36/17

JULY 1845 #8

M. Bogliolo admin of Etienne Bogliolo
vs
Asahel Smith admin of Barthlomi Campbell
ST. GENEVIEVE

} Writ of error

Attys - Nathaniel Watkins

Ashiel Smith adm. of
B. Campanel pltff
v
Matteo Bogliolo adm.
of Etienne Bogliolo
defendt.

Judgement
in favor of
defendant
Nov. Ter. Circuit
Court St. Genevieve
County 1836

The clerk of the supreme Court
to be held at Potosi, Washington
County, will issue a Writ of Error
in behalf of the plaintiff in the
above cause returnable to the
next May Term of said court

P. Cole

April 12th 1837 Attys. for pltff in
Error.

No. 3.

Ashiel Smith
adm.
vs
Matthew Boglioli
adm.

Precipe for
Writ of Error

P. Cole
Atty

Writ of Error issued
April 14th 1837 fees
fee paid by P. Cole
Atty

A. Smith admr. of
B. Campanel, ~~pltff~~
vs
Matteo Bogliolio admr.
of Etienne Bogliolio
defendant.

action of assumpsit
& Judgement in the
Circuit Court of
Ste. Genevieve County
Mo. —

The defendant in the above cause or his attorney of record John Scott, will take notice, that I have obtained a Writ of Error to remove the record and proceedings in the ~~above~~ cause therein to the supreme Court of the state, and that an enquiry will be had before said supreme Court into said record and proceedings at the May Term of said court to be held at Potosi in the County of Washington for the fourth Judicial district on the fourth monday in said month of May in the Year 1837. - in order to the reversal of said Judgement for manifest error apparent in the record and proceedings therein

A. Smith admr.
of B. Campanel
pltff by
P. Cole Atto.

May ~~th~~ 3d. 1837

the within Notice came to hand
on the twenty first of this month
and Not served for want of time
Stgeneviève May 21st 1837
Wm Adams Sheriff

STATE OF MISSOURI, } ss.
JUDICIAL DISTRICT, }

The State of Missouri, to the Honorable the Circuit Court of Ste Genevieve County, GREETING:

FOR AS MUCH as in the record and process, as well as in the rendition of Judgment, on a certain plaint which was in our Circuit Court, for our County of Ste Genevieve before our judge thereof, between Ashael Smith Admr of B. Campanel

Plaintiff, and Matteo Boglioli Admr of Etienne Boglioli

Defendant, in a plea of as it is said, manifest error hath happened, to the great damage of the said Ashael Smith Admr of B. Campanel as by his complaint we are informed: We, being willing that the error, if any there be, should be duly amended, and full and speedy justice done to the parties aforesaid in this behalf, COMMAND YOU, that if judgment be thereupon given, then a transcript of the record of the judgment, with all things touching the same, you certify and send (with this writ) to our Supreme Court, to be holden at the town of Potosi, within and for the Fourth Judicial District, on the 4th Monday of September next, that our Judges of our said Court, inspecting the record of the judgment aforesaid, may cause to be done therein, for correcting the said error, what to them of right, and according to law, shall seem meet to be done.

Witness, ISRAEL M'GREADY, *Clerk of our said Court, and the seal of office hereunto affixed, at the town of Potosi, this* twentieth *day of* June *in the year of our Lord, one thousand eight hundred and thirty-* Seven *, and of the Independence of the United States of America, the* Sixty first

Israel McGready Clerk

By reason of long continued sickness, and the impracticability of obtaining a Deputy Clerk, competent to prepare so complicated a record, the undersigned is compelled to return the within Writ not executed. —

Jos. D. Grafton Clerk
Ste. Genevieve
Circuit Court

No 1.
Supreme Court 4th Judicial
District September Term 1837

Ashel Smith Adm^r of
B Campanel
vs by Writ of Error
Matteo Bogliola Adm^r of
Etienne Bogliola

To County of St Genevieve

Asahel Smith adm
of Bartholomew Compassel
v
Matteo Bagliolio
adm of Eliane
Bagliolio.

Action on the
Case in the St. Ger
ceive Circuit Court
9th. Judicial Circuit
in the State of
Missouri —

The clerk of the Supreme Court at
Potosi will issue an alias writ
of Error in the above Cause, the first
having failed to bring up the record in
account of indisposition in the clerk of
the Circuit Court, as by his return on
the original writ appears.

P. Cole
Attd. for Pltff in
Error —

May 23d. 1837.

No 1
September 5 1837

Ashael Smith
adv.
v. ξ
Matteo Bogliolio
adv.
Precipe for
alias Writ of
Error

Issued June 20th
1837
No. 1 Sept. 5. 1837

Smith ads of
Cornwall
in
Matter Baptist
ads of Etienne Baptiste

In the supreme
Court Sept Term
1837

The plaintiff in the above cause
moves the court for a rule upon
the clerk of St Genevieve Circuit Court
to show cause of any he can at the next
term of this court wherefore he has
failed to execute the writ of error in
the above cause, returnable to the
present term of this court, according
to the exigency thereof, and why he
should not be punished
by attachment for such
failure, according to
law.—

P. Cole
Attd for Smith
Pltff in Error

Ashel Smith
admr. &c
vs
Matteo Bogbola

Mo for Rule on
the Clerk of St Genevieve
County to Show cause
Why he failed
to return the writ

Filed Septr 27th
1837 J McGerady
Clk

Asahel Smith adm.
plaintiff in Error
vs
Matter Bogliolo adm.
defndt

In the Supreme Court
May Term 1838.

and now at this day comes the said Asahel Smith administrator aforesaid and says that in the rend and proceedings aforesaid, and also in giving the judgment aforesaid there is manifest error in this to wit that the circuit court on the trial of the above cause refused to instruct the jury as required by plaintiff and then and there did instruct the jury against Law. The circuit court also erred in refusing a new trial in the above cause to plaintiffs. There is also error in this to wit that by the rend aforesaid it appears that the judgment aforesaid in form aforesaid given was given for the defendt Matter Bogliolo adm. against the said Asahel Smith adm. as aforesaid, whereas by the law of the land the said judgment ought to have been given for the said Asahel Smith adm. as aforesaid against the said Matter Bogliolo adm. And the said Asahel Smith adm. prays that the judgment aforesaid for the errors aforesaid and other errors in the rend and proceedings aforesaid may be reversed, annulled and altogether held for nothing and that he may be restored to all things which he hath lost by reason of said judgment.

P. Cole Atty
for plaintiff in Error.

Joinder in Error

Arahead Smith adv.
plaintiff in Error
vs
Mattea Bogliolo adv.
defect

assignment of
error

Filed May 28th
1838
J McGuady
Clk

A. Smith adm. of
B. Campanel, pltff
vs
Matteo Bogliolio
adm. of E. Bogliolio
deft

Action of Assumpsit & Judgement in the Circuit Court of St. Genevieve County

The above defendant or John Scott his attorney of record, will take notice that I have obtained a Writ of Error in the above Case, to remove the record and proceedings therein to the Supreme Court to be examined for Error, at a Term of said Court to be held at Potosi in Washington County on the fourth Monday of May next.

A. Smith adm. of
B. Campanel dec.
pltff

November 28th 1837

Served the within notice, by giving to John Scott attorney at Law a copy thereof at the County of St. Genevieve this thirteenth day of November 1837

J. B. Robbins Sheriff of St. Genevieve County

fee .50

Smith rev
v
M. Baptiste ack
Notice of
writ of Error

Filed May 28
1838
J. W. Lewis
Clk

Ashael Smith adm.
of B. Compound
vs
Matteo Bogliolio
adm of E. Bogliolio

action of assumpsit
and judgment in
the circuit court
of Saint Genevieve
County Nov Term
1836.

Matteo Bogliolio the defendant in the above cause or his attorney of Record John Scott will take notice that I have obtained a writ of Error for the removal of the record and proceedings in the above action & Judgment to the Supreme Court of the state of Missouri in order to its reversal to be heard at a term thereof to be holden in September next at Potosi in Washington County.

28th July 1837

Ashael Smith
adm pltff
by P. Cole
Atto

gave to John Scott Att at Law on this day
a copy of the within notice

P. Cole
31st July 1837

Abdiel Smith
adm
on
Matteo Bejlidos
adm.

Notice of Writ
of Error

Filed May 28
1838
J M Lund
Clk

Matteo Bolaolio

vs

Campanell

The plaintiff by his attorney moves the Court to grant a rule upon the Clerk of ~~St Genevieve~~ the Circuit Court ~~portion~~ and for the County of St Genevieve to shew cause why he has not sent up the record in the above cause

Fridgill Atty

143
163

Boliolio
vs
Campanell

Motion

Filed May 11th 1842
J M Gorman
Mr

STATE OF MISSOURI, } ss.
JUDICIAL DISTRICT, }

The State of Missouri, to the Honorable the Circuit Court of Ste Genevieve County, GREETING:

FOR AS MUCH as in the record and process, as well as in the rendition of Judgment, on a certain plaint which was in our Circuit Court, for our County of Ste Genevieve before our judge thereof, between Ashel Smith Admr of B Campanil — — — — — — —

Plaintiff, and Matteo Bogliola Admr of Etienne Bogliolai

— — — — — Defendant, in a plea of as it is said, manifest error hath happened, to the great damage of the said Ashel Smith Admr of B Campanill — as by his complaint we are informed: WE, being willing that the error, if any there be, should be duly amended, and full and speedy justice done to the parties aforesaid in this behalf, COMMAND YOU, that if judgment be thereupon given, then a transcript of the record of the judgment, with all things touching the same, you certify and send (with this writ) to our Supreme Court, to be holden at the town of Potosi, within and for the Fourth Judicial District, on the 4th Monday of May next, that our Judges of our said Court, inspecting the record of the judgment aforesaid, may cause to be done therein, for correcting the said error, what to them of right, and according to law, shall seem meet to be done.

Witness, ISRAEL M'GREADY, *Clerk of our said Court, and the seal of office hereunto affixed, at the town of Potosi, this* 18th *day of* December *in the year of our Lord, one thousand eight hnndred and thirty-* Seven *, and of the Independence of the United States of America, the* Sixty Second

Israel McGready Clerk

No [illegible]

Supreme Court 4th Judicial District

May Term 1838

Archie Smith Adm't &c

vs

Matthew Bogholan Adm't

Eleanor Bogholan

To the Governor County

The execution of the within Writ will appear by the annexed Schedule.—

Jos. S. Grafton Clerk Sec Governor

Circuit Court

Pleas at the circuit for the county of New Madrid in the fourth Judicial circuit of the State of Missouri holden at the town of New Madrid at the term of Febuary of said court in the year of our Lord one thousand eight hundred and thirty four

Before the Honorable John D Cook Judge of the circuit court of the fourth judicial circuit aforesaid

N. Madrid Cir. Court

Be it remembered that heretofore on the eleventh day of May in the year eighteen hundred and thirty three Asahel Smith Administrator of Bartholemy Campbell Dec. filed with the clerk of said circuit court his certain Declaration precipe upon which the said clerk issued and delivered to the Sheriff of said county a writ of Summons which was by said Sheriff returned on the 24th day of October AD 1833 with the return thereon endorsed - Which Declaration writ and return are as follows

State of Missouri fourth Judicial circuit at the county of New Madrid June term of said court AD 1833

Declaration

Asahel Smith Administrator of all and Singular the goods chattels rights and credits which were of Bartholemy Campbell Dec. plaintiff complains of Matteo Bogliolo administrator of all and Singular the goods chattels rights and credits which were of Eitienne Bogliolo both of said county Dec. at the time of his death who died intestate defendant of a plea of for that whereas he the said Eitienne in his life time to wit on the 27th day of April in the year of our Lord 1816 at the city of New Orleans in the State of Louisiana to wit at the county of New Madrid in the State of Missouri aforesaid made and executed his certain note in writing commonly called a promissory note which is here to the court now shown the date whereof is the day and year aforesaid and thereby promised and bound himself in the course of the month of Febuary this next to pay at the order of Mr. Bartholemy Campbell the Sum of

One thousand eight hundred & Seventy Six dollars Seventy eight & three fourth cents value received of him (a word illegible) amount of merchandise which he had Sold and delivered to him the Said Etienne to his full satisfaction and for which he had given him (Etienne) discharge and thus and then delivered the Said note to the Said Bartholemy Campbell whereby and by reason of the promises the Said Etienne in his life time became liable to pay the Said Bartholemy the Sum of money contained and Specified in Said note according to the tenor and effect thereof and being so liable he the Said Etienne in his life time in consideration thereof afterwards to wit on the day and year aforesaid at the place aforesaid undertook and then and there faithfully promised the Said Bartholemy to pay him the Said Sum of money contained and Specified in Said note according to the tenor and effect thereof and also whereas afterwards to wit on the day and year aforesaid at ~~he the Said~~ place aforesaid he the Said Etienne Bogliolo in his life time was indebted to the Said Bartholemy Campbell in his life time in the Sum of five thousand dollars lawful money of the United States for goods wares and merchandise by the Said Bartholemy Campbell and before that time in his life time Sold and delivered to the Said Etienne in his life ~~time~~ year and at his instance and request and being so indebted he the Said Etienne Bogliolo in consideration thereof afterwards to wit on the day and year aforesaid at the said place undertook and then and there faithfully promised the Said Bartholemy Campbell in his life time the Said last mentioned Sum of money when he the Said Etienne Bogliolo Should be thereunto afterwards requested. Yet the Said Etienne Bogliolo in his life time and the Said ~~Matteo Bogliolo administrator as aforesaid after the death of the Said Etienne~~ [illegible]

Declaration

~~[illegible] as aforesaid after the death of the [illegible]~~

as aforesaid after the death of the said Etienne not regard in &c but continuing to cheat and defraud the said Bartholemy Campbell in his life time and the said Asahel Smith as administrator aforesaid after the death of the said Bartholemy to which the said Asahel Smith after the death of the said Bartholemy Campbell to wit on the 22d day of A D 1833 at the county of New Madrid aforesaid administrator of all and singular the goods chattels rights & credits which were of the said Bartholemy Campbell Decd at the time of his death who died intestate by Orrin Jay clerk of the county court within and for the county of New Madrid aforesaid in due form of law was granted and which afterwards by the county court within and for said county at the april term of said court was confirmed in this behalf hath not as yet paid the said several sums of money or either of them or any part thereof to the said Bartholemy Campbell in his life time or to the said Asahel Smith administrator as aforesaid after the death of said Bartholemy although often requested so to do but to do the same the said Etienne in his life time and the said Mattis Boglioli administrator as aforesaid since the death of the said Etienne hitherto hath and still doth wholly neglect and refuse to pay the same or any part thereof to the said Asahel Smith Administrator as aforesaid to the damage of the said Plaintiff as Administrator as aforesaid of twenty thousand dollars and therefore he brings suit &c. A. Smith Attly

And the said A Smith brings into Court here his letters of Administration which gives sufficient evidence to the Court here of the grant of Administration to the said Asahel Smith as aforesaid the date whereof is the same day and year in that behalf above mentioned.—

A Smith adm. of Bartholmi Campbell

State of Missouri

Writ } County of New Madrid } ss:

The State of Missouri to the Sheriff of said County Greeting

We command you to summon Mattio Bogliolo if he be found in your
Writ } Bailewick to appear before our Judge on the first day of the term
of our Circuit Court to be holden at the Town of New Madrid
within and for the County of New Madrid on the first thursday
after the third monday of June next to answer unto Asahel Smith
Administrator of Bartholimi Campnel dec.d of the within Dec-
laration and have you then there this Writ.—

Witness Alp.re Delarodeire Clerk of our said Court
{Seal} at office this eleventh day of May in the year of our
Lord eighteen hundred and thirty three.—

Alp.re Delarodine Clk. by
R. D. Dawson Dy Clk.—

Which Writ is returned as follows:

State of Missouri }
County of New Madrid }

Shffs. return } May the 20th. 1833— Then served the within declaration and
Writ on the within named Mattio Bogliolo by reading the
within declaration and writ in the hearing of the within named
Mattio Bogliolo.— John B. Powell Shff N. M. C.

And afterwards at the term of October of the said Court in the
year of our Lord 1833, on the ninth day of the term and on the
second day of the month of November 1833, before the same
Judge,

Asahael Smith Adm.r of Barthelemy Campnell dec.d } Trespass
pleff Vs. } on the
Mattio Bogliolo Deft. } Case

Appearance } This day the Defendant by his Attorney comes and files his
Pleas filed } seven several pleas to the Plaintiffs declaration, and
issue is joined on the first of said Pleas:—

Which pleas are as follows:

(Pleas first to fifth inclusive were afterwards stricken out &
are omitted)

6. And for further plea in this behalf according to the Statute

in such case made and provided, he says the Plaintiff his
6th Plea } aforesaid action thereof against said Defendants ought not
to have or maintain because he says that on the fourth
day of July in the year of our Lord eighteen hundred and
twenty five the said Mattie Bogliolo was Administrator
of all and singular the goods and chattels rights and credi-
its which were of Etienne Bogliolo deceased of which
the said Barthelemi Campenell afterwards, to wit on the
day and year last aforesaid, to wit, at the County of New
Madrid aforesaid had due and legal notice. and the De-
fendant in fact says that Barthelemi Campenell during
his life did not duly exhibit the said demands in the
Plaintiff's said declaration mentioned to the said Mattie
Bogliolo, nor did the said Asahel Smith since his death
exhibit said demands to the said Mattie Bogliolo at any
time within three years next after the said fourth day of
July in the year last aforesaid, all of which he is ready to verify.
Wherefore he prays Judgment if the Plaintiff his aforesaid
action thereof ought further to have or maintain &c.

A Cook for Def'ts

7th Plea } 7. And for further plea in this behalf, according to the
statute in such case made and provided he says the said
Plaintiff ought not further to have or maintain against
said Defendants, because he says that on the first day of
January in the year of our Lord eighteen hundred and twenty
he the said Mattie Bogliolo was administrator of all &
singular the goods and chattels, rights and credits which
were of the said Etienne Bogliolo deceased, of which the
said Barthelemi Campenell had afterwards, to wit, on the
day last aforesaid due and legal notice, to wit, at the
County of New Madrid aforesaid, and the Defendant in
fact says that the said demands in the Plaintiffs Dec-
laration

mentioned were not duly exhibited to the said Mattie Boglioli at any time within five years next after the day last aforesaid either by the said Barthelmi Campanel during his life time nor by the said Asahel Smith since his death, all of which he is ready to verify, wherefore he prays judgment if the Plaintiff his aforesaid Action thereof against him ought to have or maintain &c.

Alvan Cook for Deft.-

And afterwards at the aforesaid term of October of said Court in the aforesaid year of Our Lord 1833, on the 12th day of the term and the 6th. day of November 1833.

Asahel Smith Adm.r &c. Plaintiff
vs.
Mattio Boglioli Deft.
} Trespass on the Case

This cause is continued until the next term of this Court.-

And afterwards at the term of February of said Circuit Court in the year of our Lord 1834, on the third day of the term and the 22d. day of the month, before the Judge aforesaid:

Asahel Smith Adm.r &c. Plff
vs
Mattio Boglioli Deft.
} Trespass on the case.-

Deft. files his Depositions

This day the parties by their attorneys came, the Plaintiff filed his Depositions in this case and the Defendant moves for a Bill of Particulars.-

And afterwards at the aforesaid term of February of the said Court in the said year 1834, on the aforesaid third day of the Term & 22d. day of the month, before the same Judge.

Asahel Smith Adm.r &c Plff
vs
Mattio Boglioli Deft
} Trespass on the case.-

Note to be translated

It is ordered that Alphonso Delandrine, translator of this Court, translate in the English language the instrument in writing on which this action is founded & that he produce said translation to this Court, next morning

Memo. by Clerk of Ste. Genevieve

[Note by Clerk of Ste Genevieve Circuit Court - The original instrument declared on being in a language with which this Clerk is not acquainted, and being also written in a hand writing to him entirely illegible, it is omitted in this transcript - The following is the translation, furnished as above ordered.]

"Translation - G F ff 1876. 68 3/4

Translation of instrument declared on

In all the course of the month of February next, I promise and oblige myself to pay to the order of Mr. Bartholme Campanel the sum of one thousand eight hundred seventy six dollars sixty eight & three fourths cents, value received of him in an acquitted account of merchandise which he has sold and delivered to me to my satisfaction and of which he has given me receipt.-

And the Sr. Stephen Bogliolo being unable to write nor to sign has made his ordinary cross in presence of the undersigned Witnesses and of Mr. Papillon a Justice of the Peace.-

New Orleans the 27 April 1816.-

Stephen [+] Bogliolo

11 Archeo Witness — Munier Witness — Signed before me Wm. Papillon Justice of the Peace 3d Son

(original marked A)

I do certify Wm. Papillon to be a Justice of the Peace in and for the 3d Son of this City.- J. Roffignac Mayor

Registry

Registered in the Office of the undersigned Notary, Page one hundred forty one of his Registers - New Orleans the twenty third April one thousand eight hundred and twenty two in the year forty six of the Indepce. of the United States of America.-

L.S.

Hc. Lafitte
Not. Pubc.

Certif of Fr. Consul

We John Orrand Francis Guillemin, Consul of France for the State of Louisiana at the residence of New Orleans, do certify that the signature here above affixed is really that of Mr.

Mr. McLafitte, one of the Public Notaries in the city of New Orleans, and that full and entire faith is due to the same as well in Courts of Justice as without.-

In testimony whereof we have subscribed these presents and affixed the Official Seal of our Consulate.-

E.L.S.

New Orleans the twenty third April one thousand eight hundred and twenty two.-

No 289.-

$2. (original marked B) F. Guillemin

Certif of Sardinian Vice Consul

We P. F. Dubourg vice consul of Sardinia for the State of Louisiana at the residence of New Orleans, do certify that the signature here above affixed is really that of Mr. J. A. F. Guillemin, Consul of France at this Residence.-

In testimony whereof we have subscribed these presents under our private Seal, there being no official Seal of our consulate provided.- New Orleans the twenty fourth April one thousand eight hundred and twenty two.-

No 1.
$2.
P. F. D. B.

P. F. Dubourg

Authentication by translator

I Alphonso Delarodorie, Interpreter and translator for the Circuit Court of the County of New Madrid in the State of Missouri to hereby certify the foregoing to be a true and correct translation of the hereunto annexed instrument of writing, written in the French language.-

Given under my hand the 22d Feby. 1834.-

Alps. Delarodorie, Interpreter and translator of the N. M. C. C.".

Fees $1.22.-

And afterwards to wit, at the aforesaid term 1834, on the sixth day of said term, on the 26th day of the month, before the said Judge.

Asahel Smith Admr. &c. plff.
vs.
Matteo Bogliolo Deft } Trespass on the case.-

Motion for change of Venue

This day the Defendant by his attorney comes and moves the Court for a change of venue.-

And now at the aforesaid term of February of said Court

in the said year 1834, on the 8th. day of said term and the 28th. day of the month, before the Judge aforenamed

Asahel Smith adm^r &c. Plff
vs.
Mattio Bogliolo Dft. } Trespass on the case.

Ordered to St. Francois } This day the Defendant by his Attorney comes and on his motion and affidavit heretofore filed, it is now ordered that a change of venue be awarded to said Defendant, and that the Clerk of this Court certify the proceedings and papers in this case to the Clerk of the Circuit Court of the County of St Francois in the sixth Judicial Circuit of this State.

All of which are herewith transmitted.

Fee Bill

Clerk's fees (Alp. Delaroderie)	$5.50¾
Sheriff's fees (John B. Powell)	2.30
	$7.80¾

I, Alph^r Delaroderie, clerk of the Circuit Court of the County of New Madrid in the fourth Judicial Circuit of the State of Missouri, do hereby certify the foregoing to be a true and perfect transcript of the record of said cause, with the original papers thereunto appertaining enclosed.

Certificate of Clk of N. Madrid }

L.S. } Given under my hand and the Seal of said Court at office in the Town of New Madrid this fifth day of May in the year of our Lord eighteen hundred and thirty four.

Alp^r Delarodarie Clerk

Wednesday July 9th. 1834.

St. Francois Cir. Court } At a Circuit Court began and held on Wednesday July the 9th. at the Court house in Farmington in and for the County of St Francois, present, the Honorable Charles H Allen, Judge.

Asahel Smith Administrator Estate Bartholomew Campbell
against
Mattio Bogliolo, Adm^r. Etienne Boliolo dec^d. } Trespass on the Case

And the said Ashel Smith Admr. &c. as to the 10th & 11th pleas of the said Defendants in this behalf above pleaded which in substance alledge that the said Cause of action in the said Plaintiffs Declaration mentioned nor any or either of them did not accrue to said Plaintiff or any other person at any time within ten years next before the commencement of this suit, nor within five years next before the twenty first day of February in the year 1825, nor at any time since, says that the said Plaintiff ought not to be barred and precluded from having and maintaining his action aforesaid thereof against him, the said Mattio as administrator as aforesaid by reason of any Matter or thing in said pleas contained because he says that the debt in the declaration mentioned was contracted by the said Etienne Bogliolo with the said Barthelmo Campenell at the City of New Orleans in the State of Louisiana at the time in the Declaration alledged, and before the said several causes of action accrued to the said Campenell aforesaid the said Etienne Bogliolo, to wit, in the month of April in the year 1815 the said Etienne removed from the State of Louisiana, leaving no goods nor chattels, lands nor tenements therein; and did from thenceforth continue and abide beyond the limits of the said State of Louisiana until the said Etienne's death in the year 1818 the Domicil and Family of the said Etienne being then and thenceforth beyond seas (to wit) in Italy in Europe - And this he the said Ashel Smith administrator of said Campenell is ready to verify &c. -

Cole & Watkins for Plaintiff.

Rejoinder } And the said Mattio Bogliolo Admr. for rejoinder to the Plaintiffs replication ~~which~~ to the plea of the statute of limitations comes and saith (actio non) because he saith that the said Etienne Bogliolo did not remove with

out the limits of the State of Louisiana before the said Instrument declared on became due and did not continue so to abide until his death in the year nor was his domicil or family residence beyond the ~~sea~~ seas in manner and form as said Plaintiff in his said replication hath ~~[illegible]~~ alledged & of this he puts himself upon the Country &c.—

James Evans Attd for Dft.

And the Plaintiff doth the like — Watkins pro pltff

A. Smith adm &c.
M. Bogliolo adm &c

Motion to Suppress Depositions

And now at this day came the parties by their attorneys and the Defendant for reasons filed moves the Court to suppress certain Depositions taken in the above cause. Which motion being seen and by the Court fully understood, it is considered by the Court that the same be overruled — to which opinion of the Court in refusing to suppress said Depositions the Defendant excepts and prays that his Bill of exceptions may be signed and sealed and made a part of the record which is accordingly done.

Which said motion is as follows:

Asahel Smith adm. of Campanell
Mattio Boliolo adm. of E Boliolo
St. Francois Cir. Court
March term 1836.—

And now at this day the Defendant comes into Court & excepts to the reading of the Depositions taken on the part of the Plaintiff in the City of New Orleans on the 2d day of February 1836, to wit, Gallien Preval, Modest Lefebre & Philip Avigno, for the following reasons:

1st The Deft. had no notice of the time and place of taking said Depositions.—

2d The notice was not served according to law.—

3d The depositions are not properly authenticated — for

these reasons the Defendant prays the suppression of the Depositions.- Scott & Evans for Deft.-

Bill of Exceptions.-

Exceptions } Asahel Smith Admr. } St. Francois Cir. Ct. March
Matteo Bogliolo Admr. } Term 1836.

Be it remembered that in this case the Pltff. filed the Depositions of the following persons to wit: Guillen Preval, Modest Lefebre & Philip Avigno to be read in evidence on the trial of the above cause to which the Defendant filed his exceptions and insisted that and insisted that the notice as served by the Shff of the County of New Madrid was not a sufficient service (which is in the following words & figures - New Madrid County State of Missouri 9th December 1835 Then executed this notice by leaving a true copy of the same at the usual place of abode of the within named Mateo Bogliolo in the hands of his wife a white person of his family over fifteen years of age - F. C. Butler Sheriff N. M. Cty.) which motion to suppress the depositions for the defect in the service of the notice as aforesaid, the Court overruled to which opinion of the Court the Deft. excepts & prays that his Bill of exceptions may be signed sealed & made part of the record in this case.

William Scott [signature]

A. Smith Admr.
Mattio Bogliolo Admr. }

Venue changed to Ste Genevieve } On motion, and by consent of parties, it is ordered that a change of venue in the above cause be awarded to the County of Ste. Genevieve, they mutually agreeing to take no advantage of any error occasioned thereby - and it is further ordered, that the Clerk immediately make out a copy of this order and a full transcript of the record and proceedings in said cause with all the original papers filed in

the same, and forming a part of the record, and transmit the same together with the said original papers to the Clerk of the Circuit Court of the said County of Ste. Genevieve.—

State of Missouri
Seventh (late Sixth) Judicial Circuit } Ss:
County of St. Francois

I, John Cobb, Clerk of the Circuit court of St. Francois County do hereby certify that the foregoing is a full, true and perfect transcript of the record and proceeding had in said Court in a case wherein Asahel Smith Administrator of estate of Bartholama Campenell against Mattio Bogliolo, administrator of the estate of Etienne Bogliolo as the same remain in my office.

Certif. of Clk of St Francois

In testimony whereof I have hereunto set my hand and affixed the seal of said Court at office this 10th day of May 1836.—

(L.S.)

John Cobb Clerk

Ste Genevieve Cir Ct.

In the Circuit Court for the County of Ste. Genevieve within the Seventh Judicial Circuit of the State of Missouri, present the Honorable William Scott, Judge of our said Court:—

Monday July 11th. 1836.—

Asahel Smith Adm.r of Bartholame Campenell dec.d
vs.
Mattio Bogliolo, Adm.r of Etienne Bogliolo dec.d } Case.

(The papers &c. in this case, on award of change of venue from St. Francois County having been filed with the Clerk of this Court on the 12th. day of May 1836) —

This day came the said parties by their Attorneys, and

case, the said Jury retired to consider of their verdict.-

Wednesday July 13th. 1836.-

Asahel Smith Administrator of Barthelme Campbell deceased vs: Mattio Bogliolo Administrator of Etienne Bogliolo dec. } Case

This day came the said parties by their Attorneys, and the said Jury returned into Court their verdict as follows, to wit:

Verdict } "1. We the Jury find that the said Etienne Bogliolo in his life time did undertake and promise in manner & form as in the said Declaration is alledged against him.-

2. That the said Asahel Smith is Administrator in manner and form as he has in his declaration alledged.-

5. That the said Etienne Bogliolo did execute the promissory note in the Plaintiff's Declaration mentioned.

[Note by Clerk - The foregoing three issues having been withdrawn on the subsequent trial, they do not appear in this transcript.]

6. That Mattio Bogliolo is Administrator of Etienne Bogliolo deceased, and that the said Plaintiff did exhibit his demand to the said Plaintiff within three years after the fourth day of July 1825.-

7. That the said demand was not exhibited to the said Defendant within five years next after the first day of January 1820.-

10. That the said Cause of Action did accrue to the Plaintiff within ten years next before the commencement of this suit.-

11. That the said Cause of Action did accrue to the said Plaintiff on the 21st day of February 1825, in manner and form as the Plaintiff has alledged in his Declaration".-

And thereupon the Plaintiff by his attorney moved the Court to give Judgment for the Plaintiff for his dam-

the court to give judgment for the Plaintiff for his damages by him sustained in this behalf, for reasons filed.—

Reasons filed on motion for Judgment.

Asahel Smith Admr.
Mattio Bogliolo Admr } July term 1836.—

Motion for Judgment non obstante Veredictum

And the said Asahel Smith by his Counsel moves the Court to enter up Judgment for him in the above cause, "non obstante veredicto" for the following reasons.

The Jury have found all the issues in the cause for the said Asahel Plaintiff, except the issue joined upon the 7th Plea, which issue is found for the Defendant, and that issue whether found affirmatively or negatively presents no legal bar to the recovery of the Plaintiff.—

Watkins & Cole for Plff.

Motion for New trial granted

And the said Defendant moved the court for a new trial in this case for reasons filed which motion is by the Court sustained and a new trial ordered, the costs to abide the event of the suit.—

Reasons filed for New Trial.—

A. Smith admr.
M. Bogliolo admr } Reasons for new trial.—

1. The verdict is contrary to law—
2. The verdict is contrary to evidence—
3. The Jury were mistaken in the issues—
4. The Jury made a mistake from the confused manner of numbering the several pleas and issues.—
5. The finding of the Jury was entered in the verdict, contrary to the finding and intention of the Jury—
6. The Jury found a verdict for the Defendant on the 10th. plea and issue, but by mistake the same was entered as the finding on the 7th. plea and issue.—
7. It is apparent to the Court that the verdict was not entered according to the finding and intention of the Jury.
8. The manner in which the finding of the Jury is entered

operates manifest injustice and oppression to the Defendant

Scott, Evans & Bogg for Dft.

Last trial

In the same Circuit Court, before the same Judge, November Term 1836.

Tuesday November 15th. 1836.

Asahel Smith Administrator of Bartholemy Campenell deceased vs. Mattio Bogliolo Administrator of Etienne Bogliolo deceased. } case

This day came the parties by their Attorneys and the Plaintiff moved the Court for leave to withdraw the replication to the 11th. Plea and to strike out the 11th. plea filed in this cause, which motion is by the Court overruled. And the Defendant by his Attorney moved the Court for leave to withdraw his first, second and fifth pleas, which leave is granted by the Court: And thereupon came a Jury, to wit, James Hoffman, George Scott, John Campbell, Jule Guebourd, Michael Crisall, Basil Simons, Antoine Courtois, John H. Berry, Auguste St. Gemme, James Strickland, Francois Janis & Charles Collins, twelve good and lawful men, who were duly empannelled and sworn well and truly to try the issues joined between the said parties and a true verdict give according to evidence. And after hearing the testimony and allegations of the parties, the said Jurors returned into Court, their verdict as follows: "We the Jury find the issues joined on the sixth and seventh pleas for the Plaintiff, and on the issue joined in the replication to the tenth plea, they find for the Plaintiff and on the issue joined in the replication to the eleventh plea, they find for the Defendant." And thereupon the said Plaintiff moved the Court

Motion to strike out 11th plea overruled

~~1.2 & 5 plea~~ 1.2 & 5 pleas withdrawn

Jury

Verdict

Motion for new trial } for a new trial for reasons filed, which motion is by the Court overruled - To which opinion of the Court the Plaintiff

overruled - } excepts and files his Bill of exceptions which is signed, sealed &

exceptions filed } ordered to be made a part of the record. - And thereupon it is considered by the Court, that the Plaintiff take nothing by

Judgment his said Writ, and that the Defendant go thereof without day, and that for his false clamor &c. it is considered that the Defendant do have and recover of the said ~~Defendant~~ Plaintiff his costs and charges in and about his defence in this behalf expended to be taxed. -

Exceptions filed. - Memorandum - Be it remembered, that previous to taking up of this cause for trial, the Plaintiff moved the court to withdraw his replication to the Defendants 11th. Plea and strike out said eleventh Plea, on the ground that the issue is an immaterial one, and presents no bar to the Plffs. cause of action, which motion the Court overruled - And also the Plaintiff moved the court to give certain instructions to the Jury, which the court refused - and to which opinions of the Court the Plaintiff excepts & files his Bills of Exceptions, which are by the court signed sealed and ordered to be made a part of the record. -

Exceptions concerning 11th plea } Bill of Exceptions concerning 11th. Plea &c.

Campanell's Admr. } Assumpsit. -
vs.
Bogliolo's Admr. }

Be it remembered, that previous to the taking up of this cause for trial, the Plaintiff moved the Court to withdraw his replication to the Defendants eleventh plea, and strike out said Eleventh Plea, on the ground that the issue is an immaterial one and presents no bar to Plaintiffs cause of action. - But the Court decided against the motion of the Plaintiff and refused to permit him

to wit draw said replication to said eleventh plea or to strike out said eleventh plea - To which opinion of the court the Plaintiff excepts and tenders this as his exception, ~~and~~ which he prays may be signed, sealed & made part of the record, which is done.-

William Scott (Seal)

Exception concerning instructions to Jury

Bill of Exceptions concerning Instructions to the Jury.- The Plaintiff moves the court to instruct the Jury, that if the said Etienne Bogliolo did remove from the State of Louisiana, in manner and form as the Plaintiff in his replication hath alledged, and did from thenceforth continue without and beyond the limits of the State of Louisiana until his death, and that his domicil and family residence was then and therefore beyond seas, to wit, in Italy in Europe, that then they shall find for the Plaintiff on the plea of the statute of limitations for five years.

2d. If the Jury shall find from the evidence that in the case that the said Etienne Bogliolo by absconding or concealing himself, or by any other improper act of his own prevented the commencement of this action, then they will find their verdict for the Plaintiff.- Which said instructions the court refused to give, but in lieu thereof gave the following - "That if the Jury should believe from the evidence, that Etienne Bogliolo was in the State of Louisiana or in the United States after the cause of action accrued in this case, then the Jury must find for the Defendants - To which proceedings of the Court the Plaintiff excepts and prays his exception to be signed & sealed and made a part of the record, which is done.-

William Scott (Seal)

Bill of exceptions concerning motion for new trial.—

Aschel Smith admr.
Mattio Bogliolo admr. } Nov. Term Circuit Court 1836.

Exceptions concerning Motion for new trial

The Plaintiff in the above action by his counsel moves the Court to set aside the verdict of the Jury rendered therein, and for a new trial, for the following reasons:—

1. The finding of the Jury on the eleventh plea is against the Law and evidence.
2. The Jury have not found the issue made by the parties.
3. The Court misdirected the Jury.
4. The Court erred in refusing the instructions asked for.
5. The Court misconceived the law, as applicable to the case in the instructions given to the Jury.—

Cole & Watkins for Plff.

Evidence of Plff

The plaintiff in the above case on the trial thereof, in order to maintain the issues on his part, introduced the following evidence

Note declared on

1. The note in the Declaration mentioned.—(which is inserted in pages 7 and 8 of this transcript, and therefore omitted in this place.— Clerk.)

Deposition of Robt. McCoy

2d. A Deposition of Robert McCoy, which is in the following words and figures, to wit:

"Robert McCoy of lawful age, being produced, sworn and examined on the part of the Plaintiff, deposeth and saith— I was acquainted with Etienne Bogliolo, and his residence was in the Kingdom of Sardinia in Europe— I knew him at the time of his death, his and his family were at that time residents of Sardinia in Europe, except his son Mattio Bogliolo, this Defendant: I knew Etienne Bogliolo at the time he contracted the debt with Campanell, the Plaintiff in the above suit at the time the said Etienne Bogliolo contracted said debt, he

was

R. McCoy's Depn. cont'd } he was a resident of Sardinia in Europe - About the year eighteen hundred and seventeen or eighteen said debt was contracted - Etienne Bogliolo was the father of Mattio Bogliolo who administered on the estate of Etienne Bogliolo - The estate of Etienne Bogliolo was worth nothing until the compromise made by me Mattio Bogliolo, Administrator of Etienne Bogliolo, Administrator of Etienne Bogliolo, some three or four years past - after that time his estate was worth several thousand dollars. - I was well acquainted with Campanell, he resided at New Orleans in the State of Louisiana and died there - I am not certain when he died, but think it was eighteen hundred and sixteen or seventeen - The Debt was demanded of Mattio Bogliolo by a young man from New Orleans, and he agreed to pay if he recovered from the estate of Mitchell, which recovery he has made and is now using the property as his own. -

Cross examined by Defendant - In the year 1816 or 1817 Etienne Bogliolo started from here (New Madrid) to go to Europe to join his family, he arrived at New Orleans sick and insane, and was brought back by his son to the neighborhood of Warrington, State of Mississippi and there died - The above demand made of Mattio Bogliolo by the gentleman from New Orleans for the Campanell debt was the summer after the death of Etienne Bogliolo - and further this deponent saith not -

Sworn & subscribed on the day &c. (November 5th. 1835) -

before Thomas Emery Justice of the Peace

Deposition of Philip Avegno } 3d. The Deposition of Philip Avegno, taken in the city of New Orleans the 2d. day of February 1836. which is as follows:

"Fillipe Avegno being of lawful age, produced, sworn and examined, deposeth and saith:

Question by Plaintiff - Will you state all you know in

relation to Etienne Bogliolo contracting a debt with Bartholomew Campanell of the City of New Orleans, State of Louisiana for which he gave his note herewith exhibited to you marked A. dated 27th April 1816, and where was his place of residence at the time he contracted the said debt with Campanell -

Answer - I was well acquainted with Etienne Bogliolo, he came to the United States from Europe where he resided, in the Spring of the year 1816. Immediately on his arrival in New Orleans, State of Louisiana, he contracted a debt with Bartholomew Campanell of the said City, of $1876.68 3/10 cents, for which he gave his note date the 27th of April 1816, exhibited to me marked A. - Immediately after Etienne Bogliolo contracted the said debt with Campanell he left the city and was gone about 18 months or 2 years, when he returned there on his way as he told this Deponent to join his family in Europe: While in the city of New Orleans, I called on him, by the request of the representatives of Campanell, for the amount of the note exhibited to me marked A, he told me he was unable to pay, but that he would make arrangements immediately, on his arrival at home in Europe, to pay the Campanell debt. He immediately left the City for the Upper Country, in place of going to Europe to join his family, and died in his passage up the river, 300 or 400 miles above this place. - On receiving information of the death of Bogliolo, the representatives of Campanell put in my hands the note of Bogliolo referred to above to take to Europe for collection, where I was going on business, and present the same for payment to the representatives of deceased Etienne Bogliolo, which I did. I had the said Note recorded in the office in the city of New Orleans, with a certificate of the French Consul attached to the same herewith shewn me marked B - On presenting the note to his wife and other representatives for payment, they told me it was out of their power to discharge the said claim, that the said

Depn. of P. Avigno contd

deceased Bogliolo had left them but little property, not sufficient to support the family on, which I found on inquiry to be the case, the wife of the deceased as well as the other representatives told me that Mattio Bogliolo son of the deceased was in the United States attending to the collection of a claim in favor of his father against the estate of one Joseph Michell of New Madrid, State of Missouri for a considerable amount, which if recovered and the note presented to him it would be immediately paid, as the debt was a just one - his wife and other connexions resided at that time and do now, at a place in Italy in Europe called Linguy in the department of Genoa - I brought the note back with me to the United States, and agreeably to the request of the deceased's wife and connexions in Europe, I presented the note for payment to Mattio Bogliolo son of the deceased whom I found in the city of New Orleans some two or three years after the death of his father - he told me his father had left but little property in Europe to support his family on, that he was in this Country prosecuting a claim against the estate of Joseph Mitchel deceased of New Madrid Missouri in favor of his father, that if the representatives of Campanell would wait the issue of that claim against Mitchell's estate and be recovered, that he would certainly pay the note his father gave to Campanell, ~~as the time the debt was contracted~~ it was a just debt - I was in the employ of Campenell at the time the debt was contracted, and I have transacted business for the representatives of Campanell after his death, which gave me an opportunity of knowing all the transactions in relation to the Campanell debt against Etienne Bogliolo, deceased - This Deponent further saith not. -

Signed &c. Fillipe Avigno. -

Testimony of

And the Defendant, in order to maintain the issues on

Defendant { his part on the foregoing trial, introduced the following testimony, to wit:

1. The Deposition of Robert D. Dawson, taken at New Madrid State of Missouri on the 5th. day of November 1835, which is as follows:

Dep.n of R. D. Dawson { Robt D. Dawson of lawful age being produced sworn and examined on the part of the Plaintiff, Deposeth and Saith:

Question by Plaintiff - Did you Know Etienne Bogliolo the father of Mattio Boliolo -

Answer - I did. - In the year 1816 (I think) Etienne Bogliolo came to this place (New Madrid) where he remained until (I think) the fall of the following year, when he left this place in company with his Son, Mattio Bogliolo with a flat boat or boats, laden with produce for the southern markets - on this trip he died as I have been informed and believe, on his way back - The said Etienne Bogliolo brot with him to this place some merchandize, and during his stay here was engaged in vending them - During the time of my acquaintance with said Bogliolo, I understood from him that his family consisting (besides his Son Mattio) of a wife and two daughters with their husbands were residents in Europe - One of his Sons in law came with them here, and remaining but a short time, returned to Europe to his family - I understood from him that he was concerned with some other gentleman at the place of his European residence, in some mercantile or shipping trade. -

Question by Plaintiff - Do you know what was the value of the Estate of Etienne Bogliolo, at the time of his death -

Answer - Of my own knowledge, I do not. But from the representation of his Son M. Bogliolo, who some short time after his death administered upon his estate, it consisted in little else than the wearing appar-

R. C. Dawson Depn. Cont.

el of the deceased - I was one of his sureties in the administration, ~~Bond~~ and I think he only gave an inventory of property of the value of sixty or seventy dollars - besides this however, there was a claim against the estate of one Joseph Mitchell deceased, for a large amount, which was then in suit. This suit was not terminated until a few years since, by which the estate of the said Boglioli acquired a large amount of property - I do not pretend to know its value, but suppose it to be worth ten thousand dollars. - This suit was terminated by a compromise between said Mattio Boglioli and Robert McCoy, surviving Executor of Jo: Mitchel.

Question by Defendant - Do you know whether the said Etienne Boglioli did or did not send his son Mattio Boglioli with produce to the Southern markets at any other time than the one you have mentioned, when his father went with him -

Answer - The said Mattio Boglioli I think in the Fall of 1816 went with produce to the South, obtained in payment for the goods sold by the said Etienne - This produce I suppose was destined for New Orleans, but whether it ever went there I know not. -

Signed &c. R. C. Dawson

Part of Depn. of R. McCoy

2d. That part of the foregoing deposition of Robert McCoy which follows, to wit:

"In the year 1816 or 1817 Etienne Boglioli started from here to join his family, he arrived at New Orleans sick and insane and was brought back by his son to the neighborhood of Warrington, State of Mississippi, and there died" -

3d. A part of another Deposition of said Robert McCoy 2d. day of September 1834 which is as follows, to wit:

Part of another Dep.n of R. McCoy

Question by Plaintiff - State what you know in regard to the claim of the said Plaintiff in this suit either from your own knowledge or from the confession of the said Mattio Bogliolo, the said Defendant.-

Answer - In the year 1813 or 1814, Etienne Bogliolo coming from Europe to this Country by the way of New Orleans, got to a considerable amount of goods from Bartholomew alias Campbell, and came up to this country and opened a store and went into business - and in the course of the summer told this Deponent how generous Campbell treated him by advancing to him goods - In the fall he told me he had made a sufficiency to pay off Campbell, and that he was going to send his son Mattio Bogliolo to New Orleans in the fall, with money, skins and other produce of the Country, to pay off his debt to Campbell, as Campbell had treated him so generous, he did not wish him to suffer - The boat started down the river with Mattio Bogliolo in possession and on his, Mattio Bogliolo's return some two or three months afterwards, the old man Etienne Bogliolo, found out after the return of his son Mattio Bogliolo, that he had not paid to Campbell any part of the debt due by him, which he was so desirous to pay - Etienne Bogliolo told me, and expressed great concern, in consequence of his son Mattio having laid out the proceeds of the money, produce & peltries, such down, for goods, instead of paying the debt to Campbell."

Another extract from same Dep.t

3d. - Another extract from the same Deposition. -

Question by Defendants - How long did the said Etienne Bogliolo reside in this Country -

Answer - He resided here from the year 1792 or 3 - till 1802, in the Spring I believe, and then went to Europe

and remained there until the year 1813 or 1814, when he again returned and brought to this country, the goods he purchased of Campanell - he resided here eighteen months or two years previous to his death. -

Question by same - What business was Etienne Bogliolo engaged in, during his residence in this country.

Answer - Merchandising and trading. -

~~Question by same~~

Which was all the evidence given by Plaintiff and Defendant in the cause - But the Court overruled the motion, to which opinion of the Court the Plaintiff by his counsel excepts and prays his Bill of Exceptions to be signed and sealed and made a part of the record, which is done accordingly. -

William Scott (Seal)

State of Missouri
County of Ste Genevieve } ss:

I, Joseph Chaffee, Clerk of the Circuit Court for Ste Genevieve County aforesaid, within the ninth Judicial Circuit of said State, do hereby certify that the foregoing is a full, true and perfect transcript (except as therein excepted) of the record and proceedings had in the Circuit Courts of New Madrid, St. Francois and Ste Genevieve Counties, in a case wherein Asahel Smith, Administrator of Barthelemi Campanell, is Plaintiff and Mattie Bogliolo, Administrator of Etienne Bogliolo is Defendant, as the same remain in my office.

In testimony whereof I have hereunto affixed the seal of the Ste. Genevieve Circuit Court at Ste Genevieve this 30th day of April A.D. 1838. -

Jos. Chaffee Clerk

3

Clerk's fees for this transcript $9.90

Error to Ste Genevieve Circuit Court

(18) ~~[illegible]~~ 856

Asahael Smith Admr of B. Campbell

vs.

Mattio Bogliolo, Admr. of Etienne Bogliolo. –

856

Ferrer May 18th 1838

J McGuady Mr

~~[illegible]~~

Bate

32

Smith Adm.r of Campanell } Appeal from
vs } the Circuit Court
Bogliolo adm.r } of St Genevieve Co

Smith brought his action in assumpsit against Bogliolo. And Judgment was given in the Circuit court against Smith, to reverse which this writ of error is sued out.

Bogliolo pleaded first that the cause of action did not accrue within ten years next before the commencement of this action

2.nd That the cause of action did not accrue at any time within five years next before the 21st day of February in the year 1825—

Bogliolo also pleaded two other pleas to wit That he had been appointed administrator to the maker of the promissory note sued on, and That the demand of Smith's intestate had not been exhibited to him with in three years.—

Also that ~~they~~ it had not been exhibited to him within five years.

To these ~~last pleas~~ two last pleas the plaintiff replied denying notice of the administration of the defendant and the issues made on the replications were found for the plaintiff

To these first pleas the plaintiff replies that the debt in the declaration mentioned was contracted by Etienne Bogliolo the defendants intestate with Berthelemi Campenell the plaintiffs intestate in the City of Orleans in the state of Louisiana at the time in the declaration mentioned viz on ~~the~~ 27th April 1816 and that before the cause

of action accrued to the said Campanell, the said Etienne Boglioto removed from the State of Louisiana leaving neither goods, nor chattels, lands nor tenements therein: and did thence forth continue and to abide beyond the limits of the said State of Louisiana till the time of the death of said Etienne, the domicil of the said Etienne then and thereto fore being beyond the seas to wit in Italy, in Europe

Issues were taken on the replications to three pleas; of which one was found for the plaintiff and the other for the defendant

The statute of limitations in force at the time this ~~act was~~ note was made, on which the suit is instituted, provides that if any defendant to any criminal or civil cause herein before recited absconds or conceals himself, or by removal out of the district or territory where he resided when such cause of action accrued, or by any other indirect means defeats or obstructs the bringing or maintaining all or any of the aforesaid actions within the respective times limited by this act, such defendant shall not be allowed to plead this act in bar, to any suit &c.

The law seems to have been framed with a view to bar those who by removal from their usual place of residence when the cause of action accrued prevented creditors from collecting their dues. The creditor when he suffers a man to become his debtor must take notice of his place of abode and calculate on ~~the det~~ finding him there when the debt becomes due: indeed he must even allow him to change his place of abode before the right of action accrues, and be content if the debtor do not

remove

after the cause of action accrues remove from his place of residence. Here the plaintiff says that the domicil of the defendants intestate was, before and at the time this note was made, in Italy. Then it must be supposed that he calculated when he suffered Etienne Bogliolo to become his debtor that he would return home, and the inconvenience of his residence in Italy must be an inconvenience which our statute of limitations does not relieve or remove.

The issues joined then on these two replications were both immaterial issues Such being the case the cause must in my opinion be remanded for a repleader

Such being the opinion of the rest of the Judges the Judgment of the Circuit Court is reversed and the cause remanded for further proceedings

G Tompkins

McL concurs in the foregoing Opinion

McLl Gwin

Jno. C. Edwards.

Smith adm^t
vs opinion
Bogtiolo adm^t

May term 1838
G Tompkins

Filed June 4th 1838
J McGrady
Clerk

STATE OF MISSOURI, } ss.
4th JUDICIAL DISTRICT,

The State of Missouri, to the Honorable the Circuit Court of St Genevieve County, GREETING:

FOR AS MUCH as in the record and process, as well as in the rendition of Judgment, on a certain plaint which was in our Circuit Court, for our County of St Genevieve before our judge thereof, between Asahel Smith admr of B Campan[illegible]

Plaintiff, and Mattao Bogliolo admr of Etienne Bogliolo

Defendant,

in a plea of as it is said, manifest error hath happened, to the great damage of the said Mattao Bogliolo admr as aforesaid as by his complaint we are informed: WE, being willing that the error, if any there be, should be duly amended, and full and speedy justice done to the parties aforesaid in this behalf, COMMAND YOU, that if judgment be thereupon given, then a transcript of the record of the judgment, with all things touching the same, you certify and send (with this writ) to our Supreme Court, to be holden at the town of Potosi, within and for the 4th Judicial District, on the 1st monday of September next, that our Judges of our said Court, inspecting the record of the judgment aforesaid, may cause to be done therein, for correcting the said error, what to them of right, and according to law, shall seem meet to be done.

Witness, ISRAEL M'GREADY, *Clerk of our said Court, and the seal of office hereunto affixed, at the town of Potosi, this* 31st *day of* July *in the year of our Lord, one thousand eight hnndred and ~~thirty~~* 40 *, and of the Independence of the United States of America, the* 65th

I McGready clerk

~~38.~~ ~~43~~ 55 ~~No 1~~ (5) (8)

Supt Court 4 Jdl Dist

Sept Term 1840

M. Boglio Adm

V.S.

B. Campanel Adm

To St Genevieve County

This Writ not executed owing to a mistake of the Clerk in supposing the term of the Supreme Court was held on the 2d monday of September, & the error was not discovered in time to prepare the very voluminous papers for this term of the Court.

Jos. Drafton Clerk

St Genevieve Cir. Ct.

Boliolio
vs
Campanells

Facts upon which the application for a certiorari is applied for
First writ of error issued to the September Term 1840

Return of the Clerk: He had not time to make out the record on account of his mistaking the time of holding court
Alias writ issued at the same term. See
Record from Potosi page 143
Rule upon the clerk to ~~issue~~ transmit
Record May Term 1842 - same record page 163

M Fridell Atty
for Boliolio

Matteo Bolidie
vs
A Smith, admr
of Campanell

Statement of
facts

Filed Aug. 9. 1843.
H. L. Boon clk

Matteo Boliolio adm
vs
Asahel Smith adm

The plaintiff by his attorney moves the Court for a ~~mandamus~~ certiorari to the Clerk of the Circuit Court of Ste Genevieve County, to make out and transmit to the Clerk of this court a full true and perfect transcript of the record and proceedings in the above cause or to show cause to this court why he has done so

M Tripell Atty
for Boliolio

Matteo Boliolio Admr
of Boliolio
vs }
Asahel Smith admr
of Campanell

Motion for a
certiorari
~~mandamus~~

Filed Aug. 9. 1843.
H. L. Boon clk

In Supreme Court of Missouri
July term 1845

M Bogliolo adm^r E Bogliolo — pepf
agst — Error St Genevieve
A Smith adm^r of B Campanell — Deft

The deft in Error by his atto comes and moves the Court to dismiss the writ of Error which issued in this case and strike the same from the Docket of this Court. Because said writ was issued on the 31st day of July 1840 and the transcript of the record of the judgment of the Circuit Court has never been filed in this Court. Because the plaintiffs in Error has not used due and necessary diligence in ~~procuring~~ in attempting to procure & file said transcript

B F Hackman
atto for deft

Bogholo. adm.

agst { Motion to dismiss

Smith adm of Campanell

Filed July 14. 1845.
H. L. Boon clk

Asahel Smith Administrator of all and singular the goods and chattels, rights and credits which were of Bartholomi Campbell deceased vs Mattio Bogliolo administrator of all and singular the goods and chattels rights and credits which were of Etienne Bogliolo deceased

} In the Circuit Court of Saint Genevieve County in the State of Missouri

To Nathaniel W. Watkins Attorney of the above named plaintiff Asahel Smith, Sir Take Notice

That I Mattio Bogliolo admr. of the Estate of Etienne Bogliolo deceased the above named Defendant have sued ~~out~~ a writ of Error in the above cause out of the Clerks office of the supreme court of the state of Missouri, at Potosi in the county of Washington in the Fourth Judicial District Returnable to the Term of the supreme court of the State of Missouri to be held at Potosi in the county of Washington within and for the Fourth Judicial District, on the second Monday after the fourth Monday of August 1840 When and where you may attend if you think proper

Mattio Bogliolo Adm. of Etienne Bogliolo Dec.d Defendant

Served the within Notice on the within named N.W. Watkins by leaving with him a Copy of the same on the 27th August 1840 in the Town of Jackson Cape Girardeau County Missouri

Served $0.50

John M. Johnson Ass
by his Deputy
J. N. Bonne

Campanelle
vs
Bolio
Notice

Campanel adm.
vs
Bogliolo adm

1 Did the court err in failing to decide the Motion of the Plaintiff to enter Judgment on the 7. plea Notwithstanding the verdict for Deft. at the 1st trial

2 did the Court err in the Instructions given by the Court.

3. did the court err in refusing plaintiffs 1. Instruction

4 did the Court err in refusing pltffs 2. Instruction

~~In regard to the failure of~~

1st. The Fact that there was a verdict at the second trial of the case for the pltff on 7 Plea renders the 1st point very plain - he is placed in precisely the same Condition he would have been had his Motion been decided in his favor - And as the Court granted a new trial Judgment could not have been given for him on the other issues.

Besides The plaintiff had control of his Motion And his failing to press it is tantamount to an abandonment of the Motion.

2nd The Instruction given by the court was properly given

The Replication alledges that E Bogliolo remained out of the State of Louisiana & continued out until his death This allegation is denied - The Testimony shows that Bogliolo was in Louisiana after the cause of action accrued. And if he was in Louisiana after the cause of action accrued he did not continue out as alledged by the replication - and the Jury should have been ~~so~~ instructed to find for Deft - if he was in Louisiana after ~~3rd~~ the cause of action accrued for that is the matter in issue -

3rd There is no evidence to authorise the 1st instruction asked by the plaintiff: the plaintiff himself proved that Bogliolo was in Louisiana after the cause of action accrued.

4th The 2d Instruction is not at all warranted by the testimony. The Instruction asked that if the Jury found a fact to exist not put in issue by the pleadings then they must find for the Defendant. If the fact that defendant was obstructed or hindered from bringing his suit was put in issue, still the obstruction must have arisen from the removal and not from any other cause. Yet the plaintiff asked the court to instruct the Jury if the obstruction arose from any cause they must find for the Plaintiff. The removal was the only avoidance of the plea alledged and was the only one of which the Deft had notice and against which he was prepared to defend.

The verdict of the Jury on the 10 & 11 Issues are not inconsistent. It might very well be that a removal might take place after 5 years and before the application of 10 years. However the court have nothing to do with the inconsistency of the verdict. If the verdict of the Jury was right the court will not reverse the judgment because an other issue was improperly found for the plaintiff which may seem to conflict with it.

Alvan Leach for Deft

In this case the instructions applicable to the 6 & 7 pleas is not in the copy of the record brought up and in the examination I made of the Record at St Genevieve I overlooked the Bill of exceptions, containing the instructions which forms a part of the Record as sent up by the Clerk

Campanel. adm.
vs
Bogholo adm

Deft. Brief

Alvan Cook

In the Supreme Court Fourth Judicial District
September Term 1837
Wednesday September 27th 1837 Court met pursuant
to adjournment present all the Judges

On Motion of Philip Cole Esq It is ordered by the
Court that a rule be made against Joseph D
Grafton Clerk of the Ste Genevieve Circuit Court
that he be and appear at the next term of this
Court and Shew Cause if any he can wherefore
he has failed to execute the writ of Error in the
Case of Asahel Smith Adm of B Campanel
against Mattes Bogleola Adm of Etienne Bogleola
according to the exigency of the Writ of and
why he should not be punished by attachment
for such failure according to law

Washington County ss

I Israel McGready clerk
of the Supreme Court for the fourth Judicial
District in the State of Missouri do hereby
Certify that the foregoing is a true copy of the
Rule against Joseph D Grafton made by
the said Court at the September Term 1837
as the same remains of record in my office

In testimony whereof I have hereunto set my hand and affixed
the Seal of said Court at office
this 18th day of Dec 1837

Israel McGready
Clerk

Rule

in

Joseph D Grafton

Mr Sr Guerrier County

Ashael Smith adm
of Bartholomew Compound
vs
Matteo Bagliolio adm
of Etienne Bagliolio

Action on the case and Judgment in the circuit court of St. Genevieve County. Nov Term 1836

The plaintiff in the above cause moves the court for an alias writ of error in the same, the original have been returned to the present term of the supreme court not executed by reason of indisposition of the clerk of St Genevieve circuit court.

P. Cole
Att'y for Smith.

Ashael Smith
adm
vs
Matteo Bagliolo
adm

Motion for
alias Writ of
Error

State of Missouri
Fourth Judicial district } ss

The State of Missouri To the Honorable the Circuit Court of Ste Genevieve County Greeting

For as much as in the record and process as well as in the rendition of Judgment on a certain plaint which was in our Circuit Court for our County of Ste Genevieve before our Judge thereof between Ashiel Smith Adm. of B. Campanel plaintiff and Matteo Bogleolo adm. of Etienne Bogleolo defendant in a plea of as it is said Manifest error hath happened to the great damage of the said Ashiel Smith Adm of B Campanel as by his complaint we are informed we being willing that the error if any there be should be duly amended and full and speedy Justice done to the parties aforesaid in this behalf Command you that if Judgment be thereupon given then a transcript of the record of the Judgment with all things touching the same you certify and send (with this writ) to our Supreme Court to be holden at the Town of Potosi within and for the Fourth Judicial district on the fourth Monday of May next that our Judges of our said Court inspecting the record of the Judgment aforesaid may cause to be done therein for correcting the said Error what to them of right & according to law shall seem meet to be done

In testimony whereof I Israel McGready Clerk of our Supreme Court for the fourth Judicial district have hereunto set my hand and private seal (there being no seal of office provided) at office this 14th day of April A.D. 1837

Israel McGready Clerk

I have been unable to comply with the requisitions of the within writ on account of sickness

For. D Grafton Clk
Sta Genl. Dis Court

No 3.

Supreme Court 4th Judicial District May Term 1837

Ashel Smith Adm. of B. Campance vs } writ of Error

Matteo Bogleola' Adm of Etienne Bogleola

To County of Ste Genevieve

Isaiah Smith adm
of B. Campanel ~~plaintiff~~
in Error

vs

Matteo Boglioli adm
of Etienne Boglioli
defendant —

Error to Circuit
Court of St Genevieve
County. —

Statement of the pleadings on the record

This was an action of Assumpsit brought by plaintiff in Error against defendant in the year 1833 upon a Note given by Etienne Boglioli to Barthelome Campanel in New Orleans on the 27th April 1816 for $1876.68¾ payable in the month of February after date. There were two trials of this cause in the circuit Court and the pleas are not consecutively numbered, owing to the irregular practice that obtained during the progress of the cause They stand thus upon the record 1st non assumpsit 2d That Smith was not administrator, 3rd non est factum, 6th That Matteo Boglioli was not administrator, and that plaintiffs demand was not exhibited within three years after 4th July 1825 — 7th That said demand was not exhibited to defendant within five years next after the first of January 1820. 10th That the cause of action did not accrue within ten years before the commencement of this suit. 11th That the cause of action did not accrue within five years before 21st February, 1825 nor at any time since. Upon the first trial, the issues upon those pleas were found for plaintiff, with the exception of the seventh, which was found for defendant. It appears from the record (page 21) that the plaintiff considered the finding on the 9th plea for defendant

to present no bar to his recovery and accordingly moved the court to enter up judgement in his favor "non obstante veredicto" but the record shows no disposition of this motion by the court. A new trial was asked for by defendant, which was granted by the court, and the cause continued to the next term. At which term the defendant withdrew all his pleas in the cause except the 6.th 7.th 10.th 11.th upon which pleas and issues last mentioned the cause was tried again, and the jury found the issues on the 6.th 7.th and 10.th for plaintiff, and on the 11.th plea for defendant. A motion was made by plaintiff for a new trial, which was refused by the court, a bill of exceptions taken and the evidence in the cause presented. The court also during the trial refused an instruction and gave one, to which exception was taken by plaintiff. The following points are submitted for the consideration of the appellate court.

1.st The circuit court erred in not considering and disposing of the motion of plaintiff to enter up judgement.—

points of Error for consideration of Supreme Court

2.d The Circuit Court erred, in refusing to instruct as asked by plaintiff, and in giving other instructions not asked to the jury.

3.d The circuit court erred in refusing a new trial and in rendering judgement for defendant, which should have been for plaintiff.

I will consider the points in the order they are made. As to the first. The motion by plaintiff for judgement upon the first-verdict rendered in the cause, was a lawful motion, and it was the bounden duty of the circuit court to have considered and disposed of it before granting a new trial to defendant. The failure of the court to consider the motion was precisely equivalent to a refusal to consider,

with this difference that the party in the first case injured is deprived of his exception. A court is presumed to know its records, and this cause could not legally advance until this motion was removed by the action of the court upon it. This is therefore error.

Bellissime vs McCoy 1. Mo. Rep 318.

Second, The instruction asked by plaintiff, were legal (see record page 24) and the court erred in refusing to give them, and most certainly erred in substituting the following "That if the Jury shall believe from the evidence that Etienne Boglioli was in the state of Louisiana, or in the United States after the cause of action accrued in this case then the Jury must find for the defendant". The true question is was the plaintiff bringing an action for obstructed in the collection of his debt by defendant, If he was the statute does not run, and only begin to run when such obstruction is removed. And certainly this is agreeable to the dictates of Justice and Law that will not permit a party to profit by his own wrong. The Debtor and Creditor might reside in the same state, and in the same County, and a state of facts exist that would be held in law an obstruction, and prevent the operation of the statute of Limitations. There appears to have been on the part of the court a total misapprehension of the Law on this question, there is error therefore here also.

Bobb vs Shipley 1. Mo. Rep 229.

See proviso to sec 1. page 510 Digest 1825

Third, The question whether the circuit court erred in refusing a New trial will necessarily require the consideration of the Verdict of the Jury in finding the issue on the 11th plea for defendant. and the facts put in issue by the pleadings on that issue and the evidence before the Jury in support of or against the finding. As before remarked, The defendant withdrew from the

record his pleas of Non assumpsit Non est factum, and That Smith was not admr of Companelle and went to trial upon the 6th 7th 10th 11th the three first whereof were found for plaintiff and the finding is to this effect 6th "that Matteo Bogliolo is administrator of Etienne Bogliolo, and this demand was exhibited to him within three years after 4th July 1825. On 7th The Jury find that said demand was exhibited to said defendant within five years next after 1st January 1820. 10th The Jury find that the cause of action did accrue within ten years before the commencement of this suit. On 11th The Jury find that the cause of action did not accrue within five years before 21st February 1825 nor at any time since. It will be perceived at once that the finding of the Jury on the 10th and 11th pleas is wholly irreconcileable. I will proceed to examine the pleadings in reference to the 11th and the facts put in issue by them. To this plea the plaintiff replied in substance, that Etienne Bogliolo after having contracted the debt in the declaration mentioned with Bartholome Companele at New Orleans, and before the cause of action accrued to plaintiff left the state of Louisiana, leaving no goods, chattels, lands &c therein, and has continued to abide beyond the limits of said State until his death, the domicil of said Etienne & family being beyond seas &c To this Replication the Defendant Rejoins as follows "Actio non" because he says that the said Etienne Bogliolo did not remove without the limits of the state of Louisiana before the said instrument declared on became due, and did not so continue to abide until his death, nor was his domicil or family beyond seas in manner and form &c and of this he

puts himself upon the country. & the plaintiff
doth the like —
The facts put in issue by this pleading are first
Did Etienne Bogliolo remove without the limits
of the State of Louisiana before the note he gave
Campanel become due or not?
Second, Did Etienne Bogliolo's place of residence
continue beyond the limits of the state of Louis=
=iana until his death, or not?
Third, was Etienne Bogliolo's Domicil and
Family beyond seas or not?
As to the first, The note given and which is the
foundation of this action, bears date 27th April
1816, and is made payable in the month of February
1817 — Robt D. Dawson a Witness proves, that in 1816
Etienne Bogliolo came to New Madrid, and brought
with him some merchandize. That he remained there
until the fall of the following year then went down the
river and died on his return. Etienne Bogliolo infor=
=med witness that his family resided in Europe.
Robert McCoy a Witness, proves, that he knew Etienne
Bogliolo, that his residence was in the Kingdom
of Sardinia in Europe. That he knew him at
the time of his death, that the residence of Etienne
and his family at that time was Sardinia in
Europe, except Mattio Bogliolo his son the defendant.
That he knew Etienne Bogliolo at the time he
contracted the debt with Campanel, at that time
he was a resident of Sardinia in Europe, That
in the year 1813 or 1814 Etienne Bogliolo came from
Europe and got a considerable amount of goods
from Bartholew Campanel, and came up to this
country New Madrid and opened a store, and resided here
18 months or 2 years before his death; which was at Warrington in Mississippi
Philip Avigno a Witness proves, that he was well

acquainted with Etienne Bagliolo. He came to the United States from Europe where he resided in the spring 1816. The witness after giving the particulars of his debt with Companel states "That immediately after Etienne Bagliolo contracted the said debt with Companel he left the city (Orleans) and was gone about 18 months or 2 years, when witness saw Etienne again in Orleans, Etienne informed him he was going to Europe to join his family, and being requested to pay the Companel debt stated he was unable to pay, but would make arrangements upon his arrival at home in Europe to pay it, and immediately left the city for the upper country instead of going to Europe and died in his passage up the river 300 or 400 miles above this place (Orleans). This is the substance of the evidence material to the issue under consideration and proves beyond all contradiction 1st. That Etienne Bagliolo did remove without the limits of the state of Louisiana before the note sued upon became due 2d. That his temporary ~~place of res~~ as well as permanent place of residence was beyond the limits of the state of Louisiana until his death and thirdly, That the domicil of Etienne & family was beyond seas — This issue therefore should have been found for plaintiff, and therefore the court erred in refusing a new trial, and in rendering Judgement for defendant, instead of plaintiff

Murreys Lessee Baker et al 4. Cov. Rep. 320

Shelby et al vs Guy 6. Cov. Rep. 345. —

In Conclusion I have not considered it necessary in this examination, to attempt to prove from all the evidence in the cause and the Law itself that the defendant cannot protect himself from paying this debt by a reliance upon

Digest of 1825 page 510. S. 1

Bob. v Shipley 1. Mo. Rep. 229. Hancock vs Gillespies adm 678

although such proof might be found in the evidence, and in the Law the statute of Limitations for this reason. The defendant in his rejoinder to the replication of the plaintiff, (~~that~~ ~~[illegible]~~ in avoidance of the defendants plea of the statute of Limitations) puts in issue certain facts, which he considers will avoid the effect of his plea, if the plaintiff can prove them. The plaintiff takes issue, and as I understand the evidence does prove them, the verdict of the Jury to the contrary notwithstanding. If the supreme court should concur as to the entire conclusiveness of the evidence on this point it is respectfully submitted, that the cause should not be remanded, but that final Judgement be given for plaintiff.

Cartmill v Hopkins 2. Mo Rep 220 – Weber vs Manning adm 2. S.A. Rep 229 –

P. Cole attd for
Smith adm
~~pltff~~ in Error

No. 1

Asahael Smith
admr of B. Campanel
vs. pltff in Error

Matteo Bogliolo
admr of Etienne Bogliolo
deft in Error

Brief of pltff
in Error.

P. Cole atty.

Campanels admr.
Bogliolos admr.

Campanels admr brought an action of Assumpsit in the Circuit Court of New Madrid County against Bogliolo admr. The Suit was removed first to St Francois & afterwards to St. Genevieve County.

The Declaration contained two counts one on a promissory note the other for goods wares and merchandize sold to Bogliolo by Campanel.

The Defendant pleaded 11 pleas all of which were withdrawn except the 6, 7, 10 & 11.

The 6 & 7 were pleas that plaintiff did not present the demands within 3 & 5 years after letters of administration were granted to deft.

To these pleas pltff replied that notice had not been given of letters & issue was joined

The 10. is a plea of the Statute of limitations of 10 years

The 11 is a plea that the causes of action did not accrue at any time within five years next before the 21. day of February 1825 nor on that day nor at any time thereafter. To these pleas plaintiff replied that the contract was made in the State of Louisiana That in the month of April 181 the said Bogliolo removed out of the state of Louisiana and did not return during his lifetime and that his family residence was out of the United States beyond seas. Defendant rejoined that Bogliolo did not remove out of the State of Louisiana did not continue out and that his family residence was not beyond seas & plaintiff joined issue

at the Term of the circuit court of St Genevieve county the case came on for trial Before the trial commenced the pltff asked leave to withdraw his replication to 11 plea & moved to strike out said plea. both of which were denied him to the opinions of the court he excepted.

On the trial which came on at the same Term the plaintiff moved the court to instruct

2 The Jury that if they should be satisfied from the Testimony that the note or claim on which suit was brought had been presented to Mattio Bogliolo admr. of E. Bogliolo within the times limited by law for presenting claims or demands against ~~dec^d persons~~ the estates of dec^d persons that they must find for the deplaintiff. This instruction the court refused, But instructed the Jury that it was competent for them to find under the 6 & 7 issues that the said claim was or was not presented within 3 or 5 years

On the 6. 7 & 10 issues there was a verdict for the plaintiff on the 11. for the Defendant

The plaintiff demanded a new Trial and assigned the following reasons.

1st The finding of the Jury is against the law and the Evidence

2. The Jury have not found the issues made by the parties

3 The court Misdirected the Jury

4. The court erred in refusing the instructions asked for

5. The court Misconceived the law as applicable to the case in the instructions given to the Jury

The points presented in this case are

1st did the court Err in refusing leave to withdraw replication to defts 11 plea with a view to strike out 11 plea

2nd did the court err in refusing to strike out 11. plea

3 did the court Err in refusing instructions asked by pltff

4 did the court Err in the Instructions and if so was the plaintiff injured by the error

5. did the court Err in refusing a new trial

6. did the court err in entering Judgment for the Deft

As the Defendant contends there was no error in the proceedings or if there was it is not such as to prejudice the plaintiff

As to the 1st point no injury could result to the plaintiff by refusing them permission to withdraw his replication unless he wished to amend, for if he had withdrawn his replication Judgment must have been entered for want of a replication. That such was not his object is apparent from the record

his object was simply to strike out the 11. plea and this dispenses with the necessity of inquiring into the propriety of allowing him to amend at that stage of the proceedings. Mo Rep 3 vol 120 But did the court Err in refusing to strike out the plea It is clear it did not at so late a period the court will not strike out unless the plea be most glaringly defective and the party will be entitled to all the indulgence he would be after verdict see Mo. rep vol 3 page 120 Pinkston vs Stone

Then is the defts plea so defective that it would not be cured by verdict. The plea is not only substantially good but is strictly formal & would stand the test of a special demurrer - Previous to the 21. day of Feb 1825 the limitation of actions of assumpsit was 5 years It was then so changed as to extend the limitation of actions founded on notes to ten years. ~~at~~ previous to that time then a plea that the action did not accrue within five years was a good bar One year afterwards such plea would not have been good although 5 years might have expired before the alteration of the law and if more than five and less than ten had passed he could not have availed himself of a plea of ten years Then in such case no other plea than the one pleaded in the present case would have been availing but whether the plea be formal or not it certainly sets forth facts which taken together amount to a bar to plaintiffs claim for if the cause of action accrued more than five years previous to the twenty first day of Feb. 1825 he is not entitled to recover and the plea does present such a statement and the plea notwithstanding the lapse of time is not identical with the 10. plea for if at the expiration of six years the defendant had absconded or done any other act which would have avoided the force of the statute of limitation it is plain the plea of 10 years would be unavail~~ing~~ as the pltff might reply such matter and the defendant could not then rely upon the

the Bar which was complete at the charge of the Statute. for by his plea ~~he admits~~ it appears that he relies exclusively on the Statute of 1825 and such rejoinder would be a departure from the plea

The next question which arises is upon the instruction asked by the plaintiff

To the issues upon the 10 & 11 pleas the instruction would have been so manifestly improper, so entirely inapplicable that nothing is required to be said on the subject.

~~On~~ the 6 & 7 pleas the issue is simply whether the plaintiff had notice and his replication impliedly admits the failure to present

And the instruction being to the advantage of the plaintiff although clearly wrong as the court instructed the Jury that if they found a state of facts to exist contradicted by ~~the pleadings~~ the admissions of the plaintiffs pleading they might find for the plaintiff, the plaintiff can not complain of the Error

At all events the issue on those pleas was found for the plaintiff and if there was error in the instruction it did not operate to the injury of the plaintiff the court will not reverse on that grounds.

The ~~last~~ Question is did the court err in refusing a ~~refusing a~~ new trial

In order to arrive at a correct conclusion it is necessary to see what were the two issues

The 1st was whether the plaintiff had notice of Letters

The 2nd whether E. Boylston resided out of Louisiana in April 181 ~~and~~ continued out till his death and his family residence was in Europe.

I shall ~~argument~~ enquire ~~whether~~ first

whether the issue found for the deft was properly found. The plaintiff has set forth in his replication several facts which are in order to enable him to recover must all be proved for they are all denied. ~~One of the facts stated~~ That E. Bogliolo did not continue out of the state of Louisiana until his death is certain for Mr Avegno says about 18 months after the contract was entered into E Bogliolo was in New orleans in the state of Louisiana and for any thing that appears to the contrary E. Bogliolo died there. The removal of Bogliolo certainly was not such a removal as would ~~entitled~~ deprive the defendant of the benefit of the statute There was no circumstances of concealment nor any thing in it calculated to hinder or delay the plaintiff. His whole course of conduct was such as to shew that he had no design to prevent an attempt to collect the debt nor in fact was there any obstruction to the bringing of the suit. Mr Avegno says Campanel's representative by his agent (Avegno) presented this claim to E. Bogliolo when in New orleans immediately preceeding his death and Bogliolo remained some time in the City of New Orleans Mr McCoy states that he was taken by his son from New orleans sick and certainly under circumstances which did not show him any design on the part of E. Bogliolo to obstruct or hinder the bringing of a suit by Campanel or his representative. Then not only was this issue properly found for the deft. but the Jury should have found the issue on the 10. plea for Deft.

The Jury should also have found the remaining issues for Deft. Mr. Avegno plaintiffs witness & also McCoy, shows that Campanel's representative had notice in fact of that deft was admr of his fathers estate and that the debt was demanded of him as such. The court ought not then to have granted a new trial

6

If however all these points be decided against the Deft still the Judgment of the Circuit Court is for the right party and therefore ought not to be reversed -

For the 10th plea is certainly good and the replication to that and the 11 plea is a mere nullity. It presents nothing which looks like an avoidance of either plea nor does it deny the allegations of the pleas and the Court ought therefore to have entered a Judgment for want of a replication -

The replication does not alledge that Bogliolo removed from the District or Territory where he resided when the cause of action accrued neither does it alledge that the removal delayed or hindered the plaintiff in bringing his suit - The Replication says the contract was made in Louisiana & E. Bogliolo ~~Deft~~ removed from the state of Louisiana ~~previous to the time when the money became due~~ and continued out until his death. And the time of Removal is previous to the time when the Money became due - No form of pleading a removal from the place where the contract was entered into could be a good replication The statute speaks of the District Territory or State where the Deft resided when the cause of action accrued It is immaterial whether the party removed from the place he resided at when the contract was entered into - provided he did not abandon the residence he had when the cause - again the plaintiff should have alledged that by such removal he was hindered or delayed the plaintiff in bringing his suit which is necessary to be alledged and proved See 1 vol Mo. rep ~~Shipley~~ vs ~~Bobb page~~ Bobb vs Shipley - Laws of Missouri rev code 1825 vol. 2 page 511 - Geyers digest page - and this replication is so very defective that a Judgment ought -

to be entered against the plaintiff on the 2nd tenth plea notwithstanding the verdict - For the replication presents no fact which by being properly pleaded would prevent the operation of the statute. the plea being admitted and not sufficiently avoided the Judgment should have been on that plea for Deft notwithstanding the verdict - See 1 Chitty pleading page 695

And therefore a repleader can not be awarded although the issue on the 10th 11 pleas may be immaterial - besides it is now too late to ask a repleader - the plaintiff should have moved in arrest of Judgment in the circuit Court and there asked that a repleader might be awarded - See 1 Chitty page 694

Alvan Cook for Deft

Campanels Admr
vs
[redacted]
Bogliolo's admr.

Defendants Brief

Alvin Cook Ct