Caldwell, Walter; Alexander, Thomas vs. Blair, Alexander March 1834 Second Ralls 99/1

#10

1)

Alexander Blair
against
Thomas Alexander &
Walter Caldwell

Pleas before the Honourable Presthy H. McBride the Judge of the Circuit Court of Ralls County in the Second Judicial circuit in the State of Missouri at the Courthouse in the town of New London the place appointed for holding Said Court on the fourth day of June it being the first Monday of Said month in the year of our Lord One thousand eight hundred and thirty two.

Be it remembered that heretofore towit, On the 8th day of May in the year of our Lord, One thousand eight hundred and thirty two a declaration was filed in the office of the Clerk of the Ralls Circuit Court which is in the words and figures following towit,

"State of Missouri County of Ralls } 2d Judicial Circuit Set
May Term A.D 1832

Alexander Blair by his attorney complains of Thomas Alexander & Walter Caldwell of a plea that they render to him the Said Blair the Sum of three hundred dollars lawful money which they owe & unjustly detain from him for that whereas the Said Alexander Blair heretofore towit at the Nicholas Circuit Court in the County of Nicholas and State of Kentucky towit at the County of Ralls & State of Missouri aforesaid, on the first day of July it being the Sixth day of the June Term of Said Nicholas Circuit Court in the year One thousand eight hundred & twenty Six. by the judgment and consideration of Said Court recovered against the Said Thomas Alexander & Waller Caldwell as well a certain debt of One hundred & Sixty five dollars and nine cents as also interest thereon from the 16th day of February 1825 till paid to be computed at the rate of Six per centum per annum and also his costs by him about his Suit in that behalf laid out & expended Whereof the Said Thomas & Waller were convicted which Said Judgment Still remains in that Court in full force & effect in no wise reversed overruled or recovered, that is to Say at the County aforesaid in the State aforesaid And the Said Blair avers that his costs by him about his Suit in that behalf expended

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amounted to the further sum of Seven dollars & 13 ¼ Cts And the said Blair in fact saith that he hath not obtained any execution or satisfaction of or upon the said judgment interest & costs so recovered as aforesaid. Whereby an action hath accrued to the said Blair to have & demand of & from the said Thomas Alexander & Walter Caldwell the said sum of three hundred dollars above demanded yet the said Thomas Alexander & Walter Caldwell although often requested so to do hath not as yet paid the said sum of three hundred dollars above demanded or any part thereof to the said Alexander Blair but they so to do have hitherto wholly neglected & refused and still do refuse to the damage of the said Alexander Blair one hundred dollars & therefore he brings his suit

A B Chambers atty for Pltff.

Upon which declaration a Summons was issued which is in the words and figures following Toint,

The State of Missouri,

To the Sheriff of the County of Ralls Greeting: We Command you to summons Thomas Alexander & Walter Caldwell that they be and appear before the Judge of the Circuit Court to be commenced and held at the Court house in the Town of Newlondon within and for said County of Ralls on the first Monday in June next then and there to answer unto Alexander Blair in an action of debt for the sum of three hundred dollars damage one hundred dollars and have you then there this writ and certify to our said Court how you execute this writ — In Testimony Whereof I Charles Glascock Clerk of said circuit Court have hereunto set my hand and seal of office at Newlondon this 8th day of May A.D. 1832.

L.S.

Chas. Glascock Clerk

Upon the back of said Summons the Sheriff made a return which is in the words and figures following toint,

Served the within writ by reading the same and the declaration annexed to said writ to Walter Caldwell one of the within named defendants in Ralls County on this 9th day of May A.D. 1832. and Thomas Alexander the other within named defendant is not found in said Ralls County

Dabney Jones Sheriff of Ralls County

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And upon the back of said summons is the following endorsement towit,

Filed May the 25th 1832 Chas. Glascock Clerk

And upon the 8th day of May A.D. 1832 a bond was filed in the office of the Clerk of the Ralls Circuit Court which bond is in the words and figures following towit,

Know all men by these presents the I William Thompson of the County of Pike & State of Missouri as security for Alexander Blair am held and firmly bound unto Walter Caldwell & Thomas Alexander & all the Officers of the Circuit Court for Ralls County to pay all costs which may accrue in a certain action of Debt this day commenced in said Court wherein the said Blair is Plaintiff & the said Caldwell & Alexander are defendants now if said Blair shall pay or cause to be paid all costs which may accrue in this action then this obligation to be void else to remain in full force & effect In Testimony whereof I have hereunto set my hand and seal this Fifth day of May A.D. 1832 - Alexander twice interlined before signing

Attest William Thompson Seal

And afterwards towit at a Circuit Court begun and held at the court house in the town of Newlondon in and for said County of Ralls in the Second Judicial Circuit & State of Missouri on the fourth day of June it being the first Monday in said month A.D. 1832 on the second day of said Court the following proceedings were had towit,

Alexander Blair }
vs } Action of Debt on Record
Walter Caldwell }

Now at this day comes the parties aforesaid by their Attornies and the defendant by his counsel files his several pleas to the plaintiffs declaration and by consent leave is given for said plaintiff to reply at the next term of this court and cause continued - which pleas are in words & figures following towit, Caldwell }
vs } June term 1832 Action of Debt
Blair } And the said defendant by his attorney

pts

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Comes & defends the wrong & injury when &c & Says that there is no Record of a Judgment remaining in the Nicholas Circuit Court in the State of Kentucky in manner & form as the Said Pltff has above thereof in his Said declaration alledged & this he is ready to verify Wherefore he prays judgment &c—

2d and for further plea in this behalf the Said defendant Says that said Pltff ought not to have or maintain his aforesaid action thereof against him because he Says that he was not served with a any writ of Summons or capias in Said State of Kentucky to appear in Said Suit before the rendition of Said judgment in Said declaration— mentioned nor did he ever appear or defend Said Suit or in any way waive the want of Such Service or in any way Submit to the jurisdiction of Said Court prior to the Rendition of Said Judgment & that Said Judgmt as against him is void & this he is ready to verify wherefore he prays Judgment &c

3rd And for further plea in this behalf the Said defendant Says that Said Pltff ought not to have or maintain his aforesaid action thereof against him because he Says that an Execution did issue on Said judgment from the Nicholas Circuit Court in the State of Kentucky against this defendant & that the Said Execution was levied & returned in due time by the Sheriff executed & the Same is on file in the office of the Clerk of Said Court & a part of the record of Said Court— all which Said defendant is ready to verify Wherefore he prays judgment &c—

4th And the defendant by his attorney for further plea in this behalf Says that he the Said Pltff ought not to have or maintain his aforesaid action thereof against him because he Says that after the rendition of Said judgment in Said declaration mentioned & before the Court of this Suit he the Said defendant paid & Satisfied Said Plaintiff for Said Judgment court at the County of Ralls aforesaid all which he is ready to verify Wherefore he pray judgment &c

Ezra Hunt Atty for Deft

And afterwards towit, At a Circuit Court begun an held at the Court house in the town of Newlondon in and for said County of Ralls in the State of Missouri Personally appeared the Honourable Priesthy H. McBride Judge of the Second judicial circuit in and for said State and the Judge of the Court aforesaid but adjourned to & held at the house of Walter Caldwell in said Town of Newlondon on the first day of October its being the first Monday in said month A.D. 1832 on the fourth day of said Court the following Proceedings were had Towit,

Alexander Blair
vs. } Action of Debt on record.
Walter Caldwell

Now at this day comes the Parties aforesaid by their Attornies and the defendant by his Attorney filed additional Pleas in this case. which Pleas are in words & figures following Towit, Caldwell empleded

with Thomas Alexander
vs } October Term 1832
Blair.

5th And for further plea in this behalf the said Walter Caldwell by his Attorney says that the said Plaintiff ought not to have or maintain his aforesaid action thereof against him. Because he says that after the rendition of the judgment aforesaid against him & the said Thomas Alexander in favour of the said Alexander Blair. and before the commencement of this suit towit on the tenth day of March in the year of our Lord one thousand eight hundred & twenty seven towit at the County of Ralls aforesaid he the said Plaintiff agreed with this defendant to receive of & from him a certain horse of great Value towit of the Value of One hundred dollars in full satisfaction & discharge of all the residue of said judgment then due by this defendant to said Plaintiff and that he the said Walter thereon & there delivered the said horse to him the said plaintiff

for the purpose aforesaid & that said Pltff then & there received said horse of & from said Pltff in full satisfaction discharge of all the residue of said judgment then due him from this defendant as aforesaid & this he the said defendant is ready to verify wherefore he prays the Judgment of the Court if the said plaintiff ought to have or maintain his aforesaid action thereof against him &c

Hunt & Allen
Attys for deft

And the plaintiff by his Attorney moves the Court to strike from the record the third plea heretofore filed in this case by the Attorney for the defendant which said motion having been argued by the Attornies of the parties aforesaid is sustained by the Court and the defendant by his Attorney gives the plaintiff leave to file his replication to the pleas of said defendant in vacation of this Court and cause continued - which motion is in words & figures following Towit,

Blair
vs } Action of Debt on record Circuit Court
Caldwell & } Ralls Cty Oct Term 1832

The Pltff moves the Court to strike out the 3rd plea by the deft above pleaded because said plea contains no issuable matter in the form in which it is plead but if any issuable matter is contained in said plea then the same is only pleadable by the plea of nulliel record & not in the manner above pleaded

A. B Chambers Atty for Pltff

And afterwards towit, upon the 24th day of January A. D. 1833 the plaintiff Alexander Blair by his Attorney filed in the office of the Clerk of the Ralls Circuit Court four Replications to the defendants pleas which replications are in words & figures following towit,

Blair
vs } In Circuit Court Ralls County Mo

Caldwell 3

And the Said Plaintiff as to the Said plea of the Said Defendant by him first above pleaded saith that he the Said Plaintiff by reason of any thing by the Said defendant in that plea alledged ought not to be barred from having and maintaining his aforesaid action thereof against him the Said defendant. because he saith that there is such record of a Judgment remaining in the Nicholas Circuit Court in the State of Kentucky as he the Said Plaintiff hath above in his Said declaration in that behalf alledged and this he the Said Plaintiff is ready to verify by the Said record whereupon he prays Judgment for his debt aforesaid together with Damages by him sustained by occasion of the detention thereof to be adjudged to him —

A B Chambers p q.

And the Said Plaintiff as to the Said plea by the Said defendant secondly above pleaded saith that he the Plaintiff by reason of any thing by the Said Defendant in that plea alledged ought not to be barred from having and maintaining his aforesaid action thereof against him the Said Defendant because he says the Said defendant was served with a writ of capias to appear in Said State of Kentucky in Said Suit before the rendition of Said judgment in Said Declaration mentioned and that he Said defendant did submitt to the jurisdiction of Said Court prior to the rendition of Said judgment. And this he prays may be enquired of by the country —

A B Chambers Atty
for plff

And the Said plaintiff as to the Said plea of the Said Defendant by him fourthly above pleaded saith that he the Said Plaintiff by reason of any thing by the Said Defendant in that plea alledged ought not to be barred from having and maintaining his aforesaid action thereof against him the Said Defendant because he says that the Said defendant did not after the rendition of Said Judgment in Said Declaration mentioned and before the commencement of this Suit pay and satisfy him the Said plaintiff

for said Judgment or any part thereof at the County of Ralls and this he prays may be enquired of by the Country

A. B Chambers P. Q.

And the said plaintiff as to the said plea of the said defendant by him fifthly above pleaded saith that he the said plaintiff by reason of any thing by him the said defendant in that plea alledged ought not to be barred from having and maintaining his aforesaid action thereof against him the said defendant because he says that the said defendant did not after the rendition of the judgment aforesaid and before the commencement of this suit towit on the 10th day of March 1827 at the County of Ralls deliver to him the said pltff. nor did he the said plaintiff receive of and from him the said defendant a horse in full satisfaction and discharge of the judgment aforesaid and this he prays may be enquired of by the Country.

A B Chambers P. Q.

The Honourable Priestly H. McBride the Judge of the Second Judicial Circuit in and for the State of Missouri and the Judge of the Circuit Court in and for our said County of Ralls did not appear on the first Monday in February A.D. 1833 nor on or before the evening of the third day of said Term therefore all causes pending in said Court stood adjourned by operation of Law until the next regular term of said Court.

And afterwards towit, At a Circuit Court begun and held at the Court house in the town of New London in and for said County of Ralls in the State of Missouri personally appeared the honourable Priestly H. McBride Judge of the Second judicial Circuit in and for said State and the Judge of the Court aforesaid on the third day of June it being the first Monday in said month A.D. 1833 on the first day of said Court the following proceedings were had towit,

Alexander Blair plaintiff
against } In Debt
Walter Caldwell defendant

This day came the parties by their at-

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tornies and the plaintiff having heretofore filed four replications to the defendants pleas and the defendant joins issue and thereupon this suit is continued until next term — Which said replications and issues thereof taken are in words in figures following to wit,

Blair
vs
Caldwell } In circuit Court Ralls County Mo.

And the said Plaintiff as to the said plea of the said Defendant by him first above pleaded saith that he the said plaintiff by reason of any thing by the said defendant in that plea alledged ought not to be barred from having and maintaining his aforesaid action thereof against him the said defendant, because he saith that there is such record of a judgment remaining in the Nicholas Circuit Court in the State of Kentucky as he the said plaintiff hath above in his said declaration in that behalf alledged and this he the said plaintiff is ready to verify by the said record Whereupon he prays judgment for his debt aforesaid together with Damages by him sustained by occasion of the detention thereof to be adjudged to him —

A B Chambers p.q.

And the deft doth the like

E Hunt Atty for deft

And the said Plaintiff as to the said plea by the said Defendant secondly above pleaded, saith that he the Plaintiff by reason of any thing by the said Defendant in that plea alledged ought not to be barred from having and maintaining his aforesaid action thereof against him the said defendant because he says the said Defendant was served with a writ of Capias to appear in said State of Kentucky in said suit before the rendition of said judgment in said Declaration mentioned and that he said defendant did submitt to the jurisdiction of said Court prior to the rendition of said judgment and this he prays may be enquired of by the Country —

A B Chambers Atty for Plff

And the defendant does the like

E Hunt Atty for Deft

And the Said Plaintiff as to the Said plea of the Said defendant by him fourthly above pleaded saith that he the Said Plaintiff by reason of any thing by the Said defendant in that plea alledged ought not to be barred from having and maintaining his aforesaid action thereof against him the Said Defendant because he says that the Said Defendant did not after the rendition of Said judgment in Said Declaration mentioned and before the Commencement of this Suit pay and satisfy him the Said plaintiff for Said judgment or any part thereof at the County of Rails and this he prays may be enquired of by the Country

A B Chambers. p. q.

And the Defendant does the like

E Hunt Atty for Deft

And the Said plaintiff as to the Said plea of the Said defendant by him fifthly above pleaded saith that he the Said plaintiff by reason of any thing by him the Said defendant in that plea alledged ought not to be barred from having and maintaining his aforesaid action thereof against him the Said defendant because he says that the ~~said~~ defendant did not after the rendition of the judgment aforesaid and before the commencement of this Suit to wit on the 10th day of March 1827 at the County of Rails deliver to him the Said Pltff nor did he the Said plaintiff receive of and from him the Said Defendant a horse in full satisfaction and discharge of the Judgment aforesaid and this he prays may be enquired of by the Country

A B Chambers p. q.

and the deft does the like

Hunt for Deft

And afterwards Towit At a Circuit Court begun an held at the Court House in the town of Newlondon in and for Said County of Rails in the State of Missouri personally appeared the honourable Priestly H. McBride Judge of the Second judicial circuit in and for Said State and the Judge of the Court aforesaid

but adjourned to and held at the house of Walter Caldwell in Said Town of NewLondon on the Seventh day of October it being the first Monday in Said Month A.D. 1833 on the Second day of Said Court the following Proceedings were had Towit,

Alexander Blair
vs } Action debt on record
Walter Caldwell

Now at this day comes the Parties aforesaid by their respective Attornies aforesaid and the Matters in law arising upon the plea of Nul tiel record being argued by the Counsel of the Parties aforesaid & Submitted to the Court the Court takes this cause under advisement until the next term of this court & cause Continued—

And afterwards towit, At a Circuit Court begun and held at the Court house in the town of NewLondon in and for Said County of Ralls in the State of Missouri personally appeared the honourable Priestly H. McBride Judge of the Second judicial circuit in and for Said State and the Judge of the Court aforesaid but adjourned to and held at the House of Walter Caldwell in Said Town of NewLondon on the third day of February it being the first Monday in Said Month A.D. 1834 on the first day of Said Court the following Proceedings were had towit,

Alexander Blair
vs } Action of Debt on record—
Walter Caldwell

Now at this day comes the Parties aforesaid by their attornies and the Matters and things arising thereon in law are argued by the Counsel aforesaid and Submitted to the Court and the Court takes this Cause under advisement—

And afterwards Towit, At the Same term last aforesaid on the fourth day of Said month it being the Second day of Said term the following Proceedings were had Towit—

Alexander Blair
vs } Action debt on record
Walter Caldwell } Now at this day comes the Parties aforesaid by

their attornies and the matters and things upon the first issue joined (it being the plea of nullie record) having been submitted heretofore to the Court and the Court having fully seen and considered the premises & having inspected the record the court do find for the plaintiff upon said issue the sum of One hundred and seventy two dollars twenty two & a half cents the debt in the declaration mentioned and do assess his damages to the further sum of ninety two dollars and sixty three cents. And thereupon came a jury to try the other issues herein joined they being upon the second fourth & fifth pleas herein pleaded Joint, Willis M. Jamison, Robert Cruse, Arther Hern, Jefferson Hays, William Burke, Seth Chitwood, Stephen Cleaver, Samuel W. Marshall, Russel King, Jesse Hildreth, James Turley and Alexander Spotswood twelve good and lawful men of the County who having been duly elected tried and sworn and having heared the testimony of the parties the argument of council and the instructions of the Court returned into Court the following Verdict Joint, we of the jury do find for the plaintiff upon the issues joined between the parties upon the issues joined between the parties upon the second fourth & fifth pleas herein joined, Whereupon it is considered by the Court that the said plaintiff do have and recover of the said defendant Walter Caldwell the sum of One hundred & seventy two dollars and twenty two & a half cents for his debt and the further sum of ninety two dollars and sixty three cents for his damages and his costs in this behalf expended to be taxed according to law and that he have thereof execution.—

By order of plaintiffs attorney a credit of one hundred and twenty dollars & twenty five cents be allowed upon this judgment it being the same sum of eighty five dollars together with interest endorsed upon execution in the record in the declaration mentioned.— And also the further sum of sixty dollars & twenty nine and a half cents it being the sum of forty six dollars and thirty eight and a half cents together with the interest accrued thereon mentioned in the receipt of Jonathan Crouch indorsed upon the back of the record given in evidence in this cause—

And afterwards Court, At the same term last aforesaid on the fifth day of said month it being the third day of said term the following proceeding were had Court,

Alexander Blair pltff
vs } Action of Debt on Record
Walter Caldwell Deft

Now at this day comes the defendant by his counsel & files his affidavit praying the Court to grant an appeal in this case – which affidavit is in words & figures following Court.

Blair
vs } Circuit Court Feby term 1834 Action of Debt –
Caldwell

The above Walter Caldwell defendant in the above cause personally appears before me Charles Gascock Clerk of the Circuit Court in & for said County of Ralls & being duly sworn on oath says that his application for an appeal from the judgment of the Circuit Court to the Supreme Court in the above cause is not made for the purpose of vexation or delay but because he verily believes that he is agrieved by the judgment of said Court –

Subscribed & sworn to in
Open Court this 5th day
of February A D 1834
Chas. Gascock Clerk

Walter Caldwell

And thereupon the said Walter Caldwell as principal & Jonathan Abbay Jr. & Richard S. Howard as his security personally appear here in Open Court & acknowledge themselves indebted to the said Alexander Blair in the sum of three hundred dollars to be levied of their respective goods & chattels lands & tenements upon condition that whereas the said Alexander Blair has recovered a judgment against said Walter Caldwell at the present term of this Court for the sum of one hundred & seventy two dolls 22½ cts debt & ninety two 63/100 dolls damages and costs – from which judgment said Walter Caldwell has prayed an appeal to the Supreme Court now therefore should the said Walter Caldwell prosecute his said appeal with effect and pay & satisfy the condemnation money and all costs or otherwise abide the judg=

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ment of the Supreme Court in said appeal then this ~~obligation~~ reconizance to be held null & Void otherwise it is to be and remain in full force & Vertue which reconizance is received & approved of by the Court & said appeal granted —

And afterwards Towit, At the Same Court last aforesaid on the Sixth day of said month it being the fourth day of said term the following proceedings were had Towit,

Alexander Blair Plaintiff
vs
Walter Caldwell Defendant } Action of Debt on record.

Now at this day comes the parties aforesaid by their counsel aforesaid and the Counsel for said defendant file their two several bills of Exception in accordance with the Exception to the Opinion of this Court taken during the progress of the trial of the above cause and pray that the same may be signed & sealed by the Court and made a part of the record herein which is done accordingly — which bills of Exception are in words & figures following Towit,

Blair
vs } Circuit Court Feby Term 1834
Caldwell

Be it remembered that the issue of nul tiel Record joined between the parties in the above cause coming on to be tried by the Court, the plaintiff by his Counsel offered the following or so much of the record as relates to the law side of the Court as a record in support of his said issue — Towit —

Walter Caldwell & Thomas Alexander — Compts
against } In Chancery.
Alexander Blair . . . . . Deft.

Pleas, before the Honble Henry C. Brown Esq. Sole Judge of the Nicholas Circuit Court, at the Court house in the town of Carlisle 30th day of March in the year One thousand eight hundred And Twenty Seven.

Be it remembered that heretofore towit, on the 8th day of January in the year 1827 aforesaid Thomas Alexander and Walter Caldwell by their Counsel William Musgrove esq: produced and filed in

the Clerks Office of this Honble Court the following Bill in Chancery, with the Order for an Injunction agreeably to the prayer of the Said Bill endorsed, against Alexander Blair, which Said Bill and endorsements are in these words and figures Towit, "To the

Bill

Honble Judge of the Nicholas Circuit Court in chancery Sitting. your Orators Thomas Alexander and Walter Caldwell humbly Complaining unto your Honor, respectfully Shew, that on the 24th day of October in the year 1820. your Orators jointly purchased of One Moses Hall a family of negroes, for which they were to pay to Said Hall One hundred Dollars in United States paper, and $ in horses and wheat, at the market price in Kentucky currency - That the Said Caldwell did pay the Said Hall the Said $100. in United States paper or its equivolent - and your Orators also delivered him several horses which were received at their free Value estimated in the currency of the Country, and for the ballance they executed their obligation to one Alexander Blair (To which obligation for greater certainty your honor is respectfully refered, and which your orators pray may be made a part of this bill) for the Sum of $242. to be discharged in wheat, One half payable on the 9th of November 1820 the Other on the 9th November 1821. But your orators failing to deliver to Said Blair the wheat according to the ~~stipulation~~ of the contract, did at Sundry times pay to the Said Blair certain Sums of money in the paper currency of the Country, for which they received free credits on the back of their obligation, until they reduced the Amount to $165.79 cents, for which they executed to the Said Blair another note in the words and figures following towit, "One day after date, we jointly and severally promise to pay to Alexander Blair or order the legal Sum of One hundred and ~~sixty~~ five dollars and nine cents, Value received, in our note due the Said Blair heretofore. Witness our hands and Seals this 15th day of February 1825" Walter Caldwell (Seal)

attest
J.B. Blair.
John Alexander

Thos. Alexander (Seal)

your Orators would further represent unto your honor that, at the time of Executing the note above recited, they at first refused to sign a note made payable in Dollars generally, without specifying what kind of Dollars, until James B. Blair who drew the note, and who was acting as the agent of the Said Alexander Blair replied, that it was well understood it was to be discharged in the paper currency of the Country. Your Orators then signed said note, and when it became due the Said Blair instituted his Suit at law for the full amount of Said note in Gold or Silver, and at the last June term of this Court obtained a judgment at law for the full amount - Execution was issued and the Debt replevied according to law - the replevin bond has now run out, and other executions have been levied on the Property of your Orators; and altho' the Said Blair well knows that it is fraudulent, unjust, inequitus and oppressive thus to coerce the Said judgment at law, as it was never the intention of the parties that Said Sum was to be paid in gold or Silver, yet he continues to harrass your Orators with Executions for the full amount, and gives out in speeches that he will receive nothing but gold or Silver in discharge of Said Execution. all of which do your Orators conceive to be contrary to equity and good conscience. Wherefore your Orators pray that the Said Alexander Blair may be made a defendant to this Bill, and that he, true and perfect answer make to all the charges and allegations set forth in this bill, in as full and ample a manner, as if the Same were again repeated, and they pray that your honor will further grant them a Subpona with injunction, enjoining and restraining the Said defendant from proceeding farther on his Said judgment, until this matter can be fully heard and determined in Equity, where frauds are remedied and relief granted - and upon a final hearing they pray that this injunction may be made perpetual for all over and above the value of $165. and 9 cents in commonwealths bank notes, which they acknowledge they justly owed to Said Blair, and no more - They also pray that your honor will grant them their costs in this Suit expended, and such other and further relief generally, as to

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equity may relieve, and your Orators as in duty bound will ever pray &c.

Attest

William Musgrove

Thomas Alexander
Walter Caldwell

Nicholas County Set.

The foregoing Bill was this day sworn to by the said Thomas Alexander & Walter Caldwell before me John G. Parks a justice of the peace for said County. Given under my hand this 8th day of January 1827

John G. Parks

Nicholas County Set.

The Clerk of the Nicholas Circuit Court is hereby required to issue a Subpoena with injunction agreeably to the prayer of the foregoing Bill, upon the said Thomas Alexander and Walter Caldwell entering into bond with Jonathan Crouch their security in the penalty of $400 conditioned according to Law. Given under our hands (two of the Justices selected by the County Court of Nicholas County to grant Injunctions necessary &c) this 8th day of January 1827.

John G. Parks
W. McClanahan

Injn Bond.

Afterwards towit, on the 8th of January in the year 1827 afd. the following Injunction Bond was executed towit, "Know all men by these presents that we Walter Caldwell, Thomas Alexander & Jonathan Crouch are held and firmly bound unto Alexander Blair in the just and full sum of four hundred Dollars current money of Kentucky, to the payment of which well and truly to be made, we and each of us bind ourselves and every of our heirs Executors and administrators, jointly and severally firmly by these presents, sealed with our seals and dated this 8th day of January 1827. The Condition of the above obligation is such, that whereas the above bound Walter Caldwell and Thomas Alexander hath obtained an Injunction in chancery to stay proceedings on an Execution which issued from the Nicholas Circuit Court clerks office on a replevin bond in favour of Alexander Blair against Walter Caldwell Thomas Alexander and Hardage Smith for $192.72.

cents with interest thereon from the 8th day of September 1826. until paid - also thirty three cents costs, until the Matter can be heard in Equity upon a Bill for that purpose filed - Now if the Said Walter Caldwell and Thomas Alexander Shall pay or cause to be paid unto the Said Alexander Blair his heirs or assigns the full amount of the Said Execution with Interest as aforesaid; and also all such Damages costs and charges as Shall be awarded him in case Said Injunction Shall be dissolved; then the above obligation to be void, else to remain in full force." - signed Walter Caldwell Seal

Executed in the office of the Nicholas Circuit Court. } Thomas Alexander Seal
Jonathan Crouch Seal

Attest
M. R. Arnold

And thereupon a Subpoena in chancery, with an Injunction endorsed thereon, issued, which has never been returned & filed. And now at this day towit. at a Court holden for the Circuit and County afd on the 30th day of March in the year one thousand eight hundred and twenty seven, as first above mentioned the following Order was made in the cause aforesaid towit, "By consent of the parties by their counsel, It is ordered that this suit be dismissed and it is further ordered that the Complainants pay the defendant his costs herein expended. It is further ordered and decreed that the Injunction obtained by the Complainants to stay the execution of the judgment in this Bill mentioned, be dissolved. And that the defendant recover against the Complainants ten pCent Damages on Seventy Dollars part of the judgment enjoined, according to Law."

ord. dism.

Injn dissolved &c

The record & proceedings of the judgment at Law, enjoined by the foregoing Bill in chancery, follows in these words and figures towit,

Pleas before the Honble Henry O. Brown Esq Sold Judge of the Nicholas Circuit Court, at the courthouse in the Town of carlisle on the 1st day of July (being the 6th day of the June Term) in the year One thousand Eight hundred and twenty Six.

A Blair
"
Caldwell & Alexander

Record at com. Law

Best remembered, that heretofore towit, on the 9th day of January in the year 1826. aforesaid Alexander Blair by R. C. Hall

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Esq. his attorney filed in the Clerks office of this Honble Court his certain Declaration in a plea of Debt against Walter Caldwell and Thomas Alexander, which said declaration follows in these words and figures to wit, "Nicholas County and Circuit Sct

Declaration

Alexander Blair complains of Walter Caldwell and Thomas Alexander in custody &c. of a plea of Debt that they the said defendants render unto him the said plaintiff the sum of one hundred and sixty five Dollars and nine cents, which they the said defendant owe to, and unjustly detain from him the said plaintiff For this that heretofore to wit, on the 15th day of February 1825 in the County and circuit aforesaid they the said defendants by their certain writing obligatory, signed with their own proper names, and seals thereto affixed, which is now here to the Court shewn, the date whereof is the same day and year afd promised to pay the plaintiff or order the legal sum of one hundred and sixty five Dollars and nine cents, one day after the date of said writing obligatory, for value received in a note of said defendants due to said plaintiff. yet the said defendants not regarding their said promise and undertaking did not pay the said plaintiff the said $165. 09. cents one day after date of said writing obligatory, nor have they the said Defendants paid the said $165 09 cents to the said plaintiff at any time since the date of said writing obligatory, or any part thereof, to the damage of the said plaintiff $200. and therefore he brings his Suit &c. — The note made profert of in the foregoing declaration follows in these words and figures to wit, "one day after date we Jointly and severally promise to pay Alexander Blair or order the legal sum of one hundred and sixty five Dollars and 9 cents, value recd in our note due to the said Blair heretofore. Witness our hands and seals this 15th day of Febuary 1825"

Note

Attest
J. B. Blair
John Alexander.

Walter Caldwell (Seal)
Thos. Alexander (Seal)

Afterwards the following writs or Capias issued in the cause aforesaid to wit,

ac. Cap.s v. W. Caldwell

"The Commonwealth of Kentucky, To the Sheriff of

Nicholas County. Greeting: We again command you to take Walter Caldwell joint and Severale obligor with Thomas Alexander, if he be found within your Bailiwick and him safely keep, so that you have his body before the Judge of Nicholas Circuit Court, at the Courthouse in Carlisle on the first day of our next June Term, to answer unto Alexander Blair of a plea of Debt of one hundred and Sixty five Dollars and nine cents, Damages two hundred Dollars: And have then there this writ. Witness Lewis H. Arnold Clerk of our said Court, this 8th day of April 1826. in the 34th year of the Commonwealth."

Lewis H. Arnold

Endorsements. "This is an action of Debt brought on a writing obligatory, but no bail required." Hall P.Q.

"Executed on the within named Deft on this 6th of June 1826" signed William H. Thomson D.S. for Jas. H. Thomson S.N.C.

A previous Capias having issued directed to the Sheriff of Bath County, was never returned.

Capias vs Alexander

"The Commonwealth of Kentucky To the Sheriff of Nicholas County, Greeting: We command you to take Thomas Alexander joint and Several obligor with Walter Caldwell, if he be found within your Bailiwick, and him safely keep, so that you have his body before the Judge of our Nicholas Circuit Court, at the Courthouse in Carlisle on the first day of our next March Term, to answer unto Alexander Blair of a plea of Debt of one hundred and sixty five Dollars and nine cents, Damages two hundred Dollars: And have then there this writ. Witness Lewis H. Arnold Clerk of our said Court, at the Courthouse aforesaid this 10th day of January 1826. In the 34th year of the Commonwealth." Signed Lewis H. Arnold. Endorsements. "This is an action of Debt brought on writing obligatory, but no bail required

Hall P.Q.

"Executed on the within Alexander on this 26th of Jany. 1826" signed Wm. H. Thomson D.S. for James H. Thomson S.N.C.

At which day court, at the March Term in the year 1826. the cause aforesaid was continued until the next Term

And now at this day towit, at a Court holden for the Circuit

21)

Judgmt

And County afd. On the first day of July 1826 as first above written, came the plaintiff by his attorney, and the defendants having been duly warned and not appearing tho solemnly called.

Therefore it is considered by the Court that the plaintiff recover against the said defendants the sum of one hundred and sixty five Dollars and nine cents current money, the debt in the declaration mentioned, with Interest thereon from the 16th day of February 1825. til paid, to be computed after the rate of six p cent um p annum, and also his costs by him about his suit in that behalf expended, and the said Defendants in mercy &c.—

The note upon which this judgment is founded, bears date the 15th day of February 1825.— Afterwards towit, on the 24th day of July 1826. the following fieri facias issued on the judgment aforesaid towit, "The Commonwealth of Kentucky, To the Sheriff of Bath County, Greeting: We command you that of the estate of Walter Caldwell and Thomas Alexander you cause to be made the sum of one hundred & sixty five Dollars and nine cents with six p Cent p annum Interest thereon from the 16th day of February 1825. untie paid which Alexander Blair lately in our Nicholas Circuit court recovered against them for Debt. also the sum of seven Dollars and thirteen and a half cents which to the said Alexander Blair in the same court was adjudged for his costs by him about his suit in that behalf expended, whereof they are convict as appears to us of record; and that you have the same before the Judge of our Nicholas Circuit Court, at the Courthouse in the Town of Carlisle on the fourth Monday in September next to render to the said Alexander Blair, of the debt and costs aforesaid: and have then there this writ. Witness Lewis H. Arnold Clerk of our said court, at the Courthouse aforesaid this 24th day of July 1826. In the 35th year of the Commonwealth.— Signed Lewis H. Arnold.— Endorsement: "This Execution Eminates on a judgment founded on a note dated 15th February 1825." att. L. H. Arnold C.N.C.C.

Shffs return towit, "Executed & Replevied See bond enclosed - Signed, Tho. J. Young D.S. for Jas. Wade S.B.C. The Bond "enclosed" follows in these words & figures towit, "Know all Men by these Presents that we Watter Caldwell Thomas Alexander Hardage Smith are held and firmly bound unto Alexander Blair in the Just and full Sum of three hundred Eighty five Dollars and forty four Cents, which Payment well and truly to be made and done, we bind ourselves, our heirs executors administrators &c. jointly and Severally, by these Presents - Sealed with our Seals and dated this 8th day of September 1826.

The condition of the above obligation is such, that whereas there hath issued from the clerks office of the Nicholas Circuit Court a writ of fieri facias in the name of Alexander Blair against the estate of the above above bound Watter Caldwell and Thomas Alexander for the Sum of one hundred and Sixty five Dollars and nine cents with Interest thereon at the rate of Six pCent pannum from the 16th day of February 1825 until paid, bearing date the 24th day of July 1826. and returnable to the fourth Monday in September next ensuing, directed to the Sheriff of bath County, which duly came to the hands of Thomas J. Young Deputy for James Wade Sheriff of Bath County, ~~which~~ on the 8th day of August 1826. which hath been levied on the estate of the above bound Watter Caldwell and Thomas Alexander by the Said Deputy Sheriff of Bath County, and they pray to replevy the Same for three months agreeably to law, which is granted them by their giving the Said Smith as their Security for the payment of the Same -. Now if the Said Watter Caldwell Thomas Alexander or either of them, does well and truly pay the Said Alexander Blair the Sum of $165.09 cents Debt $15.48 interest Seven Dollars & 13½ cents costs & four Dollars & fifty one cents Shff half commission & fifty cents for taking this bond - Amounting in the whole to One hundred and ninety two Dollars and Seventy two cents within three months from this date with interest thereon at the rate of Six pCent pannum

23) from this date, then this Obligation to be void, else to remain in full force and Virtue in Law.

Attest

Thomas J. Young D.S. for
James Wade S.B.C.

Walter Caldwell (Seal)
Thos. Alexander (Seal)
Hardage Smith (Seal)

Exon.

Afterwards towit. on the 19th day of December in the year 1826. The following fieri facias issued on the said bond Towit, "The Commonwealth of Kentucky, To the Sheriff of Bath County, Greeting; We command you that of the estate of Walter Caldwell, Thomas Alexander and Hardage Smith you cause to be made the sum of One hundred and ninety two Dollars and Seventy two Cents with 6 p Cent Interest thereon from the 8th day of September 1826 until paid which Alexander Blair lately in our Nicholas Circuit Court recovered against them for Debt due upon a replevy bond; also the sum of thirty three cents which to the said Blair in the same court was adjudged, for his costs by him in this behalf expended, whereof they are convict as appears to us of record; and that you have the same before the Judge of our Nicholas Circuit Court, at the Courthouse in the town of Carlisle on the fourth monday in February next, to render to the said Alexander Blair of the Debt and costs afd: and have then there this writ. Witness Lewis A. Arnold, Clerk of our said Court. at the Courthouse aforesaid this 19th day of December 1826. In the 35th year of the Commonwealth.—

Lewis A. Arnold C.N.C.C.

Endorsed. No security of any kind shall be taken on this Execution.

att Lewis A. Arnold C.N.C.C.

Upon which the Sheriff made the following return Towit,

Shff return

"Levied on one Town lot in Sharpsburgh one house fifty barrels of Corn, about twenty barrels of corn in the Shock, ten head of Cattle, twenty head of Sheeps, and were to be sold the 10th January 1827. and not sold in consequence of an Injunction issued from the Clerks office of the Nicholas Circuit Court" Signed Thomas J. Young D.S. for James Wade S.B.C.

Exon Afterwards towit, on the 11th day of April 1827 the following fieri facias issued towit. "The Commonwealth of Kentucky To the Sheriff of Bath County. Greeting: We command you that of the estate of Walter Caldwell, Thomas Alexander and Hardage Smith you cause to be made the sum of One hundred and ninety two Dollars and Seventy two cents with Six pCent pannum interest thereon from the 8th day of September 1826. until paid, which Alexander Blair lately in our Nicholas Circuit Court recovered against them for Debt due on replevy bond; also the sum of five dollars & Seventy and a half cents which to the said Blair in the same Court was adjudged for his costs by him in this behalf ~~[illegible]~~ expended, whereof they are convict as appears to us of record; and that you have the same before before the Judge of our said court, at the Courthouse in the Town of Carlisle on the fourth Monday in May next, to render to the said A. Blair of the debt and costs aforesaid: and have then there this writ Witness Lewis A. Arnold Clerk of our said Court at the Courthouse aforesaid this 11th day of April 1827. In the 35th year of the Commonwealth.—

Lewis A. Arnold

Endorsed, "no security of any kind shall be taken."

att Lewis A. Arnold C. N. C. C

shff retn Upon which the Sheriff made the following Endorsement & return Towit, "I know of no estate whereby I can make the money or any part thereof 28th May 1827." Signed J. A. Trumbo D.S. for J. Trumbo S.B.C.—

cr by Pltt. The plaintiff Endorsed on Sd Exon a credit for $85. paid to J. B. Blair p rect dated some time in March 1827 which rect was given to Caldwell.—

fifa Afterwards on the 14th day of March in the year 1828. the following fieri facias issued towit, "The Commonwealth of Kentucky To the Sheriff of Bath County, Greeting: We command you that

of the estate of Walter Caldwell, Thomas Alexander and Hardage Smith you cause to be made the Sum of One hundred and ninety two Dollars and Seventy two cents with Six p Cent Interest thereon from the 8th day of September 1826. till paid, which Alexander Blair lately in our Nicholas Circuit Court recovered against them for Debt due on replevy bond; also the Sum of Six Dollars and Sixteen cents which to the Said A. Blair in the Same court was adjudged for his costs by him in this behalf expended, ~~was adjudged for his costs~~ whereof they are convict as appears to us of record. and that you have the same before the Judge of our Nicholas Circuit Court, at the Courthouse in the Town of Carlisle on the fourth Monday in April next, to render to the Said A. Blair of the debt and costs aforesaid, and have then there this writ. Witness Lewis H. Arnold Clerk of our Said Court this 14th day of March 1828. In the 36th year of the Commonwealth.

Lewis H. Arnold

Endorsement. "Credit is to be given on this Execution for $85: paid to J. B. Blair in March 1827. and no Security shall be taken."

Att L. H. Arnold C.N.C.C.

Which Exon was never returned.

Afterwards to wit, on the 14th day of April 1828 the following fieri facias issued to wit,

fifa. "The Commonwealth of Kentucky To the Sheriff of County. Greeting: We Command you that of the estate of Walter Caldwell, Thomas Alexander and Hardage Smith you you cause to be made the Sum of One hundred and ninety two Dollars and Seventy two cents with 6 p Cent p annum Interest thereon from the 8th day of September 1826. till paid which Alexander Blair lately in our Nicholas Circuit Court recovered against them for Debt due upon replevy bond; also the Sum of $6.16 cents which to the Said A. Blair in the Same court was adjudged for his costs by him in this behalf expended, whereof they are convict as appears to us of record; and that you have the Same before the Judge of our Said court

at the Courthouse in Carlisle on the fourth Monday in June next, to render to the said A. Blair of the debt & Costs aforesaid; and have then there this writ. Witness Lewis H. Arnold Clerk of our said Court this 14th day of April 1828. In the 36th year of the Commonwealth."—

Lewis H. Arnold

Endorsment. "Credit is to be given on this Execution for $85. paid J.B. Blair in March 1827. and no Security shall be taken."

attest L.H. Arnold C.N.C.C.

Which Execution was never returned.—

Defendants Costs in Chancery Court.

Exon Costs Chy.

"The Commonwealth of Kentucky To the Sheriff of Bath County, Greeting: We command you that of the estate of Thomas Alexander and Walter Caldwell you cause to be made the Sum of Seven Dollars and Seventy five ½ cents which lately in our Nicholas Circuit Court was adjudged to Alexander Blair for his Costs expended in defending a certain Suit in Chancery instituted in the said court by the said Alexander & Caldwell ag.t the said Blair, whereof they are convict as appears to us of record; and that you have the same before the judge of our said Court, at the Court house in Carlisle on the fourth Monday in May next, to render to the said Blair of the costs aforesaid, and have then there this writ. Witness Lewis H. Arnold Clerk of our said Court this 18th day of April 1827. In the 35th year of the Commonwealth.— Signed Lewis H. Arnold. Upon which the Sheriff made the following return— "I know of no property whereby I can make the money or any part thereof. 28th May 1827."— Signed J. A. Trumbo D.S. for J. Trumbo S.B.C.—

Exon for Dam.s on dis.n of Injunction

"The Commonwealth of Kentucky To the Sheriff of Bath County, Greeting: We command you that of the estate of Thomas Alexander & Walter Caldwell you cause to be made the Sum of Seven Dollars which Alexander Blair lately in our Nicholas Circuit Court recovered against them for Damages on dissolution of Injunction— also the Sum of Seventy ½ cents which to the said

27)

Blair in the same court was adjudged for his costs by him in this behalf expended, whereof they are convict as appears to us of record; and that you have the same before the Judge of our said Court, at the Courthouse, in Carlisle on the fourth Monday in May next; to render to the said A. Blair of the Damages and costs aforesaid: and have then there this writ. Witness Lewis H. Arnold Clerk of our said Court this 18th day of April 1827, In the 35th year of the Commonwealth. —

Lewis H. Arnold

Endorsement. "This Execution emanates on a judgment founded on a contract dated subsequent to June 1824

att L. H. Arnold, C. N. C. C.

Upon which the Sheriff made the following return to wit, "I know of no estate whereby I can make the money or any part thereof. 28th May 1828." — Signed S. A. Trumbo D.S. for Trumbo S. B. C. —

Kentucky Set

I Lewis H. Arnold Clerk of the Nicholas Circuit Court do certify that the foregoing Seventeen pages contains a true transcript of the record and proceedings of the plaint whereof mention is therein made, as full and complete as the same remains of record in my Office.

In Testimony whereof I have hereunto set my hand & affixed the seal of my Office done at Carlisle this 23rd day of February 1831. —

Lewis H. Arnold Clk

State of Kentucky 2nd Jud. Dist. Set

I Henry O. Brown, Sole, & Circuit Judge, in & for the 2nd Judicial district, & State afs.d — do certify that Lewis H. Arnold whose name is attached to the foregoing record, is, & was, at the, date of the signing thereof, the true & lawful Clerk of the Nicholas Circuit Court, within the afs.d 2nd Judicial district; & that his certificate is in due form

28/ of Law, & full faith & credit is due his official acts as such.—
Given under my hand & seal this 31st day of March 1831—

H. O. Brown (Seal)
Sole judge 2nd Jud. Dist. Ky.

~~Recd of Thomas Alexander forty six Dollars thirty Eight & ½ cents in part of the money I paid on the within Record paid about the 5th October 1829. & Credit is to be given for the Same——~~

Jonathan Crouch

To the instruction of which by the Court as Record, Evidence & to the Sufficiency of the Same to Support Said issue the defendant by his Counsel objected — 1st Because the presiding judge does not certify that the attestation of the Clerk is in due form of Law — pursuant to the acts of Congress &c —

2d Because the said supposed record purports to be a Record of proceedings had in the Nicholas Circuit Court sitting as a Court of Chancery — wherein Walter Caldwell — and Thomas Alexander were complainants & Alexander Blair was defendant — and not such a record at Law & between the parties as declared on — & the whole or none should be read —

3d Because the judgment set out in said supposed record varies in its discription from the one set out in the Declaration in the amt of the debt — interest & costs —

4th Because said supposed record contradicts the averment in the declaration that said pltff has not had any Execution or Satisfaction of his said Judgment — in this court, said Judgment is merged by the judgment on the replevy bond for $192.72 cts with 6 per cent Int. thereon from the 8th of Sept 1826 till paid against Said Caldwell, Alexander & Cardage Smith — On which it appears $85.00 cts was paid March 1827 & an fi. fa. issued for the ballance dated March 15th 1828 which has never been returned which imply full payment —

and 5th Because said supposed Record offered varies from the

29/ one set out in the declaration & is in other respects insufficient to support the issue above joined as aforesaid —
These Objections are overruled by the Court & said record is read & inspected by the Court & deemed to be sufficient to support said issue to the above Decision & Opinion of the Court the defendant Excepts & tenders this as his Bill of Exception which is signed & allowed to be filed as a part of the Record as a part of the recorded in the above cause

P. H. McBride (Seal)

Blair
vs } Action of Debt Circuit Court Feby Term
Caldwell } 1834

Be it remembered that the issues of fact joined between the parties aforesaid coming on to be tried before a jury — the plaintiff — produced & offered to read in support of the first issue of fact joined on the second plea above pleaded by the defendant so much of the supposed record from by set out & excepted to in the bill of Exceptions taken on the trial of the issue of nul tiel record in the above cause & is here referred to & made a part of this Bill to save again copying the same as relate to the proceeding had on the Law side of the Court to the reading of which the defendant objected which objections was over ruled by the Court & so much as was offered as aforesaid was read to the jury — the defendant then contended that the whole of said supposed record that which relates to the proceedings Chancery as well as at Law should be read to the jury — this was objected to by the Pltff — & his objection sustained by the Court & so much as related to the proceeding in the Chancery side of the court was excluded by the Court to this decision of the Court the defendant excepted & tenders this as his bill of Exception thereto
The defendant then read so much of said Record as related to the proceedings had on the Law side of the Court in support of the issues joined between the parties aforesaid on the fourth & fifth plea above pleaded by said Defendant The defendant

31) then offered the following Parole Evidence in Support of Said issues to wit. Blair vs Caldwell } Feb term 1834 Ralls Cir. Court

Samd. Caldwell a witness states yt he delivered a horse to yt pltff in 1827 early in yt year — yt price was $87.00 or $87.50 — yt horse was in discharge, as he learned, of a note given by deft to one Hall & by him transfered to Blair — he does not know to whom the note was made payable — does not know whether pltff had a judgmt. on yt demand at yt time — understood yt ye horse was recd by pltff in full discharge of yt demand agt deft — yt note was given by deft — and one Alexander for yt purchase of negroes made jointly by them — yt horse was a very fine large bay horse knows nothing of any Recpt having been given by pltff for the horse — Pltff was with yt deft on yt first night deft started to this country and was then riding yt horse — deft landed here in Apl. 1827 — has been back Since (1828) and been pltff he returned to sell yt Land left by deft 102 acres and sold it for about $10 pr acre — & thinks yt the horse did not entirely satisfy yt demand — yt there was a small demand balance, say a few dollars — yt while in Ky yt pltff made no demands agt. yt deft — he was yt agent — of the deft and known as such by yt pltff

P. H. McBride

And the above was all the evidence offered on either side on the above three issues of fact The pltff then moved the Court for the following instruction to the jury — Tovit, Blair vs Caldwell } The Plaintiff by his counsel moves the Court to instruct the jury as follows to wit,

1 That there is no evidence given by the pltff of the payment of the judgment aforesaid

2nd That there is no evidence that the horse was given by

the defendant in full accord and satisfaction of this judgment as in his fifth plea above pleaded

3d That a partial payment is not a payment upon the issue joined upon the fourth plea —

which were objected to by the defendant — & given by the court & the court further told the jury that there being no evidence to support the issues joined on said forth & fifth plea they must find for the pltff on those issues. The defendant then moved the Court to instruct the jury that the return of the officer to the writ of capias dated April 3d A.D. 1826 & directed to the Sheriff of Nicholas County against said defendant — in said record from by made as aforesaid which Return is in words & figures following to wit "Executed on the within named Defendant on this 6th of June 1826 Signed William H Thomson Ds for Jas. H. Thomson S. N. C." is not legal evidence of a due service of said process — and that they should disregard the same — This instruction the Court refused to give & on motion of the plaintiff instructed the jury — That the return of the officer so made as aforesaid & certified in the Record as aforesaid is conclusive evidence of a due & legal service of said process — unless disproved by the production of other Evidence To this refusal & instruction & each opinion & decision of the Court aforesaid the defendant excepts & tenders this as his Bill of Exceptions thereto & prays that the same may be signed & allowed to be filed as a part of the record in the above cause —

D. H. McBride (Seal)

33

Alexander Blair
vs
Walter Caldwell } Action detiton record

	Dolls. cts
Charles Glascock Clerk of the Ralls Circuit Court fees in the above cause	$10.46¼
Sabney Jones Sheriff of Ralls County fees	7.00
Adam B. Chambers Attorney fee	3.00
Juror's fees	3.00
Joseph Yates witness fee in the above cause	4.10
Amount twenty Seven dollars & 56¼ cents	$27.56¼

State of Missouri } ss
County of Ralls } I Charles Glascock Clerk of the circuit Court in and for Said County of Ralls do certify that the within & foregoing thirty three pages contain a full true & perfect Transcript of all the record and proceeding had in our said Court in the case therein named of Alexander Blair against Thomas Alexander & Walter Caldwell as fully and as amply as the same remains of record in said Court.

In Testimony whereof I the clerk aforesaid have hereunto set my hand and seal at office in New London this 15th day of March A.D. 1834.

Charles Glascock Clerk

(10)

Alexander Blair
vs } Copy of Record
Thomas Alexander and
Walter Caldwell

Clerk's fees for this Copy
Copying 12000 words & figs $12.00
Certifying same under seal — .50
State Tax — — — — — — .62½
$13.12½

State of Missouri
2nd Judl District Jct.
The foregoing Transcript filed
in Clerks Office of Supreme Court
March 31st 1834 —
Levi Pettibone Clerk

Supreme Court April 2 1835

Caldwell v Blair } On appeal from the Circt Court of Rails

The plaintiff by his attorney comes here in to Court & says that in the Record & proceedings ~~and also~~ in the giving of the judgment aforesaid there is manifest Error — in this tout —

in the opinions of the Court in overruling the objections of the defendant to the Record offered on the plea of Mull tiel Record by the plaintiff — & in finding by the Court for the plaintiff on said wedn so offered by said plff on said issue —

2 Also in the overruling the objections to the wedn offered by said plff on the first issue of fact — & in refusing that offered by the Defendant —

also in refusing the wedn offered by the Deft on the issues joined on the fourth & fifth pleas

also in the giving the instructions asked by the plaintiff & in the refusing those asked by the defendant — and also there is error in this that by the Record & proceedings aforesaid it appears that the judgment is in favor of said Blair against said Caldwell whereas by the Law of the Land said judgment ought to have been given in favor of said Caldwell against said Caldwell whose he prays that said judgment may be Reversed

Hurst & Wright P.L.

Blair
vs
Caldwell

The said Blair by his attorney says that in the record and proceedings aforesaid or in the matters and things before assigned for there is no error and he prays the court now here may proceed to examine as well the record and proceedings aforesaid as the matters aforesaid assigned for error and that the judgment of the court may be confirmed in all things

A B C Chambers
for Deft in
Error

Caldwell
v
Blair
Honors assign

Filed 21st April 1834
Lin Pittsburg
Clk

Caldwell & Alexander
by
Blair

An action of debt was brought by Blair against Caldwell & Alexander The plaintiff had Judgment

The action was founded on a record from the State of Kentucky The first plea was nul tel record The second was payment the third was accord & satisfaction

On the trial the defendants by counsel objected to the authentication of the record the Court overruled the objection

The certificate of the Judge to the record was thus I certify that the certificate of the clerk is in due form of law

The act of Congress on the subject of authenticating records from one State to another says the Judge shall certify that the attestation is in due form.

The Objection here is that the Judge in Kentucky has used the words certificate of the Clerk instead of the words the attestation of the clerk and has superadded the words of law.

It is argued that attestation and certificate are not the same thing It is insisted by Mr Brent that attestation of a record means that the clerk has affixed that the record is true and includes his ~~the~~ signature of the Clerk as well as the judicial seal of the court and that a certificate does not necessarily include the seal

We are of opinion there is no force in this objection as to the words "of law" being added to the judges certificate We are of opinion that amounts to nothing more than what is implied without those words being ~~inserted~~ written or added and can not do any injury

The record shews that after the judgment was obtained in Kentucky the plaintiff had an execution on the judgment that a levy was made on property and that the sheriff returned the property to the defendant on his giving a bond with security to pay the debt at the end of three months It was inserted by counsel for the defendants that on the face of such record the plaintiff must shew a good judgment which must appear to be unsatisfied or at least it must not appear to be satisfied We are of opinion that if it appear from the record produced that there has been satisfaction thereof that the record is not such a one as the plaintiff has relied upon

The Authority produced shews satisfactorily that when there has been a levy on the defendants property or when a bond has been taken by the sheriff the judgment is satisfied thought the sheriff should never sell the property in such case the party must look to the sheriff

See 12 John 207, 13 Sal 323. 2nd Id 936 2 Ba 720

We are of opinion that the record ought to have been rejected But inasmuch as the returning the sheriff shews that a bond was taken and no order made by the same law or pretended law of Kentucky and now we cannot see what that law was therefore will be remanded

There was an other objection taken by the defendant In the record there was a copy of a bill in chancery on the part of defendants against the plaintiff the defendants insisted that this bill being in the transcript entitled them to read it the court refused the evidence and rightly as we conceive Because this Bill was evidence made by the party who offered it ~~Another Objection was that~~ some other objections were made on the part of the defendants which we deem of no importance

Another objection to the record is that it appears by the record that the judgment was enjoined and no dissolution of the injunction appears this is a good objection untile it is

appears the injunction was dissolved

The Judgment of the Circuit Court is ~~dissolved~~ Reversed with costs the cause is remanded for farther proceedings

Blair
v 3 opinion
Calcutta

Filed 28th April 1834
Levi Pittsburg Clk

McGirk Sec?

to be printed

Supreme Court April 2 1834

Caldwell
v
Blair } On appeal from the Circuit Court of Rads —

This was an Action of Debt by Blair against Caldwell & Alexander — The declaration consists of one Count & sets out a judgment rendered in the Nicholas Circuit Court Ky — at the June term 1826 for $165.09 debt with six percent interest from the 16th of Feby 1825 till paid & costs of suit — and avers that the costs amount to $7.13½ & that the pltff has not had Execution or satisfaction of said judgment &c —

Alexander was not served with process & no ~~for the~~ proceedings had against him — Caldwell appeared & filed five pleas to the Declaration & ipses taken on four — 1st Mul tiel Record — ~~payment of the judgment~~ — 2 That Caldwell was ~~never~~ served with process legally before the judgment in Ky — ~~to be any way submitted to~~ 3d That he has since said judgment paid the Debt — & 4th That he gave Blair a horse in satisfaction of the Residue of said judgment due him & that he so received it —

The other plea the 3d on file stating that an Execution had issued on said judgment & was levied & returned by the sheriff "Executed" & was on file in said Circuit Court — was on motion of the plaintiff stricken from the ~~court~~ — on the ground that it contradicted the Record & tendered no issuable matter —

On the trial of the above ipses several objections were raised to the Evidence & Bills of Exceptions taken to the Opinion of the Court — & also to the instructions given & to those refused — all the ipses were found for the pltff & judgment given by the Court on the ipse of Mul tiel Record — for $165.09 debt & $92.63 damages & also costs — from which the Defendant appealed to this Court —

The evidence offered by the plaintiff was a paper purporting to be a Record from the Nicholas Circuit Court of Ky — & as most of the points relyed on arise out of this paper — we will give a brief statement of it or rather of the proceedings had in the Court of Ky in the order of time as disclosed by this paper & then state the points —

Blair sued Caldwell & Alexander at Law on a bond & obtained judgment & Execution — this Execution after it was levied on property — was returned Executed & a Replevy bond with it — This bond run out & a fi. fa. issued ~~on this~~ for the amount then due & costs — & was also levied on property — The defendants then filed their Bill in Chancy & procured an injunction — which Bill was afterwards — dismissed — the injunction — dissolved & a decree for damages of ten per cent on $70 dollars of the debt & costs — & Executions issued on said Decree out of Chancy — & also an Alias Execution on the ~~Replevy~~ Replevy bond — which seems not to have been availing — The Record however in the shape it is presented — appears to be the Record of proceeding in the Court of Chancy — It commences with a plaintiff in Chancy — & the Bill for the injunction & concludes with the Execution on the Decree in Chancy — & is entitled Caldwell & Alexander Comp & Blair defendant — The Common Law Record is in the body & from the manner in which it is introduced it appears rather as an exhibit to the original Bill in Chancy or as explanatory of it & is incidental to that Record & is not itself the principal Record — with this preliminary statement — we will now proceed to state the points on which we rely for a reversal of the above judgment of the Court below —

The first is that this Record is not legally Authenticated
The Certificat of the judge is not in legal form — he says that "the Certificat of the Clerk is in due form of Law" The Act of Congress requires that he should certify that "the Attestation of the Clerk is in due form — 2 V U.S.L. p 102 S1 — Thereby substituting the word Certificat for attestation & adding the word Law — which go to qualify & vary the sense & meaning of the Certificat — The word Certificat here means a written communication by the Clerk to the Supr Court of what he has done ~~to the Supreme Court~~ — Jacob L D. p 409 & Web. D. & the word Attestation is the witnessing the truth of that Certificat by subscribing his name & affixing the seal of his office — if he has one — Web. D. and in this sense these words seem to have been used by the Act of Congress — above cited —

This form so prescribed by Congress when followed precludes all further inquiry — & is binding throught the Union — 1 Starke p 154 N(1) Drummond v Magruder 3 Cons R. U.S. p 305 & notes Craig v Brown 1 Peters R p 352 & 3 Bibb 369 —

Any deviation therefore from a form so important in its consequence — we contend ought not to be allowed — & that the deviation in this case renders the paper inadmissable as Record evidence —

On the trial of the above issue the Court allowed so much of said Record as relates to the proceeding at Law to be read & excluded the part relating to the proceeding in Chancery — This appears in the Bill of Exception —

2d We contend secondly - That if the paper is legally authenticated - as the Certificat of the Clerk embraces the whole - the proceeding in the Chancery Court as well as at Law - in 17 pages - the Court Erred in allowing that part to be Recd which relates to the Law side of the Court - & in excluding that which pertains to the proceeding in the Court of Chancery - The Court should have received the whole & not a part - That which relates to the proceeding in Chancery as well as those at Law - The Certificat of the Clerk includes the whole in 17 pages - & that it was not competent for the party or Court to separate the one from the other If a Record it is entire either at Law or in Chancery & should all be received or all be rejected - It is under the same Seal & Certificat - 3 Inst. p 173 - 2 Bac. Evi. S. p. 611 1 Starke Ev. p 371 -

We also contend that from the form of the Record it is a Record of the Court of Chancery & not of the Court of Law - the part relating to the Court at Law - being only incident to the proceeding in Chancery - & not itself the principal - & these should have been rejected for variance - 1 Stark p 371 &c -

3d But thirdly if the Court did not Err in receiving that part that relates to the proceeding at Law nor in Rejecting the other part - We then contend that that part of the Record so received does not support the issue of the plea of Mil tiel Record - but varies from the one declared on & negatives the averments in the declaration - -

1st It does not show that the Court had jurisdiction over the defendant Caldwell at the time judgment was rendered against him — The judgment was by default the process against him a Capias & the Return by the Deputy Sheriff in his own name — "Executed on the within" without stating in what manner — It is the duty of a ministerial officer to Return such facts as will show a compliance with the command of the writ or an excuse for not doing so
1 Back p 260 - 262 - 265 - 1 V. D. S. 6 p. 537

This does neither nor does it appear that the defendant was in Court in obedience to the Command of the writ — but on the Contrary that he was not — 19 J R p 39

The Return to is in the name of the Deputy Sheriff — & on this account void — as he can act only in the name of the people — 1 V D. S. 6 p 504 & 752

This ~~objection~~ defect appearing upon the Record offered by the pltff — may be ~~[illegible]~~ objected to upon this ipse as well as by special plea — as it shows that the Court rendering the judgment did not have any legal jurisdiction of the Defendant —
3 Starkie p 1778 in note (1) 3 Pick R 405 —

So we are to preserve the Laws in thy so far as they relate to the ~~Rule~~ construction of the Record depends is the same with ours — 2 V D. S. 6. p 36

2d If this return is good in Law or if this Court is bound to so consider it when so Certified as above — & that it must be intended that the defendant in contemplation of Law was present in Court as commanded by the writ — Then we contend the same effect must be given to the Return on the Execution — for the same word Executed is there also used — & must mean that the Sheriff had done what he was therein Commanded to do — that is that he had made the money & had it then ready in Court &c — which would operate in Law as a discharge to the Defendant — & so negative the Allegation in the Declaration that the judgment had not been satisfied &c —
2 Field 936 —

The debt being Replevied & bond given cannot change the effect — for this was either Constitutional or not if not Constitutional — Then the Officer having levied the debt on the defendants property — discharges the defendants therefrom — & makes the sheriff liable therefor to the pltff —

If it is Constitutional then it must have that effect in our Courts it has in the Courts of Ky — by virtue of the Act of Congress 2 V. U.S. L p 102 §1 — 1 Starke 150 in notes —

What effect that is is clearly shown by the proceeding in that Court in this case as disclosed by this Record — That at the expiration of the bond — a fi. fa. issued on the bond not on the judgment & not only for the original judgment — but for the interest & costs since accrued — See the Ex. on the Jud. — & the Ex on bond — also Ky Dig p 588 & 9 But further the fi fa on this bond was also afterwards enjoined by the Court of Chancy as appears by the Return of the sheriff & after he had levied on much property of the defendants — And that part of the Record which relates to the Court of Chancy being Excluded — there is no evidence to show that this injunction has ever been disolved nor but that it was perpetual — If then the proceedings on this Replevy bond is to be considered Constitutional & legal & a part of the proceedings at Law — the pltff shows that the defendants are discharged or at least that the demand is tied up by an Injunction

also that the original judgment on which he has declared is not in the Ky Court considered as in force but that the Replv bond suspended it — & when that run out the plaintiff could not resort back to that judgment but must proceed as directed by the Statute Ky Dgt p 588 & 9 by fi. fa. on said bond — And so a total variance from the judgment declared on

4th We contend fourthly That the Court Erred in permitting so much of said Record to be read to the jury as relates to the proceeding on the Law side of the Court — in the excluding the Balance — in proof of the issue whether the Defendant

That the Court Erred in this — On the trial of the issue whether said Caldwell was legally served with process before judgment in Sly — the plaintiff offered so much of said Record as relates to the proceedings at Law & excluded the rest — in this we contend he Erred for the Reason above — And also in the instruction to the jury that the Return on the Capias in said Record was conclusive evidence of legal service — till contradicted by other evidence — in refusing to instruct them that said Return made as aforesaid was void & of no legal effect of itself —

5th We contend fifthly that the Court Erred in refusing to have the proceeding in the Court of Chancery as well as at Law read to the jury on the trial of the other two issues of fact — to wit payment & satisfaction — & also in his instruction to the jury that the defendant had not given any evidence in support of either of these issues —

For the first we refer to the authority first abstracted — & to show the error in the instruction we refer to the parole Evidence in connexion with the sheriffs Return to the several Executions — & to the endorsements on the Record of payments —

6th We also contend that the Court Erred in striking from the Cause the 3d plea — The Object of which was to put in issue the account in the Declaration that said judgment was yet due — & to prove the issue by the Return on the Execution — to the judgment —

Caldwell
v
Blair

Appellants
Brief —

Hunt & Wright

Blair vs Caldwell

Arts Schifate
by The Lieg on
Execute —
12 J R p 207
7 J R p 528
1 Sett p 322

Alexander Blair
vs
Walter Caldwell

Supreme Court
April Term 1834
2 Judicial District

On an appeal
From the Rolls Circuit Court

This is an action of Debt commenced by Blair against Caldwell & one Thomas Alexander upon a judgment rendered in the Nicholas Circuit Court in the State of Kentucky. The judgment is recited in the declaration. To this the Defendant filed four pleas one of which was stricken from the record. The first is ~~A~~ Nul Tiel record. Second that he was not served with notice of the action in Kentucky. The third was stricken out. ~~The~~ Fourth payment of the judgment. Fifth accord and satisfaction. Upon each of which pleas issue was joined ~~and by~~ Upon the trial of the issue of ~~the~~ Nul Tiel the read in evidence the record of the Circuit Court of Nicholas to which several exceptions were made by the Defendant all of ~~which~~ which will be examined more fully here after. This issue the court found for the Plaintiff & thereupon a jury was called to try the other three issues. Several points were made before the jury to the court all of which the court overruled and a verdict given for the Plaintiff upon the three issues joined These points will be noticed in their order. Upon the finding of the issues the court gave judgment for the debt alledged in the declaration and damages to the sum of $92,63 being the amount of interest which had accrued upon the judgment declared upon. From this judgment the Deft prayed an appeal and thus brings the cause here.

Upon the trial of the issue of Nul tiel record the following points were made to the court below

1st Because the presiding judge does not certify that the attestation of the Clerk is in due form of law the record should not have been received. The language

of the presiding judge is "That the Certificate of the clerk is in due form of law &c". The answer to this is that the term certificate and attestation mean the same thing for every certificate embraces an attestation. see Web's Dic Walker Seriden. & Jacob.

2d That the record offered in evidence is ~~a~~ ~~rec~~ purportes to be a proceeding in Chancery and not at law. The facts as they will appear by the record declared upon are That the the judgment at law was enjoined in Chancery and the proceedings on the bill of injunction are copied in with the proceedings at law both having been had in the same Circuit Court. But the two cases are in no wise connected except by the memorandums of the Clerk and no part of the proceedings in Chancery were offered or asked to be read as evidence by the plaintiff. The two causes therefore being seperate and distinct I know of rule of law by which the Ptff was compeled to read the proceedings had in another court and in another cause. 1 Stark 372 & 3 –

1 Stor Ev 372 & 3

3. That the judgment declared upon varies from the one offered in evidence. The varience pointed out upon the trial ~~was this the omission of the words current Money This varience is certainly immaterial and as it was so I presume will not again be urged as important~~

was this. In the judgment in the Nicholas Circuit it is stated for the sum of $166 09. current money These two words are omitted in the Declaration This variance is certainly an immaterial one and as it was not so I presume will not be again urged as of any importance

4th Objection was that the record contradicts the averment in the Declaration that the Plaintiff had no execution and satisfaction of his judgment because the first judgment was merged in the replevy bond and the fi fa issued upon that bond which was never returned was full evidence of payment.

There never was but one ~~judgment~~ execution issued on the original judgment and I know of no law or authority in the books by which it can be shown that the force and effect of a ~~replevy bond on~~ judgment at law can be destroyed or impaired by a replevy bond which is but a stay of execution for a limited time. Even the statute of Kentucky under which the original proceedings were had although it allows the party a right to execution upon the forfeiture of the replevy bond does not say that the force and effect of the judgment at law shall be destroyed or the party stayed from having execution on the original judgment and compelled to resort to the replevy bond as the foundation of his future proceedings. There is nothing in the law which releases the former judgment nor can the right to proceed upon the replevy bond be said to be a higher authority or evidence of the same debt.

But if it was the record contains no evidence of the fi fa which the Defendant contends is full evidence of the payment. It is a rule of law that untill a writ is returned it constitutes no part of the record ~~and al~~ see 1 Star 284 Therefore untill the fi fa was returned although the Clerk may give a copy of it in the record still it is not ~~any~~ ~~evidence~~ a part of the record and therefore amounts to nothing more than a ~~mem~~ memorandum or statement of the Clerk

1 Star Ev 284

These are all the points that were raised before the court below upon the trial of the issue of nul Tiel & if there are any others I must wait untill I hear them stated.

Upon the trial of the issues of fact upon the second fourth & fifth pleas the following points were raised and determined by the court.

1st Upon the ~~the~~ trial of the issued joined on the second plea viz "the want of notice to the Defendant of the commencement of the action declared upon" the Plaintiff offered and read in evidence the record of the ~~pr~~ low proceedings in the Nicholas circuit court. The same points as to the admisibility of the record as evidence was again raised as had been started in the first and second points upon the trial of the issue of nul

tial record and therefore need not be here again noticed. The record was all the evidence offered by either side under this issue and the Defendant asked the court to instruct the jury that the ~~evidence~~ return of the Sheriff upon the capias ad respondendum was not not evidence of a legal service and that they should disregard the same. "The wording of the return is Executed on the within named Defendant on this 6th of June &c." The Defendant contended this was not evidence of a due service because the Sheriff had not specified the manner of ~~he~~ executing the writ as required by the statute of this state and the decisions made thereon. To this I deem it sufficient answer to say that the lex loci of the original action governs as to the mode of proceeding to obtain a judgment and in the absence of any testimony that the service of the writ here declared upon is not in conformity with the law of the state of Kentucky the service as here certified by the Sheriff is conclusive of that effect. The effect of a judgment after it is obtained and the mode by which different courts proceed before entering judgment ~~is another~~ are two different things and must recieve different constructions. Thus where a party declares upon a judgment ~~and at the same~~ of a court of another state and at the same time desires to give it a peculiar or different direction from that ~~would~~ known to the law of this state then he must shew that it would have that effect in the state from whence the judgment is brought. But were no such effect is desired and where the defect is in the mode by which the parties are brought into court. the party alledging the want of an observance of some essential proceeding whereby the force and effect of the judgment is destroyed in the

state from whence the judgement comes should shew the existence of that defect by the law of the ~~land~~ state where the judgment was rendered For this obvious reason When a court of competent jurisdiction has rendered such a judgement as by the known and universal established principals of ~~by~~ law she might have rendered. the presumption in the first instance must be that she has proceeded in arriving at that judgment according the usages and principals of the law of the land where the court is — It would be the introduction of an alarming principle to say that whenever a suit was instituted on a judgment of a sister state that the plaintiff must come ~~—~~ to trial armed with all the statute law of that state to show that the ~~made~~ every act of the officers of that court had proceeded in strict conformity with the requirements of the statute As well therefore might the Defendant have objected to the writ because it was not under the seal of the court or to the manner of issuing it because no affidavit was filed. both of these are required by the statute of this state.

And if any doubt should exist as to the sufficiency of the return of the sheriff it is fully settled by the express adjudication of the Nicholas court in this case. For before the court proceed to render judgment it expressly finds the fact that the defendants were duly summoned. Therefore even if the judge of the circuit of Ralls did err in saying that the return of the sheriff was conclusive evidence of the ~~service~~ of notice still there was sufficient evidence offered aside from that in the judgment to justify the instruction of the court. and warrants the finding of the jury —

If the service is such an irregularity as avoids the judgement the Deft ought to have shown it see 19 J R 162

19 J Rep 162 But a judgement by a court of competent jurisdiction cannot be impeached in a colateral way it stands good untile reversed 13 J R 141. Particulary 152

13 J Rep 141-152

2. On the trial of the other two issues viz Accord and satisfaction and payment the Defendant offered the following evidence which was all the evidence given on these issues First a credit of $85 given by ~~order of~~ the Plaintiff upon an execution issued on the replevy bond against the Pltffs and one Hardige Smith. Secondly the testimony of a witness who stated that ~~[illegible]~~ he had delivered a horse to the Plaintiff for the defendant in part discharge of a note held by the Pltff on the defendant in 1827 a year after the rendition of the judgment

Thereupon the Plaintiff asked and obtained the following instructions from the court 1st That there was no evidence of payment of the judgment and that a partial payment did not amount to a payment under the fourth plea Secondly that there was no evidence that the horse was given in full accord and satisfaction of the judgment as in the fifth plea alledged —

In relation to the plea of accord and satisfaction it will only be necessary to refer this court to the evidence saved

in the bills of exceptions by which it will be seen that there is not the slightest proof in relation to this plea

As to the proof under the plea of payment the only sum proven to be paid was the $85 for it ~~will~~ can not be contended that the statements of the witness in relation to the horse ~~can~~ will apply to this issue or to this judgment. These propositions I think fully established by authority that under a plea of payment evidence of the payment of a lesser sum ~~wh~~ without any evidence that it was in discharge of the whole debt is not sufficient see 3 Stark 309. 1 Starkies Rep. 291. 3 Stark Evi. 1544. 1548

2 Star Ev 309
3 Star Ev 1544 & 48
1 Star Rep 291
3 Star Ev 1558

And it is equally clear that partial proof is not ~~so~~ sufficient and amounts to nothing more than an entire failure to prove any thing see 3 Stark 1558 —

Yet if this court should think there is error in the proceedings of the Circuit Court how will they correct. The Defendant did not move for a new trial and consequently although the facts may appear upon the rec[illegible] by the bill of exceptions I am unaware how the court can now arrest the judgement or grant a new trial. Our practice is in this respect similar to the the English practice and ~~+~~ it has there been expressly been determined that a failure to move for a new trial the party is forever precluded from moving the same point again see 2 Tidd 820. 5 Ter R 436

2 Tidd Rep 820.
5 Ter Rep 436
2 Tidd 816. 824

Besides it has been ~~expres~~ determined that the errors if any exhists in this cause are causes for a new trial and not causes for an arrest of judgment. see 2 Tidd 816 & 824

A Blair Deft

(60) vs

W Caldwell Pltff in Error

Deft in Error

Brief

W. Caldwell
v
Blair

Supreme Court April 2 1834

Appellant Attorney fee $3 —

Hunt & Wright

Issue Concerto for costs. —

E. Hunt.

Caldwell
v
Blair

[illegible]
$3 —
&
Paid [illegible]

Rates —

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