357

July 1845, #9
Oliver Caldwell
vs
Rachel Lockridge
Jackson County
} Debt/Contested Estate

Caldwell & Lockridge were administrators of Jones Lockridge Caldwell made final settlement and was granted $190.42. Court then made order for Caldwell to pay $101.53 to the estate but did not notify him of this. Court set aside this debt because it gave him no notice

R.G. Smart, Hall - Atty

STATE OF MISSOURI----Sct.

The State of Missouri....To the Judge of the Sixth ——— Judicial Circuit in said State....**GREETING:**

WHEREAS, *In the record and proceedings in a certain cause lately pending in the Circuit Court within and for the County of* Jackson ——— *in said circuit, wherein* Oliver Caldwell was plaintiff and Rachel Lockridge Administratrix of I. Lockridge, Deceased was ———

defendant manifest error, hath intervened, to the great damage of the said plaintiff ——— *as by his* —— *complaint, we are informed;*

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

WITNESS, Hampton L. Boon, *Clerk of our said Supreme Court, at office, in the City of Jefferson, the* Eighth ——— *day of* May ——— *in the year of our Lord, one thousand eight hundred and forty-* five.

H. L. Boon.

State of Missouri } ss
County of Jackson }

I Saml D Lucas Clerk of the Circuit Court Within and for the County of Jackson in the State of Missouri do certify and in obedience to Command of the Within Writ I herewith annex a full & ~~xxx~~ and Complete Transcript of the Record and Proceedings in the Cause of Olivia Caldwell Plaintiff against Rachel Sockeridge Administratrix of the Estate of Jones Sockeridge decd Defendant in as full and ample a manner as the Same now remains of record in said Court

In testimony Whereof I hereunto Set my hand and affix the Seal of Said Court at office in Independence Ans 28th Day of May A.D. 1845

Saml D Lucas Cl

State of Missouri }
County of Jackson } ss

Pleas in the Circuit Court begun and held at the Town of Independence for the County of Jackson in the South Judicial Circuit of the State of Missouri on the Third Monday of March in the Year of our Lord One Thousand Eight Hundred and forty Nine before the Honorable John F. Ryland Judge of said Circuit

Be it Remembered that heretofore "to wit. on the South day of March in the Year Eighteen Hundred and forty Nine Rachel Lackeridge Administratrix of the Estate of Jones Lackeridge deceased by her Attorney Samuel H Woodson Esqr filed in the office of the Clerk of the Circuit Court for the County aforesaid the following Transcript of an Appeal from the County Court of said County of Jackson. Which Transcript is in the Words and Figures following" To wit.

"At a Term of the County Court begun and held at the Court House in the Town of Independence for the County of Jackson in the State of Missouri on the first Monday in February A.D 1845 it being the 3rd Day of said Month Court met Pursuant to adjournment Present Alvin Brooking Richard D Stanley and Richard Fristoe Justices of said Court.

Be it Remembered that Heretofore "to Wit" on the 23rd day of January A.D. 1845 the following Notice was Served on Rachel Lockridge Administratrix of the Estate of Jones Lockridge deceased in Words and Figures following "To Wit" To Rachel Lockridge Administratrix of the Estate of Jones Lockridge deceased You are Hereby notified that on Monday the First day of the next February Term of the Jackson County Court or as Soon Thereafter as counsel can be heard Which Term commences on Monday the day of February 1845 I Shall make Application to Said Court for an order requiring You to Pay me the Amount due me on the Final Settlement made by me as Administrator of the Estate of Jones Lockridge deceased at Which time and place You can attend if You think Proper

Oliver Caldwell

Upon Which Said Notice is the following return Made by the Sheriff of Jackson County "To Wit"

I Certify that I executed the within Notice by delivering to Rachel Lockridge a true Copy of the Same on the 23rd day of January 1845 in Jackson County

Thomas Pilcher Sheriff

And afterwards To Wit on the Second day of Said Term among other Proceedings the following were had and Made "To Wit"

Oliver Caldwell
vs
Rachel Lockeridge Adm^rs of the Estate of
Jones Lockeridge dec^d

Now at this day come the Parties aforesaid by their attornies and said Plaintiff files his Motion for an order on said Administratrix requiring her to pay him the sum of One hundred and Ninety dollars and forty Two Cents With interest thereon at the rate of Six per cent from the 9th Day of November 1838 being amount allowed by the Jackson County Court to said Plaintiff against said Estate at the date aforesaid

And afterwards "To wit" on the Third day of said Term the following proceedings were had and made in said Cause "To wit"

Oliver Caldwell
vs
Rachel Lockeridge Adm^rs of the Estate of
Jones Lockeridge dec^d

Now at this day come the parties aforesaid by their attornies and said defendant files her motion to Quash said Plaintiffs motion heretofore filed for an order to pay. Which said Motion of said Defendant to Quash being by the Court here seen and heard and fully understood is by the Court overruled.

And afterwards To wit on the Fourth day of said Term

The following Proceedings were had
and Made in Said Cause "To Wit"

Olivia Caldwell
vs
Rachel Lockridge Admx of the Estate of
Jones Lockridge dec'd

Now at this day come
the Parties aforesaid by their Attorneys
and the Motion heretofore filed by said
Plaintiff for an order on said de-
fendant to pay is taken up and con-
sidered and the Court after hearing the
same and the Said arguing thereon
doth take said Motion under ad-
visement until to Morrow.

And afterwards To Wit
on the Sixth day of Said Term the
following Proceedings were had and
Made in Said Cause To Wit

Olivia Caldwell
vs
Rachel Lockridge Admx of the Estate of
Jones Lockridge dec'd

Now at this day come the
Parties aforesaid by their Attorneys
and the Court after Mature deliberation
doth sustain the Motion of said Plain-
tiff for an order to pay. It is therefore
ordered by the Court that Rachel
Lockridge Administratrix of the Es-
tate of Jones Lockridge deceased pay
to Olivia Caldwell the Sum of one
Hundred and Ninety Dollars and
Forty Two Cents the Amount ordered to
be Paid as Ex. Administratrix of said

Estate at the November of this Court
in the Year 1838 and it is further or-
dered that Said Administratrix pay
said Caldwell the further Sum of
Seventy one Dollars and Ninty Seven
Cents it being Six Percent interest
thereon from the date of said order
Whereupon the said Alvin Caldwell
comes into Court here and files his
Remittitur for the Sum of Seventy one
Dollars and Ninty Seven Cents being
the Amount of interest assessed by
the Court. and thereupon said Plaintiff
files his Bill of Exceptions to the Read-
ing the Record of this Court of Monday
November Term 1838 on the Trial of this
Cause. Which said Bill of Exceptions
is Signed Sealed and Made a Part of
the Record in this Cause and said Plain-
tiff offers to file his Bill of Exceptions
to the decission of the Court in refusing
to have his Remittitur Made Part of the
Record in this Cause. and the entry made
thereon. Which said Bill of Exceptions
the Court Refuse to Sign and Thereupon
said Defendant files her Bill of
Exceptions to the Decission of the Court
in Overruling her Motion to Quash Pla-
intiffs Motion to Pray and to the decission
of the Court in Making the order en-
tered to Pray said Caldwell. Which
said Bill of Exceptions is Signed
Sealed and made a Part of the Re-
cord in this Cause and Thereupon

said Defendant by her attorney files affidavit and prays and appeal to the Circuit Court and said Defendant by her attorney files herein the Bond of Samuel H Woodson with Jacob Hall as security in the Sum of Four Hundred Dollars. It is therefore ordered by the Court that an appeal be granted to said defendant in this Cause

Which said affidavit is in the Words and figures following "to Wit."

Oliver Caldwell
vs
Rachel Lockeridge
Admsc of the Estate
of Jones Lockeridge

In the Jackson County Court
February Term
1845

This affiant Samuel H Woodson attorney for the defendant in the above entitled Cause makes oath and states that the Defendant does not take this appeal for the purpose of Vexation or delay but because he this affiant believes said defendant aggrieved by the decission of the Court made herein

S H Woodson attorney
for Rachel Lockeridge

Sworn to and Subscribed in open Court this 7th Day of February 1845
L D Lucas Clerk

Bill of Ex Which said Bills of Exceptions are in the Words and figures following "To Wit."

Copy
Tim

Oliver Caldwell
vs
Rachel Lockeridge
Admx of the Estate
of Jones Lockeridge
deceased

In the Jackson
County Court Feb-
ruary Term 1845

Best Remembered that heretofore to wit on the 23rd Day of January 1845 the following notice was served upon the said defendant in the Words and figures following to Wit. To Rachel Lockeridge Administratrix of the Estate of Jones Lockeridge deceased You are hereby notified that on Monday the first day of the next February Term of the Jackson County Court or so soon thereafter as counsel can be heard which Term commences on Monday the day of February 1845 I shall make application to said Court for an order requiring You to pay me the ~~sum of~~ amount due me on the final settlement made by me as Administrator of the Estate of Jones Lockeridge deceased at which time and place You can attend if You think proper

Oliver Caldwell

upon which said notice is the following return made by the Sheriff "To wit" I certify that I executed the within notice by delivering to Rachel Lockeridge a true Copy of the same on the 23rd day of January 1845 in Jackson County

Thomas Pitcher Sheriff

And afterwards to wit on the Second day of the February Term of said Court the Plaintiff by his attorney filed the following Motion To wit

Oliver Caldwell
vs
Rachel Lockeridge
Administratrix of the
Estate of Jones Lockeridge

In the Jackson County Court
February Term
1845

And the said Oliver Caldwell comes and moves the Court here to make an order on said Rachel Lockeridge as remaining Administratrix of said Estate directing and ordering her to pay said Caldwell out of the assets belonging to said Estate the sum of One Hundred and and Ninety Dollars and forty Two Cents together With Eight Per Cent interest thereon from the 9th Day of November 1838 the said sum of $190.42 being the Amount allowed by Jackson County Court of the 9th of November 1838. and ordered to be paid to said Caldwell by said Estate

Oliver Caldwell by
Hicks & Summit his attos

And the said Defendant by her attorney filed the following Motion in Words and figures following To wit

Caldwell
vs
Rachel Lockeridge Admse
Jones Lockeridge decd

In the Jackson County Court.

Defendant moves the Court to Quash Plaintiffs motion filed in the above entitled Cause for the following Causes, That the said motion shows that the amount moved to be paid by defendant is due upon a Judgment of this Court and as such the proper Course for Plaintiff to have pursued was to sue out a Scirce facias to revive said Judgment, That defendant has not been properly notified that said motion would be made

Woodson & Smith Attg.
For Defendant

Bill

Which said motion was by the Court overruled to the decession of the Court in Overruling said motion the Defendant by her attorney excepts, the Court thereupon proceeded to hear the motion of the Plaintiff and the Plaintiff introduced Jacob Ragan who being sworn stated that he knew of the defendant being in possession of 3 slaves at this time which slaves he believed to have belonged to the Estate of said Lockeridge dec. at the time of his death. defendant by her attorney admitted that there were assets in her hands belonging to said Estate, the Plaintiff then offered and read the following record of the County Court of Jackson County

" Final Settlement of Oliver Caldwell one of the Administrators of the Estate of Jones Lockeridge deceased November

Term 1838 in Pursuance of notice previously given.

Dr Oliver Caldwell

To Amount due the Estate at Last Settlement of February Term 1838

	$	¢
	606	83
To Balance Phelps' Note in Kentucky	593	00
" Cash of A Goodman in part of rent	51	09
" Balance of rent say $13.41 due by Goodman sued for and undetermined	13	41
$	1264	33
" Balance due Oliver Caldwell as Administrator of said Estate	190	42
$	1454	75

Oliver Caldwell Cr

	$	¢
By Amount Paid on Phelps Note in Kentucky from the 1st of March to 15 Oct 7½ Months at 12 per Cent	90	00
" Hunsbrough Caldwell	56	75
" Silas Barker	4	60
" Thomas Tally	4	00
" Samuel Johnson	3	00
" William Parrish Jr.	3	90
" Solomon Allen	600	00
" Cash paid the Estate by G W Tally	7	88
" Note returned on King not good	10	00
" Cash paid Joseph B Chiles	25	00
" Paid William Noland Season 2 mines	7	00
" My Commission on $8836.91 @ 6 per cent	530	21
" Thirty five days Services in Settling said Estate at $2.00 per Day	70	00
" Paid for notice of Settlement in Paper	4	00
" Paid R Hicks as a fee for assisting in Settling Estate	25	00
" Amt against A Goodman in law undetermined	13	41
$	1454	75

Which said Settlement is by the Court here received and ordered to be spread upon the record. And it appearing to the Court satisfaction of the Court and proof thereof being made that said Administrator had advertised in a public News Paper printed in Liberty Clay County Missouri according to Law of his intention to make application to this Court to resign his Administration of said Estate and said Administrator resigns accordingly. And it is further ordered that Estate refund to said Caldwell the sum of one Hundred and Ninety dollars and forty two cents the amount that appears to be due said Caldwell from said Estate as said Administrator, "the plaintiff then closed his testimony the Defendant then offered to Read the following record of the County Court of Jackson County" Oliver Caldwell Administrator of the Estate of Jones Lockeridge deceased on Settlement of said Estate and on application to resign his said Administration of said Estate

first order

Now at this day comes Rachel Lockeridge Widow and relict of said Jones Lockeridge deceased and Co Administratrix. Who pleads and defends for the benefit of the Estate in this behalf by Richard R Rees her attorney. Whereupon the Court after mature deliberation had thereon doth consider that the order made at this Term of the Court approving of the Settlement of the said Oliver Caldwell

2nd order

Administrator as aforesaid of the Estate aforesaid be and the same is hereby re-cinded so far as the percentum in said Estate is concerned and it is further considered by the Court that instead of the allowance of the 6 per cent on the whole personal Estate of said deceased as in said Settlement changed and by said order of approval allowed the said Oliver Caldwell shall be allowed in his Settlement as follows to Art
6 per cent on the first Thousand Dollars
5 per cent in the second Thousand Dollars
4 per cent on the third Thousand Dollars
3 per cent on the fourth Thousand Dollars
2 per cent on the fifth Thousand Dollars
and one per cent on the residue of the personal property of said Estate making the percentum allowance the sum of Two hundred and thirty Eight Dollars and thirty Six Cents instead of Five Hundred and thirty Dollars and Twenty One Cents. It is also considered by the Court that all other Credits demanded by said Caldwell be allowed. and that said Settlement be approved according to the Terms of this Order, and it is further ordered by the Court that Oliver Caldwell pay over to Rachel Lackeridge Administratrix of said Estate the money in his hands belonging to said Estate as shown by said Settlement to be the sum of One Hundred and One Dollars and fifty Three Cents. To the

reading of which the Plaintiff by his Counsel objected, but the same was read. to the opinion of the Court in suffering said Record to be read in Evidence the Plaintiff by his Counsel excepts and filed herein his Bill of Exceptions.

"O. Caldwell
vs
Rachel Lockeridge
Admr &c

In the Jackson County Court February Term 1845

Best Remembered that on the trial of this Cause the Defendant offered the following record of the Jackson County Court in Evidence"

"Oliver Caldwell Administrator of the Estate of Jones Lockeridge deceased on Settlement of said Estate and on Application to resign his said Administration of said Estate

Now at this day comes Rachel Lockeridge Widow and relict of said Jones Lockeridge deceased and be Administratrix. Who pleads and defends for the benefit of the Estate in this behalf by Richard R Rees her attorney. Whereupon the Court after mature deliberation had thereon doth consider that the order made at this Term of the Court approving of the Settlement of the said Oliver Caldwell Administrator as aforesaid of the Estate aforesaid be and the same is hereby recinded so far as the percentum on said Estate is concerned. and it is further considered by the Court

that in lieu of the allowance of the 6 Per Cent on the Whole Personal Estate of said deceased as in said Settlement charged and by said Order of Approval allowed the said Olivia Caldwell should be allowed in his Settlement as follows To wit 6 Per Cent on the first Thousand Dollars 5 Per Cent on the Second Thousand Dollars 4 Per Cent on the Third Thousand Dollars 3 Per Cent on the Fourth Thousand Dollars 2 Per Cent on the Fifth Thousand Dollars and One Per Cent on the Residue of the Personal Property of said Estate making the Per centum allowance the Sum of Two Thousand and Nine Eight Dollars and Sixty Six Cents instead of Five Hundred and Sixty Dollars and Twenty One Cents. It is also considered by the Court that all the Credits demanded by said Caldwell be allowed and that said Settlement be approved according to the Terms of this order and it is further ordered by the Court that Olivia Caldwell pay over to Rachel Buckenridge Administratrix of said Estate the Money in his hands belonging to said Estate as shown by said Settlement to be the Sum of One Hundred and One Dollars and Sixty Three Cents. To the giving of which said record in evidence to the Court the Plaintiff objected but the Court permitted the same to be read to the opinion of Court in permitting said Record to be read the Plaintiff by

his Counsel excepts and prays that his Bill of exceptions may be signed sealed and made a part of the record in this Cause which is done accordingly.

Given under our hands and seals this 7th Day of February 1845

Alvin Brooking Presiding Justice of said Court — Seal

R. D. Stanley Justice of Jackson County Court — Seal

Richard Fristoe Justice of Jackson County Court — Seal

This was all the Evidence offered in the Trial of said Cause by either party the Court thereupon made the following order

"Oliver Caldwell
vs
Ruchel Lockeridge
Admx. of the Estate of Jones Lockeridge dec.

Now at this day come the parties aforesaid by their attorneys and the Court after mature deliberation doth sustain the motion of said Plaintiff for an order to pay. It is therefore ordered by the Court that Ruchel Lockeridge Administratrix of the Estate of Jones Lockeridge deceased pay to Oliver Caldwell the sum of One Hundred and Ninety ~~Two~~ Dollars and forty Two Cents the amount ordered to be paid him as Co Administrator of said Estate at the November Term of this Court in the Year 1838 and it is further ordered that said

Administratrix pay to said Caldwell the further sum of seventy one Dollars and Ninty six cents it being six per cent interest thereon from the date of said order.

From which order of the Court the Defendant appeals and prays that this her Bill of exception be signed sealed and made a part of the record in this Cause. Which is done accordingly

A Brooking Seal
R D Stanley Seal
Seal

And afterwards To Wit on the Third day of the said March Term of the said Circuit Court the following proceedings were had and made in said Cause To wit

" Oliver Caldwell
vs
Rachel Lockeridge Admx
Appeal from County Court

Now at this day come the Parties aforesaid by their attorneys and said Plaintiff files motion to dismiss the appeal.

And afterwards To wit on the fifth day of said Term of said Circuit Court the following proceedings were had and made in said Cause To wit

Oliver Caldwell
vs
Rachel Lockeridge Admx
Appeal from County Court.

Now at this day come the Parties aforesaid by their attorneys and the Motion to dismiss the appeal heretofore filed is taken up which being seen and heard and by the Court fully understood, is by the Court overruled and thereupon neither party requiring a Jury to try the issue herein all and singular the premises are by them submitted to the Court which being seen and heard and by the Court fully understood the Court hereby reverse the Judgment in the Court below and for want of sufficient notice to said defendant it is ordered that the Cause be and is hereby dismissed.

And afterwards to wit on the Sixth day of said Term of said Circuit Court the following proceedings were had and made in said Cause" to wit.

"Oliver Caldwell
vs
Rachel Lockeridge Admx

Appeal from County Court

Now at this day come the Parties aforesaid by their attorneys and said Plaintiff files his Motion in arrest of the Judgment rendered herein which said Motion being seen and heard and by the Court fully understood is by the Court overruled to the decision of the Court in overruling said Motion the plaintiff excepts and thereupon said Plaintiff files his Motion for a New Trial which said Motion being by the Court here seen and heard and fully understood -

is by the Court overruled to which decision of the Court in overruling said Motion the Plaintiff excepts and files herein his Bill of exceptions which is signed sealed and made a part of the Record in this Cause.

Which said Bill of Exceptions is in the Words and figures following, to wit

" Abner Caldwell
vs
Rachel Breckenridge } Appeal from County Court

Be it Remembered that on the Calling up of this Cause for trial the Plaintiff appellee filed his motion to dismiss the appeal. To wit

" Rachel Breckenridge
vs } Appeal from County Court
Abner Caldwell } On the Fourth Circuit Court which Jan 1845

And the said appellee Abner Caldwell comes and moves the Court to dismiss said appeal

1st Because there is no Sufficient affidavit by appellant.

2nd Because said appellant failed to file bill of exceptions to the opinion of the County Court in overruling his Motion to Quash appellees Notice in the County Court.

3rd Because the appellant filed no bill of exceptions to the opinion of the County Court in Finding for appellee

4th Because said appellant filed no Sufficient Bill of Exceptions

to the Opinion of the County Court on any of the Matters decided by said Court and from which Appellant has Appealed." Which Motion the Court overruled. The Court then reversed the Judgment of the County Court, dismissed the Suit. The Plaintiff then filed his Motion in Arrest of Judgment. "To wit."

"Oliver Caldwell
vs
Rachel Lockridge
Assumpsit

Appeal from County Court

And the said Plaintiff Caldwell comes and moves the Court here to arrest the Judgment rendered in this Cause.

Because the Court erred in overruling the Plaintiffs Motion to dismiss the Appeal

2nd Because the Court erred in reversing the Judgment of the County Court

3rd. Because the Court erred in dismissing the Suit

Which & Grant Attys for Pltff

Which was overruled by the Court the then filed his Motion for a new trial." To wit.

"Oliver Caldwell
vs
Rachel Lockridge
Assumpsit

Appeal from County Court

The Plaintiff Caldwell moves the Court to set aside the Judgment

rendered and grant him a Newtrial Because 1st. The Court erred in over-ruling the Motion to dismiss the appeal

2nd The Court erred in reversing the Judgment of the County Court

3rd The Court erred in dismissing the Suit

Hicks & Smart Atty for Pltf

Which was also over ruled by the Court To all which opinions of the Court in overruling the aforesaid Motions to dismiss the appeal, in reversing the Judgment of the County Court, and dismissing the Suit and in over-ruling the Motion in Arrest of Judg-ment and for New Trial the Plaintiff by his Counsel excepts and prays that this his Bill of exceptions may be signed sealed and made a part of the Record in this Cause which is done accordingly

John F. Ryland Seal

State of Missouri } ss
County of Jackson } I Sam C. D.
Lucas Clerk of the Circuit Court in
and for the County of Jackson in the
State of Missouri do hereby Cer-
tify that the preceeding Twenty
pages contain a full and com-
plete Transcript of the Record and
proceedings in the Cause therein
mentioned Wherein Oliver Coldwell
is Plaintiff and Rachel Lockridge
Adm^x &c is Defendant, as fully as
the same remains of record in said court

In testimony Whereof I
hereunto set my hand
and affix the seal of
said Court at Office in
Independence this 28th
Day of May A.D.
1845

Sam C. D. Lucas Clerk

~~4 fr.~~

(~~8~~) (9)

Oliver Caldwell

vs Transcript

Rachel Lockeridge

Adm^x

Filed June 9th 1845.

H. L. Boon

clk

Smith v. Rice

512. 11 Mass

Jackson

In Supreme Court
July Term 1845.

Oliver Caldwell
apt
Rachael Lockridge admx. Jones Lockridge decd.

In Supreme Court

And the said deft by her attorneys and for joinder in Error says that there are no such errors in the record & proceedings below as the plaintiff has assigned and thus he prays may be enjoined &c.

Hickman
for deft

Caldwell

n } founder in
error

Lockeriage adm

Filed July 17. 1845.
H. L. Boon clk

Oliver Caldwell } In the Supreme Court. July Term
vs } 1845:
Rachel Lockridge administratrix of the Estate of
Jones Lockridge deceased -

and the said plaintiff by his attorney comes and says that in the record and proceedings of the Jackson Circuit Court in said cause there is manifest error and offers for error and shows to the court here that the said Circuit Court erred in the following matters:

1. The court erred in refusing to dismiss the appeal from the Jackson County Court. the affidavit being insufficient and there being no sufficient bill of exceptions:

2. The court erred in reversing the decision ~~of the decision of the~~ of the County Court. and in dismissing plaintiffs suit -

3d. The Circuit Court erred in not granting a new trial and proceeding denovo after reversing the decision of the county court.

4. The court erred in refusing a new trial and refusing to arrest judgment.

5. The judgment of the circuit court should have been for the plaintiff in affirmance of the judgment of the county court -

Wherefore the errors aforesaid the said plaintiff prays that the said judgment and proceedings be reversed and for nothing held and that said plaintiff be restored to all things which he has lost by reason of the judgment. together with costs. S Smart

Atty for plaintiff

Oliver Caldwell

vs

Rachel Lochridge

admrx. &c

Assignment of Error.

Smart atty

for Plaintiff

Filed July 17. 1845

H. L. Boon Clk

Oliver Caldwell } Writ of Error to the Jackson Circuit Court
vs
Rachel Yorkridge, Administratrix of the Estate of
John Yorkridge deceased.

To Samuel H. Woodson and Hugh N. Smith, attorneys of Record for Rachel Yorkridge, administratrix of the Estate of John Yorkridge dec.d; and defendant in this above entitled Cause, You are hereby notified that I have obtained from the Clerk of the Supreem Court of the State of Missouri a writ of Error to the decision of the Jackson Circuit Court made at its last March Term, in the above entitled Cause and that the said Cause will come up for hearing upon said Writ of Error at the next Term of the Supreem Court to be Commenced and held at the City of Jefferson on the first Monday of July AD 1845 at which time and place you Can attend if you think proper.

May 31st, 1845. Oliver Caldwell
"

I certify that I gave a true copy of the within Notice to ~~Woodson &~~ Saml H Woodson & Hugh N Smith in Jackson County on the 31st day of May 1845

Thos Pitcher Sheriff of Jackson County
By Wm Tirrill D.S.

Sheriffs fee 50

Oliver Caldwell
Ds { Notice
~~Rachel Robinson~~
Admr

Filed July 17. 1845.
H. L. Bowen clk

Oliver Caldwell
vs
Rachel Lockridge admx of
Jones Lockridge decd.

Error to Jackson Cir
cuit Court.

Oliver Caldwell & Rachel Lock
ridge were appointed admrs and admx of the estate of
Jones Lockridge decd. At the Nov. Term of the Jack
son Circuit Court in 1838 Caldwell having given
the requisite notice, made a settlement of his account
& resigned his letters of administration: At this settle
ment the court allowed Caldwell a ~~sum~~ commission
of 6 per cent on the estate amounting to $536.21. The
settlement left the estate indebted to Caldwell
$190.42, and an order was made directing the
admx to pay him that sum. Afterwards at a sub
sequent day of the same Term an order was made
correcting the former order, disallowing the amount
of the commission allowed by that order. The effect
of the correction was to bring Caldwell $101.53 in debt
to the estate. This order was made without any notice
to Caldwell: Afterwards in Jany 1845 Caldwell
gave the admx notice that at the next Feby Term of
of the Jackson ~~Circuit~~ County Court, he should move for an
order requiring the admx to pay him the amount
allowed to him by the Court at the Nov. Term 1838
when he resigned his letters of administration. The
County Court made the order accordingly. From this order
an appeal was taken to the Circuit Court when the
following judgment was entered "Now at this day came the
parties aforesaid by their attorneys & the motion to dismiss
the appeal heretofore filed is taken up, which being
seen & heard & by the Court fully understood, is by
the Court overruled; and thereupon neither party re
quiring a Jury to try the issue herein all &

singular the premises are by them submitted to the Court, which being seen & heard & by the Court fully understood the Court hereby reverses the judgment of the Court below, & for want of sufficient notice to said defendants it is ordered that the cause be & is hereby dismissed. From this judgment an appeal was taken to this Court.

In the first place it will be proper to notice the nature of the order made by the County Court at the Nov. Term 1838 requiring the admr to pay to Caldwell $150.42. From the argument of the cause & the references made it seems to have been regarded by the defendant in error as nothing more than a demand against the estate which must be exhibited & allowed like all other debts against a deceased person's estate. This is certainly an erroneous view of the subject: When an admr has made his settlement and a balance is found for or against him that settlement has the force of a judgment: It is precisely on the footing of all other allowances against an estate & its payment may be enforced in like manner. A Court would not permit an executor or admr to resign who was in arrears to an estate, until the balance against him had been settled. He would not thus be permitted to escape the control of the Court in coercing the payment of the debts he may owe the estate.

There is no foundation in law for the idea that a scire facias was necessary to revive the judgment rendered by the County Court at the Nov. Term 1838. Whatever may be the law in regard to the necessity for such writs to revive judgments after a year & a day [redacted] in courts proceeding according to the course of the common law, there is no pretence, that such laws are applicable to allowances made against estates in our County Courts. By the

common law a judgment against an executor or administrator was an admission of assets sufficient to satisfy it. If suits were instituted on claims and there were no assets to satisfy them, upon plene administravit pleaded, a judgment of assets quando acciderint was entered on which execution could be issued when it was shown by proceedings on scire facias that assets had subsequently come to the hands of the executor or administrator: all claims against an estate are by our laws permitted to be matured into judgments without regard to the means of satisfying them or to the solvency of the estate. There is no such a thing as a judgment ~~[illegible]~~ quando acciderint: after a few years debts their class depends upon the time within which they are ~~presented~~ exhibited. The state of the account of the executor or admr. is always known to the Court, and an allowance may be made and years may elapse before the Court will make an order directing its payment because from the situation of the assets of the estate it is seen that there is no money in the hands of the ex. or admr. applicable to its payment. The necessity of a scire facias arose from the presumption that after a year and a day a judgment was satisfied. Having a right to an execution during that time, the law contemplated that it would be resorted to in order to obtain satisfaction. But where an execution was stayed by writ of error or an injunction, the presumption of payment did not arise & no revival of the judgment was necessary. In our county courts when a judgment is rendered against an estate the party cannot take out execution without the order of the Court, and the court may and frequently does refuse to make an order to pay an allowance

until the year & day have elapsed; being governed in making such orders entirely by the situation of the accounts of the ex or adm^r.

The cause turns on the legality of the action of the County Court at the Novr Term 1838 in correcting the previous order of the term without notice to Caldwell. Caldwell having made a settlement of his account and resigned his letters of administration, could he have been considered in court any longer for any purpose. There an authorities for the position, that parties are considered in court for a year & a day after judgment, that being the period within which an execution may issue upon it. There is no doubt of the principle that during the term all the proceedings are in the breast of the Court and they may be altered or vacated as justice requires. The doctrine that the parties are to be presumed in court for a year and a day after judgment was repudiated by this court in the case of Laughlin & al vs. Fairfield banks, Sisle & Edwards 8 Mo. Rep 367. In that case this Court held, that the Circuit Court acted erroneously in setting aside the return endorsed on an execution without notice to the defendants, and it was further held that in every case of a special motion, unless there has been an express or implied waiver of notice, the want of such notice would of itself be sufficient to vitiate the proceedings. Now whatever may be the law applicable to cases in Courts possessing common law jurisdiction & whose proceedings are in conformity to that law as was the case above cited, it is manifest that the proceedings in the County Courts in the settlements of the accounts of adm^rs are entirely dissimilar from

common law.
the course of practice in causes pending in Courts of ~~equity~~.
In every suit there must be an actor & reus. When an admin
istrator comes into Court to make a settlement it cannot with
any propriety be said that it is a Step in a cause. True
any one interested may in suitable cases except to the
action of the court in making such settlements & prosecute
an appeal to the Circuit Court, but the settlement may
be made without any exception being taken, how then can
it be said to be a Step in a cause. When a court pro
ceeding according to the course of the common law enters
an erroneous final judgment, that judgment may be reversed
by writ of error in a superior tribunal. Not so in proceed
ings in the County Courts. A Writ of error does not lie on a
final in those Courts. The party complaining of any order or
proceeding therein must take the steps required to
correct that error of the Court at the time it was com
mitted otherwise he is remediless in an appellate tribunal.
In the case now under consideration, the admr ~~Campbell~~ Caldwell had
given the regular notice of his intention to resign his letters, he
appeared in pursuance of that notice, made a final settle-
ment & resigned. On what principle could it be said that
he was in Court after that time for any purpose. Beyond
all question the County Court during the term had authority
to vacate the order that had been made. But that only
could have done according to the principles of justice.
No one could be affected by proceedings of which he had
no notice. It is a principal of universal justice that
a judgment against a party without notice of the
proceedings is purely void. Although the Court
may have jurisdiction of the cause yet if the de
fendant is not affected with notice of the proceed
ings he is not bound by them. When the motion was
made to correct the former order if there was not time
during the term to bring in ~~Campbell~~ Caldwell by notice

the motion might have been continued & notice given in vacation and in that way the court would have retained control of the ~~cause~~ matter. The order obtained by Baldwell was after the notice required by law. That subsequently obtained was without any notice to him. Now if one or the other of these orders, only can stand how can we hesitate according to the principles of justice in determining which which shall obtain. It is in vain to say that Baldwell might have appealed. He could only have appealed by being in court during the term at or after the time at which the order was made, & his complaint is, that the order was made when he was not in court & when he had no notice ~~of the proceedings~~ that it was necessary to be there. The case of Smith vs. Rice 11. Mass. Rep 507. is one involving the propriety of an order made by a probate court which affected a person who had no notice of the proceedings. The case is very similar to the one under consideration & a portion of the opinion is transcribed as showing the views entertained by an able tribunal on this question. "It was said in the argument that as the judge of probate had jurisdiction of the cause his decree is conclusive; and that the only remedy of the demandant if aggrieved was by appeal. This is undoubtedly true in cases when the Probate Court is acting within its jurisdiction & pursuing the course prescribed by law, if in such a case there is an incorrect exercise of authority the only remedy is by appeal. But in the case at bar, the very grievance complained of is that the party had no notice of the pendency of the cause & of course no opportunity to appeal. Any party aggrieved at the judgment of a justice of the peace or of a court of common pleas, may appeal if he has had due notice of the suit, and when he has had an opportunity to appeal & neglects it he can not afterwards bring a writ of error on such judgment. But if judgment

has been rendered on the default of the defendant, without any appearance by him & without a sufficient service of the writ; or in the Court of Common pleas if a sole defendant be out of the State & judgment be rendered against him without the continuance required by statute, the defendant may reverse the judgment by writ of error. 2. if the party die before judgment rendered against him his executor may reverse it on error. And in all these cases it is no objection to the writ of error that the cause was open to appeal, inasmuch as the plaintiff in error had no opportunity to avail himself of that remedy."

"It is then very evident, that if the proceedings in the probate Court were according to the course of the Common Law, the decree in question might be reversed for the error before mentioned. But no writ of error lies to the probate Court. Their proceedings not being according to the course of the common law a party situated like the present demandant has no means of revising the decree & causing it to be cancelled or reversed so as to prevent its being produced against him in another cause. He has then a right when it is so produced to aver & prove its nullity." The other judges concurring the judgment is reversed & the cause remanded

W. Scott

34 ~~46~~

Caldwell
vs
Lockridge ~~[illegible]~~ Ads.

Opinion
Scott

Filed Oct. 21st 1845
H. L. Boon clk

Olivr Caldwell
vs
Rachel Lochridge, Admx.
of Jones Lochridge Decd.

In the Supreme Court
July Term 1845

(Statement of the Case)

Olivr Caldwell & Rachel Lochridge were Adms. & Admx. of the Estate of Jones Lochridge decd. At the November term of the Jackson County Court for 1838 Caldwell having made his final settlement, as one of the Administrators of said Estate, resigned his letters of Administration. At the same time the Court ordered "That Estate refund to said Caldwell the sum of one hundred and ninety dollars and forty two cents, the Amount that appears to be due said Caldwell by said Estate, as said Administrator."

On this settlement the Court allowed Caldwell six per cent commission on $8836,91 amounting to $530,21-

At the same term of the Jackson County Court, ~~at which~~ the preceding order was made, and afterwards on motion of the attorney for the administratrix of said Estate, the Court entered up another order rescinding the first order, as far as the six per cent commission on the whole amount of the personal estate was concerned, & allowing Caldwell, the sum of $238,30 instead of $530,21 as was allowed by the first order— This left Caldwell indebted to said Estate in the sum of $101,53, which the Court directed to be paid over by Caldwell to the Administratrix, and approved of Caldwell's final settlement according to the terms of the latter order-

On the 23rd day of January 1845, Caldwell had a notice served on said Administratrix, that on Monday the first day of the then next term of the Jackson County Court, then next following, or as soon thereafter as Counsel could be heard, he would move the Court for an order requiring her to pay him the Amount allowed him on his final settlement by the Court, in the first order.

on the 2nd. day of the February term of the Davidson County Court for 1845, Caldwell moved the Court for an order on the administratrix to pay him out of the assets of said estate in her hands, the said sum of $190.42 with six per cent Interest thereon from the 9th. day of November 1838. Whereupon the Administratrix by her attorney moved the Court to quash said Caldwells motion. "Because," first, "the said motion shows that the amount moved to be paid by said dependant, is due upon a judgment of this Court, and as such the proper course would have been for plaintiff to sue out a scire facias to revive said judgment." 2nd. "That dependant has not been properly notified that said motion would be made." This motion of the dependant was by the Court overruled.

The motion of Caldwell was then taken up by the Court. The first order of the Court at its February term for 1838, was then read in evidence, and the Administratrix admitting that she had assets of said estate in her hands, the plaintiff closed his testimony. The administratrix, dependant, then read in evidence the 2nd. order of the Davidson County Court, at its February term for 1838, to the reading of which the plaintiff objected. She tendered his bill of exceptions which was signed by the Court & made a part of the record. This was all the evidence offered on the trial of this motion by either party.

The Court thereupon made the following order. To wit:- Oliver Caldwell

vs

Rachel Lockridge, admx. of Jones Lockridge, dec.

Now at this day come the parties aforesaid by their attornies, and the Court after mature deliberation doth sustain the motion of said plaintiff for an order to pay. It is therefore ordered by the Court, that Rachel Lockridge administratrix of Jones Lockridge deceased, pay to Oliver Caldwell the sum of one hundred and ninety dollars and forty two cents, the amount ordered to be paid him as Admr. Administrator of said Estate at

at the November term of this court in the year 1838, and it is further ordered that said Administratrix pay to said Caldwell the further sum of seventy one dollars and thirty six cents it being six per cent interest thereon from the date of said order" The plaintiff filed his remittitur for the sum of $71,36, the interest on the amount of the order allowed from its date - The Court refusing to allow the plaintiffs remittitur to form part of the records in this case, the plaintiff offered to fil a bill of exceptions which the court refused to sign -

The defendant then filed her bill of exceptions to the decision of the court, in overruling her motion to quash plaintiffs motion to pay - & to the decision of the court in making the order on her to pay said Caldwell - Which said bill of exceptions is by the court signed & sealed & made a part of the record in this cause -

The said defendant then filed the necessary bond & affidavit and prayed an appeal to the Circuit Court, which was granted, and ordered accordingly -

At the March term of the circuit court of Jackson County for 1845 - The Plaintiff Caldwell filed his motion to dismiss the appeal of said Administratrix, which motion was by the court overruled - The cause was submitted to the Court, which revesed the judgment of the County Court, & for want of sufficient notice the cause was dismissed -

Caldwell then moved in arrest of judgment, and for a new trial both of which motions the Court overruled.

To all which proceedings of the Court in overruling said motions of said Caldwell, - to dismiss the appeal - in arrest of judgment & for a new trial, and in reversing the judgment of the County Court & dismissing the cause, the plaintiff by attorney excepted, & tenders his bill

bill of exceptions which was by the court signed & sealed, & made part of the record in this cause—

The case is brought here by writ of error, by Caldwell for the purpose of reversing the judgment of the circuit court—

J. Hall
Defendants Atty.

Points and Authorities.

The ~~defendant~~ relies upon the following points and authorities—

I. The notice, that plaintiff would move the court for an order requiring defendant to pay the amount of ~~[illegible]~~ ~~[illegible]~~ was altogether an informal proceding in this cause

II. The order of the Jackson County Court made at its November Term of 1838, offered & read in evidence by the plaintiff Caldwell, is to all intents and purposes a judgment of the court, and as such could only be enforced after scire facias, there being no evidence that execution had been sued out upon it within a year and a day after its rendition. See McKinney's Admr Vs Davis 6 Mo. R. p 501— ~~[illegible]~~ 1 st. Mo. R. p 368— Dowsman Vs Potter— 1 st Tompkins Law Dic. p 707. 3rd. Mo. R. p 307 2nd. Bac. Abr. p 729— 7 Mo. Mo. R. p 469 Gamble Admr Vs Hamilton's admr.

The County Court had power to rescind the first order, upon motion, as was done at the same ~~[illegible]~~ term at which it was made— (Dunn) Had the court a right to enter up another order, at the same term at which the preceding

one was recinded,?

See Revised Stat. Mo. 1835 p 469 -
7 Mo. R. p 320. Ashby vs Glasgow & others
See also Bouvier's Law Dic. Title "Term." also Jacob's
Law Dictionary - title - "Judgment"

The first order having been recinded properly, it was clearly incompetent testimony, to warrant the proceedings of the County court at its Term for March 1844 -

If the County Court erred in recinding its first order - & entering up the second order - the Caldwell could have appealed to the circuit Court - Rev. Statutes Mo. p 63

That, as all the pleadings in the County court, are by statute, may be "orepenis." The various motions, appearances, testimony &c necessary to warrant a judgment in that court will by a higher court be presumed unless it otherwise appears by bill of exceptions - Rev. Statutes [illegible]

Oliver Caldwell

vs } Error to Jackson [illegible]

Rachel Lockridge Admx.

of Jones Lockridge Decd

Statement of the case

and points with au=

thorities By J. Hall

Atty for Dft.

In Supreme Court of Missouri
July Term 1845

Oliver Caldwell
agst
Rachael Lockeridge admr of Jones Lockeridge decd Deft

Pltff
Error. Jackson Ct

This suit was commenced in the County Court of Jackson upon the following notice (viz)
To Rachael Lockeridge admr of the Estate of Jones Lockeridge decd. You are hereby notified that on Monday the first day of the next February Term of the Jackson County Court or as soon thereafter as Counsel can be heard which term commences on Monday the day of February 1845 I shall make application to said Court for an order requiring you to pay me the amount due me on the final settlement made by me as administrator of the estate of Jones Lockeridge decd at which time and place you can attend if you think proper
Signed Oliver Caldwell
The Sheriff returns that he executed the notice by delivering to Rachael Lockeridge a true copy of the same on the 23 day of January 1845 in Jackson County
On the 2nd day of the February Term 1845 the pltff filed his motion (so says the order) requiring said admr to pay him $190..42 with Int at 6 pr cent from 9. Nov. 1838 being amt allowed by Jackson County Court to pltff agst said Estate at date aps. — On the 3 day of Court the deft filed her motion to quash the pltffs motion which was overruled by the Court — On the 5 day of the Court judgement was rendered in favour of the pltff agst said admr for the sum of $190..42 and also for the sum of $71..37 being 6 pr cent from Nov 1838 — Bills of exceptions were filed and an appeal taken to Circuit Court and at the March term of so Circuit Court the pltff Caldwell moved to dismiss the appeal which was overruled and neither party requiring a jury

the issue was submitted to the Court. and the judgement of the County Court was reversed (as stated by the Order) for want of sufficient notice to the defendant and the cause dismissed without any judgement against either party for costs - Caldwell filed his motion to dismiss the appeal as ~~in arrest of judgement~~. 1st Because there is no sufficient affidavit by appellant - 2 Because said appellant failed to file bill of exceptions to the opinion of the Court in overruling her motion to quash appellee motion in County Court. 3 Because the appellant filed no bill of exceptions to the opinion of the County Court in finding for appellee - 4th Because said appellant filed no sufficient Bill of exceptions which motion was overruled - Caldwell filed his motion in arrest of judgement 1 Because the Court erred in overruling the Plaintiffs motion to dismiss the appeal. 2 Because the Court erred in reversing the judgement of the County Court - 3 Because the Court erred in dismissing the suit - which motion was overruled. Caldwell then filed his motion for a new Trial for the same reasons as stated in motion in arrest of judgement which motion was also overruled - Bill of exceptions filed and Case brought to Supreme Court by writ of Error.

B F Hickman
for deft in Error

Points made by deft in Error

Upon the trial of the appeal from the County Court the Circuit Court committed No Error in reversing the Judgement of the County Court and dismissing the case for want of sufficient notice - See Revised Statutes pages 55 & 56. Sections 5 & 17 - and 5 vol Mo R page 334 -

The notice & motion of plaintiff in County Court shows that his claim is founded on a Judgement of said County Court. and therefore he should have resorted to his writ of Scirefacias. and not attempt to enforce the collection of said Judgement nor to obtain another one by motion - Revised Statutes page 56. Sec 8 - also 6 vol Mo R page 501 -

The County Court erred in giving Judgement in favour of the plaintiff (Caldwell) because 1st he had not made oath or filed an affidavit with his claim as required by law - Revised Statutes page 56 Sec 9 - and 2nd because the Judgement entered up was not against the assets of Lockendge decd in the hands of his admr to be administered. And the Circuit Court having in reversing the Judgement of said County Court decided in favour of the right party. the Supreme Court will not now interfere with its decision - 6 vol Mo Rep page 250 - 489 - 7 vol Mo R page 416

Hickman
for defendants
in Error

Oliver Caldwell

agst { Evron
Jackson

Jones Lockerdge's admr

Statement of Case &
Points of Dependant
in Error

Hickman

Oliver Caldwell
vs
Rachel Lochridge, administratrix of the Estate of Jones Lochridge deceased.

In the Supreme Court.
July Term 1845.

Error to Jackson Circt Court.

This case grows out of the action of the Jackson county Court at its February Term 1845.

To understand the case fully however, it is necessary to look at the case from the beginning:

At the November Term of the Jackson County Court in 1838, Oliver Caldwell as one of the Administrators of the Estate of Jones Lochridge deceased, made his final settlement as said administrator, and resigned his letters of administration, after legal notice given.

By this settlement, the Estate of Lochridge was indebted to Caldwell in the sum of one hundred and ninety dollars and forty two cents, which the Court ordered to be refunded to Caldwell out of the Estate of said Lochridge. At a subsequent day of the same term of the court, and after Caldwell had made his final settlement and resigned his letters of administration, without notice to Caldwell, the court rescinded so much of the final Settlement made by Caldwell, as related to the per centum allowance to him for his services. By this order of the ~~County~~ County Court, Caldwell was brought in debtor to the Estate, in the sum of 101 dollars and forty three cts.

At the February term of the Jackson County Court for 1845, and after notice given, Caldwell filed his motion in said Court, for an order upon Rachel Lochridge, the remaining administratrix of the Estate of Jones Lochridge deceased, to pay him the amount due him from said estate as appears from his final Settlement made in 1838. This order the Court made, requiring the said administratrix to pay Caldwell the amt due him as appeared from his final settlement made in November 1838. From this decision of the county Court, the administratrix by her attorney, appealed to the Circuit Court of Jackson County.

The circuit court reversed the decision of the county court and dismissed the suit. Caldwell then moved for a new trial and in arrest of judgment which motions were overruled by the court. He then filed his bill of exceptions and the cause is now brought to this court by writ of error.

Points and authorities

By R. G. Kennart atty for plaintiff in Error.

1. The final settlement made by Caldwell in 1838. was in every respect, in conformity with the law, and from the time of his resignation, all his powers then ceased. Revised statutes of 1835. title administration. 1st article section 30 & 31.

2nd

The decision of the county court made at the February Term 1845. in ordering Rachel Lochridge the administratrix, to pay the amount due Caldwell on his final settlement, as administrator of Jones Lochridge deceased, made in 1838. was right and proper. See Revised statutes of 1835. title administration article 5th sections 11 - 12. 13 & 14. page 58 - 59.

and further, that as soon as Caldwell had made his final settlement and resigned his letters, his powers of administration then ceased and he was no longer in court, and the court had no further control over him and any order made by them affecting his rights was null and void

3d That the second order of the county court made in 1838, rescinding a part of the final Settlement of Caldwell, was null and void the same having been done without notice to Caldwell, and the whole proceeding an Ex parte one. See Monroes Kentucky Reports. vol 8 - page 158 - Missouri Reports 7th vol. P. 465 Smith vs Ross and Strong.

4th

The allowance made to caldwell at his final settlement, by the county court in 1838, being warranted by the law, and being such an allowance as the court had a perfect right to make, the only way by which the opposite party could take advantage of the same, was by appeal to the circuit court. See. Revised Statutes of 1835. Title administration 15 section 6th article - also 7th article 1st section.

5th

The circuit court erred in dismissing the suit in that court, as a new trial should have been granted had, in case the county court erred in the decision it made. See 8th article of administration laws, Section 8.

Caldwell

v.

Lockridge

Pltfs Brief

Smart atty.