DAVISON, CLARA ✓ BAGWELL, JAMES H. 1865 ST. LOUIS COUNTY 544/9

OLD 644/8

AFFIRMED

INVOLVED

- A TRUNK WITH WEARING APPAREL
- PAYMENT OF BOARD BILL
- OLIVE STREET HOTEL
- TAYLOR, GEORGE AND WIFE

Dawson, Respondent
vs.
Bagwell, appellant } Supreme Court

Points by Respondent on the motion to affirm the judgment rendered by the Circuit Court on the 24th April 1865.

1. After the appeal has been taken by the appellant (in filing his affidavit for an appeal and giving his appeal bond approved by the Court) and that appeal has been allowed and granted as appears from the Record, the case was without the jurisdiction of the Circuit Court, and ~~that~~ no power to vacate the appeal as attempted by the Circuit Court.

II Rev. Stat. 1855 p 1287-8 sec. 9, 10, 11, 12 + 17
ibid p. 1298 sec. 21.
Brill v Meek 20 Mo. 358
Ladd v Conzens opinion filed June 23d 1865.

2. It is true that at the com. law every judgment is within the control of the Court during the term - yet even then the Court can only proceed in due

course. After a continuance at common law Court has no power to vacate its judgment without notice.

Appeals of the whole proceedings to higher Courts were unknown at the Com. law. Errors were corrected by writ of error which was in fact the institution of a new suit.

Our Statute allowing appeals radically changes the com. law practice in introducing an appeal. This from the moment it is allowed transfers the whole case to the appellate Court under the Statutes above cited. No notice is required unless the appeal be taken at the term after the judgment is rendered. Sec 15 p 1288.

Appeals allowed from Justices of the peace to Courts of record are no more stringent in divesting a J. P. of all power over the appeal - than similar appeals from lower Courts to the Supreme Court.

Any other construction of the Statute would lead to the most perplexing results if allowed.

Krum & Decker
for Respt.

Sup Court

Davison
Respt
v
Bagwell
appellant

Points on motion
to affirm

Krum & Dickey
for Respts.

Filed Dec 2, 1865
John A Wellis
Clerk

Clara Davison
Respondent
vs.
James H. Bagwell
Appellant

~~Court~~
In the Supreme
Court.

Now comes the Respondent and having produced a transcript of a final judgment rendered in her favor in the St. Louis Circuit Court ~~at~~ the February Term 1865 thereof to wit: 24th April 1865 for the sum of five hundred and eleven dollars and fifty cents. and for costs. - upon which judgment an appeal was granted to the Supreme Court (see affidavit for appeal, appeal bond and judgment allowing appeal in transcript) moves the Court to affirm the judgment above set forth ~~as well~~ against said appellant - the appellant having ~~appellant as against the~~ failed to file the transcript thereon within the time allowed by law notwithstanding the subsequent proceedings and orders of said Circuit Court thereon + for the reasons.

1st That after the rendition of said

final judgment and after the appeal and order of the Court approving the appeal bond and allowing said appeal, the Circuit Court was divested of all power and jurisdiction of said cause

2d That the order of the Circuit Court (made afterwards without notice to the Respondent) ~~this~~ vacating the order overruling the motion for a new trial was wholly without warrant of law and is absolutely void.

3d That this Respondent would be without notice cut off from all relief, if the Circuit Court would be allowed after a final judgment & appeal wholly this Court alone has jurisdiction of the cause be permitted to set aside said judgment and vacate final judgments after the appeal has been prosecuted to this Court.

Krum & Decker
Counsel for Respdt.

Sup Court

Davison
Respondent

v

Bagwell
appellant

Motion to affirm
judgment

Krum & Decker
for Resp't

Filed Dec 2, 1865
John A. Willis
Clerk

1 State of Missouri } Be it remembered
County of St Louis } that on the 20th day
of January 1865 there was filed in the office
of the Clerk of the Saint Louis Circuit Court
a petition in the words and figures following, viz;

Petition Clara Davison Plff } In St Louis Circuit
vs } Court
James H Bagwell Deft } Feby Term 1865.

The plaintiff states that in the month of
April in the year 1864 she owned & had in her
possession a certain yellowish colored leather cov-
ered trunk commonly called a travelling trunk
which trunk contained the following described
goods & wearing apparel also the property of the
plaintiff to wit; one green plaid silk dress; one
blue & drab brocade dress; one pink barage dress;
one lead colored dress; one white brilliant wrapper;
two white bow mull dresses; one organda; one
white crape shawl; one red stetta shawl; one
black silk mantilla; one blue silk velvet man-
tilla; two white cambrick skirts; one fine cam-
brick nightgown; 3 Nutrycloth nightgowns; one
silk apron; one silk lace Garibaldi; black silk
lace edging; two pair ladies hose; 1 pair stays;
18 napkins linen; 4 silver forks; one piece of
silk black; The plaintiff further states that she
had the said trunk containing the said goods

2. & wearing apparel in her possession at the Olive street Hotel kept by the defendant in the City of St Louis County of St Louis Missouri, the plaintiff in said month of April A D 1864 at said City and County delivered the said trunk, the said goods & wearing apparel (the said goods & wearing apparel being deposited in said trunk) into the possession care and keeping of the defendant in pledge to secure the payment to him of a board bill owing by the plaintiff to the defendant for $38.50. The plaintiff further states that before exhibiting and filing this her petition she tendered to the defendant & offered to pay him the said sum of $38.50 & then at the time of said tender & offer demanded of the defendant the said trunk & goods & wearing apparel, but the defendant refused to deliver said trunk goods & wearing apparel to the plaintiff.

The plaintiff further states that the defendant has converted the said trunk goods and wearing apparel to his own use. The plaintiff further states that the said trunk goods and wearing apparel are of the value of $575 - she has sustained damage by reason of the wrongful and unlawful conversion of said goods wearing apparel & trunk as aforesaid in the sum of $575 - the value of said property & she asks judgment therefor & for interest & costs.

3 Nicholas A Mortell Atty for Pltff.

St Louis Co ss.

Clara Davison being duly sworn says that the foregoing petition & the matters therein as stated she believes to be true.

Subscribed & sworn to before me this 20th day of January 1865. Clara Davison.

(Seal) Witness my hand and Notarial seal. Francis J Donovan

(5¢ revenue stamp) Notary Public St Louis County Mo.

And upon the filing of the said petition the following Summons issued to wit;

Summons. County of St Louis,

The State of Missouri

To the Sheriff of St Louis County Greeting;

We command you to summon James H Bagwell to appear before the Judge of our Circuit Court on the first day of the next term thereof to be held in the City of St Louis within and for the County of St Louis on the first Monday of February next then and there to answer the complaint of Clara Davison as set forth in the annexed petition; and have you then and there this writ.

(Seal) Witness F A H Schneider, Clerk of our said Court with the seal thereof hereto affixed at Office in the City of St Louis this 20th day of Jany in the year of our Lord

4 eighteen hundred and sixty five.

F A H Schneider Clerk.

Upon which Summons the Sheriff made the following return towit;

Sheriffs Return. Executed this writ in St Louis County on the 21st day of January 1865 by delivering a copy of the writ and petition as furnished by the Clerk to James H Bagwell.

John C Vogel Shff

By Eugene Olean Dpty.

And afterwards towit on the 7th day of February 1865 the defendant filed the following answer herein towit;

Answer. The defendant for answer to the plaintiffs petition in said cause states that whether the plaintiff had in April 1864 the trunk named in her petition and whether it contained the articles specified in said petition or any of them and whether they were of the value therein named or of any other value or what was their value defendant has no knowledge information or belief except that derived solely from plaintiffs petition. That defendant has no knowledge of petitioner and therefore denies severally every one of the foregoing allegations. The defendant also denies that the said plaintiff having the possession of said trunk containing said articles in the said

5. month of April 1864 at the Olive street Hotel kept by said defendant then and there delivered the same into either the custody care and keeping of the defendant in pledge to secure the payment to him of a board bill of $38,50 owing then and there by plff to deft or delivered so then and there the same to the defendant in any manner whatsoever. The defendant denies that the said supposed goods were of the value of $575,00; but the defendant admits that the said plaintiff tendered defendant $38,50 as an amount she alleged she then & there owed him and demanded said supposed trunk and contents as stated in her petition. And the defendant further answering says the plaintiff is a non resident of this State as he verily believes and therefore asks that she may be required to give security for costs. The defendant further says that in the month of April 1864 two persons representing themselves to be George Taylor and wife stopped at defendants said Hotel and made a bill at the same occupying the same room as husband and wife and the amount of their bill due defendant at the time of their leaving was $46,75. That they left their baggage in their room when they left said hotel and said they or one of them would be back the then next day and get such baggage and

pay said last mentioned bill, but defendant believes they or either of them never returned for said baggage or paid said bill unless the said plaintiff is the person then representing herself as the wife of said George Taylor but whether she is or not the defendant has no knowledge remembrance information or belief except only from her statements and her petition and he denies that she is the said Mrs Taylor though he believes from said statements she may probably be such person though he has no means of determining whether she is or not and he has no knowledge information or belief as to whether such baggage was the property of the said George Taylor or of the said plaintiff if she be the said person then known as his wife as aforesaid. That on the night of the 11th day of July 1865 the said defendant said Olive street Hotel by unavoidable casualty took fire and a large part of said Hotel was then and there unavoidably consumed by said fire before the same could be extinguished. Also a very large portion of the defendants own property and of the baggage in said Hotel then and there was during the burning of said Hotel either burned up or stolen, the most of it being burned up

7 then and there, and some of such property and baggage being stolen. That the before mentioned baggage of said George Taylor and wife so left in their room as aforesaid was on the night of the said 11th of July 1864 without any fault or negligence of the defendant either burned up or stolen and thus wholly lost and if this was baggage left by the pltff at said defts Hotel and owned by her, it was left by her as said Taylor's wife and was the only baggage ever taken to said Hotel or left there or with the defendant by the plaintiff and defendant denies that he defendant ever converted or appropriated to his own use the said baggage or property or any part there or the property specified in pltffs petition or any part thereof. Wherefore he demands judgment for his costs &c

Reuben L Farnsworth
Atty for Defendant.

James H Bagwell being duly sworn says that the foregoing answer & the matters therein as stated he believes to be true.

J H Bagwell.

State of Missouri } sworn to & subscribed
St Louis County } before me this Feby 3d
A D 1865.

Seal

Otto Lyman
Notary Public.

8. And on the 12th day of April 1865 the plaintiff filed the following motion to require the defendant to elect, towit;

Motion to elect.

Now comes the plaintiff and moves the Court to require the defendant to elect upon which defence he will rely, whether upon that part which alleges a plea in bar of the action or that part which is a plea in abatement of the suit setting up that plaintiff is a married woman — for the reason that said defences cannot be joined in one answer.

N A Mortell with
Krum & Decker for plff.

And afterwards to wit; at the February term 1865 of said Court and on Monday April 24th 1865 the following proceedings were had herein, towit;

Mo to elect sustd election made jury trial & verdict for $511.50 dam.

Now come the parties by their respective attorneys, and the plaintiffs motion requiring the defendant to elect upon which defence he will rely being heard and fully considered by the Court is sustained, thereupon the defendant elects as a defence that part which alleges a plea in bar to the action, and thereupon come a jury towit; Loren Mitchell, James M Prawner, John E Shawhan, David Cobb, Charles H Alexander, John Young, Charles Teller, W C Vasquez, an=

9 gustus Pasquier, John H. Kleiborker, Henry
P. Taylor and John C. Bloomfield, twelve
good and lawful men, who being duly elected
tried and sworn the issues herein joined well
and truly to try the trial progresses and
being finished the jurors aforesaid upon their
Verdict oaths aforesaid say they find for the plaintiff
and assess her damages at the sum of five
hundred and eleven dollars and fifty cents.
Judgt. It is therefore considered by the Court that
the plaintiff recover of the defendant the
damages aforesaid as by the jury assessed,
together with her costs and charges in this
behalf expended and have execution therefor.

And at the same term the following
further proceedings were had herein.

Friday April 28th 1865.

Motion for a new trial filed and at any
time during the term is given defendant to
file affidavits in support of motion.

Said motion for a new trial is
in the words following to wit;

Mo for a The said defendant moves for a new
new trial. trial on the following grounds, viz;
1st. That the finding of the jury for the plaintiff
was by a mistake of the law and evidence.
2d. That the verdict and finding of the jury
are contrary to the direction of the Court.

10 3d. That the verdict and finding of the jury are contrary to law.
4th That the finding and verdict of the jury are not supported by sufficient evidence.
5th That perjury was committed by the witnesses on behalf of the plaintiff and an improper finding and verdict obtained thereby.
6th. On the ground of newly discovered evidence material to the issue and defence discovered since the trial and for not discovering the same before the trial there was no default of the party or want of due diligence which deft could not by diligence discover sooner.
Wherefore defendant prays a new trial.

R L Farnsworth
Atty for Deft.

Amendment also 7th. On the ground of the failure of proof of the allegations of deft's ground of defence in entire scope and meaning thereof and that there was a verdict of the jury against the deft although the deft has a good and just ground of defence.

R L Farnsworth atty for deft

And at the February Term 1865 the following further proceedings were had herein.

Saturday May 20th 1865.

Mo for a new trial Ovrd

The motion for a new trial filed herein being heard and fully considered by the Court.

11 it is ordered by the Court that the same be overruled.

Monday June 5th 1865.

Appeal bond filed & approved & agreement as to bill of excep.s

The defendant files an affidavit for an appeal and on his motion an appeal is allowed him to the Supreme Court from the judgment herein rendered; he thereupon files an appeal bond which is approved by the Court and the parties file the following agreement herein: It is agreed in this case that the defendant may file his Bill of Exceptions within sixty days after the adjournment of the present term of this Court and that the judge may sign the same and that thereupon said bill of exceptions shall have the same force and effect as though the same were signed during the present term thereof.

(signed) Krum & Decker for plaintiff
(signed) R L Farnsworth atty for deft.

Said affidavit for an appeal is in the words and figures following to wit;

Aff't for Appeal

Reuben L Farnsworth atty & agt of deft James H Bagwell, on oath says that the appeal prayed for in the above entitled cause by deft as appellant from the said St Louis Circuit Court Mo, to the Supreme Court of this State is not taken or made for vexation or delay but because the affiant and said

12 deft believes that he the appellant is aggrieved by the judgment and decision of this Court

R L Farnsworth

Sworn to and subscribed before me June 5th 1865.

F A H Schneider Clk

Said Appeal Bond is in the words and figures following towit;

Appeal Bond.

Know all men by these presents that we James H Bagwell as principal, and John T Johnson & W L Harding as sureties are held and firmly bound unto Clara Davison in the sum of twelve hundred dollars for the payment of which, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents, Sealed with our seals and dated at St Louis this Sixth day of June AD 1865. The condition of the above obligation is such, that whereas said James H Bagwell has appealed from the judgment rendered against him in favor of said Clara Davison pltff in the St Louis Circuit Court for the sum of Five Hundred and eleven dollars and fifty cents, together with costs. Now if the said appellant will prosecute his appeal, with due diligence to a decision in the Supreme Court; and shall

perform such judgment as shall be given by the Supreme Court, and such as the Supreme Court may direct the St Louis Circuit Court to give; and, if the judgment or any part thereof be affirmed, will comply with and perform the same so far as it may be affirmed; and pay all damages and costs which may be awarded against him by the Supreme Court, then this obligation shall be void, otherwise it shall remain in full force and effect.

Approved by the Court June 5th 1865. & acknowledged by Clerk June 7th 1865.

J H Bagwell (seal)
J T Johnson (seal)
W L Harding (seal)

F A H Schneider Clk.

And at the February Term 1865 the following proceedings were had herein—

Saturday September 23d 1865

Order overruling mo for new trial set aside, Mo for new trial sustd & cause cont'd

It is ordered by the Court that the order overruling the motion for a new trial heretofore made herein be and the same is hereby set aside and vacated; and that the motion for a new trial be and the same is hereby sustained, and that the defendant pay the costs accrued herein on or before the calling of the case for trial at the next term of this Court, and that this cause be continued.

And afterwards to wit at the Septem

14 ber term 1865 the following proceedings were had herein, to wit;

Cause dismissed

Monday October 30th 1865

Now comes the defendant by his attorney, but the plaintiff, although duly called, comes not, and Krum and Harding, the attorneys of record for the plaintiff herein, refusing to answer for the plaintiff, it is, on motion, ordered by the Court that this cause be dismissed at the costs of the plaintiff and that execution issue therefor.

State of Missouri } I, F. A. Schneider, Clerk of the
County of St Louis. } Saint Louis Circuit Court within and for the County of St Louis, certify the above & foregoing to be a true and complete transcript of the record and proceedings in the case of Clara Davison against James N. Bagwell as fully as the same remain my Office.

In testimony whereof I have to set my hand & affix the seal of said Court at office in the City of St Louis this 24th day of November 1865.

F. A. Schneider Cl

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(8) Oct T. 1865
No 100

Supreme Court

Clara Davison
Respondent

vs

James H Bagwell.
Appellant.

Trans. St Louis Cir Ct.

Krum & Decker
for Respondent

Farrensworth for
Appellant.

Filed Dec 2. 1865
J. A. Willis
Clerk

Trans. 8.30 Pdly
$10 Due

1865 Dec 2 Cl Also for affirmance

Davison
vs
Bagwell

In Sup Ct Mo
Oct T 1865

Opinion of the Court.

The respondent brings into, and presents to the Court a perfect transcript and moves that the judgment rendered in the Court below be affirmed.

From the record it appears that the respondent recovered judgment in the St Louis Circuit Court at the February term thereof, 1865 and that the appellant on the fifth of June thereafter made application for an appeal, and filed his affidavit and appeal bond; the bond was approved and the appeal allowed; and on the 23d of September it being still a continuation of the February term the Court granted the

appellant a new trial

At the next term the cause was called and the attorneys of record for respondent refused to answer, and the Court made an order of dismissal

When the appeal was allowed, the Court below ceased to have any further jurisdiction over the cause, and the subsequent proceedings in granting a new trial and dismissing it from the docket were coram non judice (Ladd et al vs Couzens June special term 1865)

The judgment is affirmed Judge Holmes concurs; Judge Lovelace absent

David Haguer

Davison
v
Bagwell

Opinion of the
Court
by Wagner

Filed Dec 4th 1865
J A Willis
clerk

Affirmed

Clara Davidson
Respondent
vs
James H. Bagwell
Appellant

In Supreme Court

Thos Slade, being duly sworn on his oath, says that on or about the 23d day of September 1865 Mr Decker of the law firm of Krum & Decker, came to the office of Farnsworth & Slade & left a bill of exceptions for Mr. Farnsworth in the above styled cause, remarking at the time that he had noted some modifications of Mr Farnsworth statement of the case & that he should insist upon those modifications, & if Farnsworth did not modify as suggested by said Decker, he, Decker, should take such remedy as the law would give him, a order to this effect

Thos. Slade.

Sworn to & subscribed before me this 11th day of Dec 1865

David Hagner
Judge Cir Ct Mo

Sup Court

Clara Davison

vs

Jenny H. Bangwell

Affidavit of

Thos Slade

Filed Dec. 12th 1865 Jas Willis Clk
by Edmund S. Allen
Dep Clk

Clara Davison
Respondent
vs
James H. Bagwell
Appellant

In the Supreme Court
Petition for a Rehearing

The said James H. Bagwell Now Comes and moves this Court for a rehearing in this cause and the dismissal of the appeal. Due notice of the motion being given to Messrs Krum & Bocker Attorneys of respondent as appears by the notice filed herewith with service accepted by them On the following Grounds Viz-

1st "
1st "
7. Mo. R. 320.

That there was and is no such judgement remaining in the St. Louis Circuit Court of Record as the one affirmed by this Court in said Cause the same having been set aside by the proper judgement of the said Circuit Court

2nd "
7. Mo. 320.

That there is no judgement allowing to appellant or either party an appeal to this Court remaining of record in said Circuit Court the same having been set aside and discharged by the proper judgement of the Circuit Court at the same term at which it was rendered.

3rd "

That the Appeal was prayed for in said Circuit Court upon errors arising in

in the trial proceedings and judgement of said Court and shown only by being made a part of the record of the case by Bill of Exceptions, and that said Bill of exceptions never was nor could be settled by said Court or the parties or their attorneys. That said Respondent Attorney Mr. Decker wrongfully defeated the settlement of said Bill of exceptions and of his own wrong refused to agree to a fair and true Bill of exceptions and intentionally and purposely refused to approve of a fair and true Bill of exceptions with intent to take said cause up to this Court on behalf of respondent and having the first judgement in the Circuit Court affirmed unless the Attorney of the Appellant would accept an unfair and false Bill of exceptions It being impossible for the Circuit Court to justly decide the contested points in said bill of exceptions between the opposing counsel in the cause, from the fact that there had been no minutes kept by said Court and the witnesses testifying to the material facts in contest in behalf of said respondent were beyond the jurisdiction of the Court and without the State so they could not be recalled and the only minutes of the evidence taken in the case of this evidence by appellant Atty, had been destroyed before

then, by an accidental fire which destroyed his office in the middle of the night, and that said Decker had through his own lachs and carlessness lost Appellants Bill of exceptions prepared by his counsel from the said minuts of said testimony and and submitted to him for his approval and settlement as the Bill of exceptions in the cause, and had also absolutely refused afterwards to approve or settle on just grounds two subsequent Bills of exceptions prepared successively and submitted to him at different times for his approval and had given notice that he would agree to no Bill of Exceptions which should not contain certain Statements of ~~things~~ and matters as facts which were material matters in the case made by the said Bill of exceptions and were absolute falsifications of the evidence in the case. That afterwards in pursuance of said purpose and intent said record was taken up by respondents Counsel and said Judgement affirmed in this Court without any notice whatever of either the taking up, or motion to affirm in this Court or any knowledge of the same to or by said Appellant or his Attorney. That Appellant notified said Decker by his said attorney that the said Circuit Court was to meet at

10 Oclock A.M. on the 23 day of September
1865 and adjourn for the term and that
said Attorney must then or wished have said
Bill of Exceptions settled. That said Cir-
-cuit Court then and there finding and
considering that it was impossible to sit
the said Bill of exceptions, or perfect
said appeal and that the record and judge
-ment allowing said appeal was erro-
-neous and false, ordered the same set
aside Also considering and adjudging
that said judgement overruling appellants
motion for a new trial ought to be set aside
and a new trial granted. ~~For~~ the fur ther
-ance of Justice. And then and there Ord
-ered the record of its said judgements
11. Mo 407 & 8. in the cause to be made up in the said form
6 Grant 21, 223 and words shown by the transcript of the
record in the cause Wherefore appellants
says there was no appeal taken to this Court
in the cause nor is there any record thereof
remaining in force in said Circuit Court
the same having been set aside as erroneous
by the Judgement of said Court Affida
-vits are filed herewith in support of this third
ground

4th That this Court had no jurisdict
ion of this cause

5th " That appellant having obtained the end of the appeal a new trial in the Circuit Court without the cost and expense of appeal, and accepting the same was a waiver and withdrawal of his appeal.

6th " That the Supreme Court ought not to set aside or discharge even by implication or otherwise the judgement of the Circuit Court setting aside the original judgement of the Circuit Court and granting appellant a new trial in the cause because if it's an error at all, it is not an error committed against the appellant or plaintiff in error.

2 R.S. 1300 §34.
19. Mo 426.432

7th " That the Supreme Court ought not on behalf of Respondent to review or correct any errors proceedings or judgements of the Circuit Court in this cause because no such objections or exceptions to such proceedings or judgements were made in the Circuit Court. and no case made on grounds shown by Bill of exceptions why such proceedings or judgements should be set aside nor is the grounds shown upon which said Circuit Court exercised its discretionary power in furtherance of Justice

18. Mo. 256.
5. " 522
" " 525
" " 529
6 " 599
7 " 373
" "

7. Mo. 213
8 " 59 & 64.

8th

That the judgement of this Court ought to be set aside and a rehearing granted because the same was obtained contrary to and in violation of the rule of this Court which requires an exchange of briefs by the Attorneys of the opposite parties. The Respondent in this case taking the case up after the term without notice to Appellant or his atty and without submitting the brief of his atty being exchanged on his points shown unto appellant or his atty by his attorneys

Wherefore Appellant prays a rehearing of this cause and that he be permitted to show cause why said supposed judgement in the Circuit Court in favor of respondent should not be affirmed by this Court. And that upon such rehearing of said cause said affirmance of said judgement may be set aside and said appeal be dismissed at the costs of respondent and for other proper relief

R. L. Farnsworth
Atty of Appellant

Reuben L. Farnsworth Atty of Appellant on oath says that the matters and things in this petition set forth as herein above set forth are true as he verily believes

R. L. Farnsworth

Sworn to & subscribed before me

THOS SLADE NOTARY PUBLIC ST LOUIS CO. MO.

Thos Slade 20 day of December A.D. 1865
Witness my hand & notarial
seal the day & year last
above written -

Thos Slade, Notary
Public St. Louis, Mo.

Sup. Court

Clara Davison
Respondent
vs
James H. Bagwell
Appellant
Petition for
Rehearing

Filed, Dec. 12th 1869 J. Mitchell Clk
by E. T. Allen Dy Clk

R. L. Farnsworth
Atty of Appellant
Pet for rehearing
overruled

Clara Davison
Respondent
vs
James H Baywell
Appellant

In the Supreme Court
Petition for Rehearing

Reuben L. Farnsworth Atty of Appellant on oath says That on the trial of the said Cause in the Circuit Court The Judge of the said Court made no minuts of the evidence in the cause and that other person but this affiant did make minuts of such evidence and that he did make ten minuts of respondents witnesses given at the trial. That after the trial he recalled to his aid the witnesses for appellant and from them took down the evidence given by them in the cause and incorporated the evidence of respondents witnesses by the aid of his said minuts in his paper prepared for a bill of exceptions and when this he had prepared a paper embodying substantially the whole evidence and proceedings in the cause he submitted it to Mr Decker Respondents Atty for his approval. That after said Decker had received it and had several weeks to examine it he not returning it, affiant called

upon him for said paper. That said Decker informed affiant that he had lost said paper, and that he had prepared one in its place which he submitted to affiant for affiants approval, that upon examination of this paper affiant found it a gross misrepresentation and falsification of the facts proceedings and evidence of the cause and returned it to Mr. Decker refusing to approve of it. That in the meantime affiants office had been destroyed by fire in the middle of the night and said minutes of said evidence taken by him wholly destroyed or lost, of which said Decker was informed. That afterwards affiant prepared a third paper in the cause for a Bill of exceptions embodying substantially as he was able the evidence and proceedings in the cause and submitted the same to said Decker for his approval. That after examining the same and holding the same several weeks he returned it to affiant with four written pages of objections to it refusing to approve of it. Which the Judge of the Circuit Court being duly informed of declined to settle the disputed points between the counsel because he was incapable to to form and

having an accurate present knowledge of the same or any minutes thereof. That afterwards this affiant carefully from his said paper and said Deckers objections and consultation with the said Judge, prepared a fourth paper embodying substantially the whole case and yielding as far as he could to the objections made by Decker without absolutely endangering the merits of the real case made by him on the trial thereof and submitted the same to Mr Decker for his approval thereof as a fair bill of exceptions. That after Mr Decker had kept it over a week affiant called on him for it and informed him that Court met at 10 O'clock A.M. the 23 day of September 1865 to adjourn for the term and that that Bill of Exceptions must be then settled signed and filed. That Decker replied affiant had sixty days to do this in after the term. Affiant answered Mr Decker that affiant wished it settled on the morning of the 23 of September 1865 before adjournment. That on the afternoon of the 22 day of September 1865 said Decker returned said Bill or paper last prepared to the office

of affiant and left it with Thomas Slade then the partner of affiant but who was not atty or interested in this cause with two written pages of objections thereto and said to said Slade That he should insist those modifications and if affiant did not modify the law would give him or words to that effect — same as he suggested he should take such remedy as the That affiant did not receive or know of the return of said paper and objections thereto untill late in the afternoon of that day nor did said Slade communicate said words of threat to made by said Decker to affiant or if he did neither said Slade or affiant understood their meaning or import untill after the affirmance of the final judgment of the Circuit Court by this Court and they had first obtained any knowledge of the taking up this case into this Court and its affirmance having by seeing a notice of such affirmance in the St. Louis Republican though the Offices of Mess Krum & Decker and affiant are opposite to each other on Olive St of this City. That immediately on receiving and examining said Decker objections he sought said Judge of Cir Ct and owing to the lateness of the hour

affiant had to follow said Judge to his residence in the suburbs of the city, affiant immediately found said Judge and handed him said paper with said objections thereto. and requested said Judge to settle and sign said Bill of exceptions. That at about ten O'clock A.M. September 23d 1865 said Circuit Court met, and having fully considered the foregoing facts in relation to deciding the contested points therein and settling said Bill of exceptions found and decided that said Court could not possibly settle said Bill of exceptions and considered & adjudged that the same could not be settled nor said Appeal perfected and allowed and that said Judgement of record purporting to allow the same was erroneous and ought therefore to be stricken out and it was then and there ordered by said Court that all the Judgements and proceedings had in said Court by and with the consent and at the request of said Appellants Attorney be set aside touching said appeal. And thereupon said Court reconsidered said Judgement overruling appellants motion for a new trial and ordered and

adged that the same be set aside in furtherance of Justice and that a new trial be granted Appellant on the grounds moved for by him in said case. And then and there considered agridged and ordered that the manner and form of embodying said Judgments of the Court aforesaid in the record should be made up and expressed in the manner and form of the record that is contained in the transcript of the record brought into this Court by the respondent. That affiant immediately after the determination of said cause saw said Decker going into the bar court room and supposed that he learned all about the disposition of the cause as aforesaid and that he might readily upon inquiry learn the same. That the merit and justice of the case were clearly with the appellant. That affiant believes to by his exceptions he had reserved and made a just and legal grounds for reversing the cause in this Court and that had the appeal been truly and justly prosecuted he would have reversed

said Judgement of the Circuit Court
That the said appeal was not prosecut-
-ed and was defeated through the
wrong and fault of said Mr Dickson
That neither said Respondent or his Atty ever
gave notice to Appellant or affiant
his only atty of any intention
of any intention to take up the
record in this case of the taking
up of the record or of the making or
pendency of the motion in this
Court for affirmance of said
Judgement or of their grounds
for the same And Consequently
Appellant was wholly ignorant of
the same as well as his Atty until
after its affirmance and hence had
no opportunity to show cause in
this said Court against the affirmance
thereof. That this affidavit is
not not made for delay or vexation
but for the furtherance of justice

Reuben S. Farnsworth

Sworn & & Subscribed before me this
11th day of December A.D. 1865.
Witness my hand & notarial
seal the day & year last above
written — Thos Hade
Notary Public St. Louis Co. Mo.

Sup. Court

Clara Davison
Respondent
vs
James H. Bagwell
Appellant

Affidavit of
R. L. Farnsworth

Filed Dec. 12th 1865
Jacquelin Clk
by E. T. Allen
Dy Clk

Clara Davison
Respondent
vs
James H. Bagnell
Appellant

In the Supreme Court

To Respondent or
Messrs Krum & Decker her Attys

You will take notice that the appellant will on monday the 11th day of December 1865 move in said Court the setting aside of the judgment lately rendered in said cause and the granting of a rehearing thereof by said Court.

St Louis Dec. 9th 1865

R. S. Farnsworth
Atty of appellant

Service accepted 9 O'clock A.M. Dec. 11, 1865 by copy of this notice

Krum & Decker
Attys of Respondent

Sup. Ct.

Clara Davison

vs

James H. Bagwell

Notice of motion in Sup. Court for a Rehearing

Filed Dec. 12th 1865
by J.A. Allen clk
Edmund T. Allen
Dy Clk

R.L. Farnsworth Atty
for appellant