these judgments as law, is circumscribed by the boundaries of the foreign state itself - They have no binding extra-territorial force - Then when ~~any~~ a foreign judgment is recognized by any state, it is done not because it is law in that state, but because it is law in the foreign state. — Then ~~formally~~, whatever force or effect was given to them, by other states was voluntary and not compulsory - ~~There was~~ In fact, the recognition of foreign judgments rested entirely in comity, - Different foreign states, Extended this courtesy to each other, until that, which was at first, a mere matter of courtesy, became a matter of law.

This law then of foreign judgments resting in comity, the most that, the foreign state could expect, or the law would require, would be to give no more effect to the foreign judgment, than it would have, if sought to be enforced in the foreign state itself if this be the law in regard to foreign judgments, what additional duty or obligation, has that Section of the Constitution of the United States, in reference to the faith and credit, that shall be given to the judicial proceedings & decrees of Sister States, imposed on the several states of this Union? — When the Constitution says that full faith and credit, shall be given to the judicial proceedings of the several states, what does it mean? — We find that the Constitution by that Art." did not intend to confer any new power on the States, but to regulate their acknowledged ~~their~~ jurisdiction over persons and things within their territory". — By "full faith and credit" is meant no state shall dispute the verity of the judgment or decree — In the case at bar, we do not propose, to dispute the verity of the judgment in question, but merely its binding force or effect — Chf. Jus. Marshall in 3 Wheaton 234 lays down the law, thus. — "the judgment of a State Court should have the same credit validity and effect, in every other court of the U. S. which it had in the state in which it was rendered and that whatever pleas would be good to a suit thereon in such state and non others, could be pleaded in any court in

the United States" — then whatever defense could be made to a suit upon this judgment in the State of Maryland can be made in the State of Missouri — if this judgment cannot be Enforced in Maryland, it cannot be enforced in Missouri — if it is dead there, it is dead here also — Now what defenses could be made to this judgment if sought to be Enforced in Maryland — It appears on the face of the transcript of the judgment, that the Defendant was not summoned and it does not appear that any attorney was authorized to appear for him — This being the fact can ~~be~~ it be contended, that a court, however Extensive might have been its jurisdiction, could render a valid and binding judgment against him — It also appears that an execution on this judgment, which has never been returned or accounted for just here, then — a question arises, what presumptions, does the non-return of this execution raise? — In 12 Vermont 92 — we find the following — When an execution has issued on a judgment, it will be presumed ~~to be~~ that it has been paid, unless the execution be produced, or its loss be shown or the presumption otherwise rebutted" — ~~2 Tidd~~ the fact as to whether ~~the~~ the loss of this execution has been accounted for or the presumption of satisfaction rebutted, is a matter, which has been passed upon by the Court below & which we infer will not be inquired into by this Court

2d Lidd 1019 says, "when an Execution has once been issued, a second execution cannot be taken out until the first execution has been returned", - this is in fact, the general law, governing the issuing of executions - this maryland judgment having the same standing and dignity here, with domestic judgments, with what propriety or justice, can it be claimed that a second execution can issue on this judgment, before the first has been returned - it could not be done were it a judgment rendered in the state of Missouri, then, shall we give foreign judgment creditors rights which our own judgment creditors are denied -? - It seems to us, that this fact of the non-return of this execution, taken in connection with the testimony introduced in the Court below is conclusive against the Plaintiffs recovery in this case - more especially as the Pff. has permitted matters to remain in Status quo for so long a time -

The Plaintiff, Jno. Baker, bases his right to sue upon the judgment in question, upon a parol assignment to him by Hooker & Rogers. - Certainly according to our statutes, an assignment of this character of a judgment is not good - for they provide, that judgments must be assigned in a certain manner & that too by an instrument under seal. This then being the law of Missouri, & which goes to the validity of the assignment - It is certainly true as a matter of law that

all questions, touching the validity & construction of a contract are governed & controlled by the lex loci contractus and those touching the remedy by the lex fori - Now this instrument of assignment, if it is anything it is a contract and has a locus - there is no evidence however, shewing what that locus is, - whether it is Maryland Missouri or any other state - In the absence then of any testimony in the premises, is it not fair to presume, does not the law presume that the locus of the contract, is the place where the party seeks to enforce it or obtain the benefits of it. - if then, Missouri be the place of this contract of assignment, not only ~~[illegible]~~ the Pff's remedies are controlled by its laws, but ~~also, it~~ we may also enquire into the validity of this contract of assignment, with reference to the laws of this state - The paper introduced by the Pff. as evidence of his right & title to this judgment, is no evidence of an assignment, & consequently he can not bring this suit in his own name whether he be the real party in interest or not. - Our statute, says, what ~~is~~ sort of an assignment, of a judgment will pass the title to the judgment, & before an assignee of a judgment, can become "the real party in interest", within the meaning of the statute, he must conform to the requirements of the statute - this the Pff has not done & consequently has no right to sue - but admit for the sake of argument, that

The State of Maryland is the locus of this contract of assignment - what are the Pffs rights? - Is his position any better? - The Statutes of Maryland say, that an Equitable assignee, of a judgment, may ~~institute~~ "maintain an action" in his own name. - (and here we waive the question, whether the Pff. has established the fact, of title to the judgment, even in equity) - The whole burden of the Plaintiffs' argument and the theory which he invokes to support his action, is the theory above referred to, - the lex loci contractus & the lex fori - The Court will perceive that the Statute merely says that ~~th~~ such an assignee may "maintain an action" in his own name upon ~~[illegible]~~ the judgment, in other words, the law of Maryland merely gives the Equitable assignee, a remedy in their Courts - and they ~~do not pretend, to say, that~~ leave the law of assignments Exactly where it was at Common law - A chose in action at common law could not be assigned then Equity came in and permitted the equitable assignee to bring suit, not in his own name, as in the case at bar, but in the name of the assignor. If this suit was instituted in the State of Maryland, then, the Pff. might invoke this right of remedy or to "maintain an action" but it cannot be done in the Courts of our state - The laws of Maryland ~~have~~ which affect remedies have no Extra-territorial force or Effect and cannot be relied on ~~th~~ in a foreign jurisdiction -

upon the point of the rights of equitable assignees we cite the following - 13 Mass. 290. - 16 Pick 318 14 Mass. 107 - 1 Wheaton 235. - & the U.S. Digests on the subject of Assignments - Evidently the Plaintiff must rely, for his rights in the premises - either upon the common law of our country, - the law of Maryland or the law of Missouri. - and his case must come within, the requirements of the laws of one or the other, - and we ~~have~~ think we have satisfactorily shown that according to neither of these, has, he any rights in the Courts of the State of Missouri - Lastly - The Plaintiff is barred by the statute of limitations of the State of Maryland. - No defense could be made in the State of Maryland, we contend that it comes within the decision of Chief Justice Marshall, when he said that "whatever pleas would be good to a suit on a judgment in the foreign state could be ~~made~~ pleaded in any court in the United States." - The statute of Maryland says that "no judgment shall be good and pleadable - or offered in evidence after it is more than twelve years standing". The judgment in question was rendered in February 1840 - & this suit was instituted in 1859 - it having been nineteen years from the rendition of the judgment to the date of the institution of suit upon it - We hold that the above is not, a common statute of limitation, but it is a statute of prescription. It presumes that after 12 years, the judgment is not "good" in other words, for all prac

tical purposes, it is satisfied — it does not say, that no action shall be brought or maintained after a certain time, but says, that no judgment shall be good & pleadable, &c. — Then unlike, a common statute of limitation, it not only destroys the remedy, but also the right — if this be the case — any state or jurisdiction, can galvanize into life, that which is already dead — This judgment then, being dead and not "good", in the State of Maryland by the Express laws thereof, it cannot be enforced in the State of Mo. — When the Constitution of the U. S. says, that "full faith and credit shall be given to the judicial proceedings &c" it only means, to recognize judgments that are living and not to resurrect those, which are dead — This judgment is dead by the laws of Maryland — The Plaintiff has brought, an old decayed carcass of a judgment here and is now asking the Courts of the State of Mo, to infuse life into it, — In 10 Rich. Eq. Reports. 475. we find the following decided — "By the law of Georgia a return must be made, upon an execution by the proper officer every seven years, otherwise the judgment will be presumed to be satisfied; Held, that a judgment, rendered in that state (Ga) and sought to be Enforced, in South Carolina, no return having been made upon the execution within seven years, must be treated as satisfied." — the principle in the case at bar & this case is the same — However, much the Plaintiff may contend, & however uniform

the decisions generally, may be, upon the subject, touching the dignity & faith to be given to foreign judgments, we know & we appreciate fact, that foreign judgments are not on a par and have not as a matter of fact, the same dignity as domestic judgments - for instance, in allowing them against the Estates of deceased persons instead of being placed in the fourth class with domestic judgments, they are placed in the fifth, with simple contract debts. if they have the same dignity and the same rights, why is ~~not~~ it, that when the transcript of a judgment of a sister state is presented to the Clerks of our Courts that Execution, cannot be issued, as in the case of domestic judgments? — —

The Court below sitting as a jury, considered all the law & the facts of the case, as they were presented - and rendered judgment for the Defendants, and which we think, was in accordance, with the laws & when ~~the~~ consider the fact, that he has permitted, this claim to slumber for, 9 years, without attempting to enforce, it, - whether as a matter of fact, it has ever been satisfied or not - we must also come to the conclusion, that the judgment was also in accordance with justice and equity. and for which reasons, we think, the Court ought not and will not disturb the verdict and judgment of the Court below — All of which is respectfully submitted.

Kiekel & Orrick for Defbs.
in error

Jno. Baker Mfr in error
vs
A & J E Stonebraker
Defts in error.

Brief of Defts in error

Filed Nov 17, 1863
Wm. Mead Jr

Baker
vs
Stonebraker's admrs

This was a suit upon a judgment rendered by a court of record of the State of Maryland. The suit there was docketed in the name of "George Mc Collough, use of John Baker, use of Thomas H Fowler and Samuel J Rogers." and judgment given "for the plaintiff". Experts ~~testified~~ in the laws and practice of the Courts of Maryland proved that such an entry in the docket, of a use entitled cestui que use to the ownership and entire control of the judgment. The petition in the present case ~~stated~~ that the said judgment had been regularly assigned to plaintiff for good and valuable considerations, and at the trial the plaintiff ~~at the trial~~ offered to prove a written assignment ~~to him~~ of the judgment by Fowler and Rogers to himself which was excluded by the Court, and the Court declared the law to be that the assignment to be valid must appear of record in the transcript sued on.

It appeared in the transcript of the judgment in Maryland, that the writ which was issued against the defendant Stonebraker was not returned by the Sheriff "nor hath he done anything therein, nevertheless the said defendant voluntarily appears in Court here by Chas Schnebly his attorney and thereupon

the plaintiff declares" &c —— " and the said defendant by his attorney aforesaid says that he cannot deny the action aforesaid" &c, and thereupon the judgment was entered.
The defendants in this suit denied that Schnebley was the attorney of John Stonebraker or authorized to enter his appearance, but at the trial they offered no evidence on that subject, and the Court decided that the statement in the transcript that John Stonebraker appeared by attorney did not give the Maryland Court jurisdiction of his person so as to render such a judgment as would authorize the Court here to render a judgment thereon.
Under the instructions given the plaintiff took a nonsuit and after an ineffectual motion to set it aside has brought the case to this Court by writ of Error.

1. As to the assignment of the judgment. The Circuit Court erred in rejecting the evidence of the assignment. The present statute of Indiana in reference to the assignment of judgments refers only to ~~assign~~ judgments rendered in the Courts of this State, and at any rate could have no effect upon the assignment offered in this case because it was passed since the assignment was executed. So far as shown the laws of Maryland did not require the assignment to be of record.
The plaintiff should have been permitted to

prove the assignment and the witness Fowler was competent for that purpose. When proved, it established that the plaintiff was equitable owner of the judgment and as such could sue upon it in his own name.

2. – As to the jurisdiction of the Maryland court of the person of John Stonebraker. This question is settled beyond doubt by the well considered case of Warren & Dalton vs Sask 16 Md 102. Not only did the appearance of the defendant ~~gave~~ by attorney give the Court ~~the~~ jurisdiction of the person of the defendant, but the defendant will not be permitted in a suit upon the judgment to disprove the authority of the Attorney. The record is conclusive upon him.

Judgment reversed, nonsuit set aside and cause remanded.

Barton Bates

Judges Bay & Dryden concur.

48

Baker
vs
Stonebraker's Admrs

Opinion

Reversed, nonsuit set aside
and remanded —

Filed December 21. 1843
A. W. Mead
Clerk

Bates

I

Baker
vs
Stonebraker

As to the transcript

The suit is brought on a transcript from Maryland (filed by plaintiff) as the foundation of the action. In the attempt to prove up the case Plaintiffs witness incidentally disclosed the fact that an execution had issued on this judgment. Plaintiffs transcript though certified to be "full & complete" made no allusion to such an execution having issued. When upon the information thus obtained an application was made for "all the record & proceedings had in Maryland in the case" the transcript introduced by defendants was obtained and the question arises what is the effect of this introduction? Defendants hold that Plaintiff having brought a suit upon a mutilated or to say the least of it partial transcript ought to go out of court as soon as this is made to appear for the reason that good faith requires that when a proceeding is instituted on a record the whole of that record should be produced. It is however contended by pltff. that the execution is no part of the record. To illustrate - Suppose an execution had been issued on the Maryland judgment and the same had been fully satisfied and the return showed that fact. Could it be contended that ~~[illegible]~~ the execution & return would not be a part of the record & proceedings in the case. If not then such a judgment could be sent to another state and suit be

instituted & prosecuted thereon & the party defendant would have to show satisfaction thereof in order to defend himself successfully while at the same time the evidence showing such satisfaction was of record with the suit & judgment. But it is asked how are you to attack ~~how are you to attack~~ the transcript of Plaintiff which imports according to the argument of Plaintiff absolute verity. If this is the sole argument then the absolute verity of defendants transcript is equal if not superior because full. The transcript of Plaintiffs can have no higher standing for verity than that of defendant. If the proceedings which terminated in the judgment contained in the record had been had in this state then the argument that one transcript should not be introduced to contradict or vary another might be of some force, for ~~for~~ there are other means than a transcript given us to arrive at the verity of the record in a given case. But no authority is known to exist by which the courts of one state can control the judicial proceedings of another or to make any order in reference thereto & the only means to arrive at the proceedings (so far as records are concerned) of another state are those employed by defendant to viz: obtaining a full transcript of the proceedings had in Maryland in reference to the judgment.

III

As to the appearance & judgment.

It would appear from the transcript that a summons issued against defendant Stonebraker which summons is returned not served & thereupon at the return term of the summons appeared Chew Schnevley an Attorney as he is styled in the record who it seems represented the defendant Stonebraker but how: neither by entering the appearance of Stonebraker nor by filing a plea in the case but simply by doing nothing ~~appearing~~ ~~such~~ a It is contended by defendants that such an appearance did not give jurisdiction to the Maryland Court over the person of defendant Stonebraker so as authorised the Court ~~of Maryland~~ to enter up judgment It might be well as there seems to have been no adjudication of the point in Mo. except what is contained in 12 Mo. Quarels vs Porter 83 and Barksdale vs Appleberry 23 Mo. 389 to settle the law in reference thereto

As to the assigment of the judgment.

While at common law an equitable assignment of a judgment may exist it is denied that under that system a suit could be had in the name of the equitable assignee. The Maryland statute which seem to authorise a suit in the name of such an assignee gives a remedy in their courts and no extra territorial force it is apprehended will be claimed for the Maryland Statute Our own Statutes have defined the manner in which judgments may be assigned. The test.

Berry vs Convention 7 Vol. Maryland Repts 564

timony of Fowler ought not to have been admitted because as shown in his own deposition he done acts prior to to his assignment which would not effect his own responsibility as assignee but would ~~also~~ might also effect the judgment itself.

IV

The practice act of 1855 is claimed not to effect the question.

As to the Statute of limitation.

The language of the statute of limitation 1855 page 1053 is "judgments of any Court of record of the United states or this or any other state or territory shall be presumed to be paid and satisfied after the expiration of twenty years from the date of the rendition of such judgment" "Paid & satisfied" it is submitted goes to the extinction of the ~~debt~~ demand and ~~effects~~ does not refer, as statutes of limitation do properly, to the remedy. Our Statutes tread judgments other than those of our own State as simple contract debts & so order them to be classed in allowances against estates. Thus it is seen that so far as our state laws are concerned the faith & credit given them under the constitution & acts of congress are defined. Are there any reasons for giving judgments of sister states a standing other than simple contract debts. If it be said that the subject matter in controversy had been settled ~~and~~ then it may be asked why not authorise the issuing of an execution upon ~~them~~ such judgments when brought here or at least adopt a more speedy & simpler remedy than the institution of a suit. Or simpler still why not ~~give them de~~ claim extra territorial jurisdiction for them & thus make the "faith and credit" of the constitution available & at once establish the comity between the states in reference to their judicial proceedings which is

In ~~Bhen~~ Manning vs Hogan 26 Mo. 571 the Ills judgment was in force & not barred by the Statute of Ills which gave judgments 20 years for revival. – The present judgment was barred.

V

attempter to be reached. If successful in this then the inequality between creditors of other States ~~and~~ those of our state is established except as to claims against estates.

Again by the statute of Maryland judgments after 12 years standing cease to govt & pleadable. Thus extinguished under the laws of Maryland this judgment obtains life & force by crossing the territorial limits of that state and ~~under~~ it ought to allow it to escape the statute of limitation by having a statute of satisfaction found under the heading of limitation in our law applied to it. Thus greater "faith & credit" is claimed here for the judgment than it had in ~~the~~ Maryland. The removal of defendant Stonebraker at the time and under the circumstances he died, does not deprive him of any right which he might otherwise claim under the laws of Maryland. The law cited by plff. did not intend to interfere with bona fide removals nor seek to curtail such emigrants rights.

As to payment & satisfaction

Stonebraker the defendant died as is shown in the pleadings very shortly after the institution of the suit & nothing was known as to an execution until incidentally disclosed by one of plff. witnesses. The judgment obtained in Maryland though with stay of execution was notwithstanding a lien upon the Real estate of Stonebraker. That he had a large quantity of it is

8 Maryland Reports Anderson vs Tydings 443.

shown by the evidence of Oliver Stonebraker & the deed of assignment. The voluntary releasing of the property ~~after a levy was made~~ by plaintiffs after making ~~of~~ a levy would rather indicate that satisfaction of the judgment was obtained otherwise. The disappearance of the execution so material to pltff if not satisfied - but material to the defendant if satisfied, the length of time delayed before bringing suit together with the amount involved all have a tendency to show the parties interested to have been satisfied. The point that there is no averment of payment & satisfaction in the answer it is contended not well taken.

15th Mary land Repts Boots vs Campbell 569

Orrick & Krekel for Respondents -

Note. In looking over the brief of appellants Atty the Court is ask to render up the judgment here if a reversal should be had. If the Court possessed such power there are many reasons why this should not be done. Upon the decision of the points of law if adversely to respondents they may hereafter bring their case within the ruling of the Court. The County of Washington Maryland (Hagerstown the County seat) has for the last three years been the theater of our war & documentary evidence as well as depositions have been very difficult to obtain, all of which is now changed & the parties can fully prepare their case if necessary. A party having waited nearly twenty years ought not now under the circumstances insist on ~~such~~ an unusual course which ~~may a~~ would result to the injury of defts being taken Orrick & Krekel for Respts