Fellows, Caleb; Ruggles, Nathaniel; vs Savage, Charles 1823 St. Louis CO 132/14
Bardin, Levi

Sup Court

Bardin, Ruggles & Fellows
vs.
Chs. Savage

The plffs here were also plffs below & brought debt on a judgment obtained by them against the defendant in Kentucky. The defendant pleaded four pleas in the court below in bar of the action. The plaintiffs demurred to the two last. The demurrer was overruled as to one of the pleas viz: the third, and it is to the decision of the C. Court, in thus overruling it that the plffs now object. Judgment was rendered for plffs on all the other issues.

That plea (the 3d) states that Chs. Savage & one John Shankford were in partnership in Kentucky that the debt on which sd judgment was obtained in Kentucky was a debt due from the firm of Savage and Shankford, although judgment was given against Savage alone: that after that judgment was obtained against Savage Shankford bought it of the plaintiffs and took a transfer of it for full and valuable consideration.

Objections of plffs to said 3d plea.

1st. The plea does not state that Shankford had any interest in said judgment at the time of the commencement of the suit in the court below or since: it states merely that before suit brought it was assigned. he might have for valuable consideration assigned it back again, or to some third person. It does not even state that the assignment was made for Shankford's own use and benefit.

2. Plea does not state that at the time of said assignment the original debt against Savage and Co was still due and owing from Shankford. If the original debt was not due and owing from Shankford to the plaintiffs at that time, but there was then nothing but the judgment on which plaintiffs might proceed, Shankford might as well take an assignment of the judgment as any other person. Plea is to be taken most strongly against defendant. 1 Chitty 521-2 "Therefore in trespass if defendant plead release, without saying at what time

1 Chitty, 30

it may made, it shall be intended to have been made before the trespass was committed. So here admitting for the present that the plea asserts that Shackford was ever liable for the debt, yet as it does not state the time when he was liable, it is to be intended that he was so liable at some period anterior to the assignment and not at the time of assignment.

2d. Plea does not state when Shackford was a partner of Savage. The declaration shows that the partnership had been dissolved. Plea being taken most strongly against defendant, it follows that the dissolution took place long before the assignment of the judgment. Shackford then assigned this judgment after he had ceased to have any connexion with Savage and after, for aught we know, all the partnership transactions had been finally settled between them. Why then shall he be precluded from using a strict legal right which he has purchased for a valuable consideration? Can the fact that there was once a partnership prevent it? Can he be prevented from using this judgment in a court of law because he was once liable for the same debt, and that too when the debt was in another shape? 2 Bos & Pul 120 & Cranch 31. — 1 East 20. — 1 Chitty 26

*The firm of Savage & Co might have been composed of different partners at different times.

4th The defense set up in this plea if any defense at all is an equitable one, and the deft, to avail himself of it must file his bill. 2 Bos & Pul 45. 7 East 148. There cases are instances of equitable defense set up against strictly legal liabilities, & overruled by the Court. That the matter of this plea cannot be received as a legal bar, is to be inferred from its own nature, and also from the total absence of any similar plea in bar in books on pleading and Reports. The defense is strictly and technically equitable. A judgment record is peculiarly an instance of legal liability. It has two parties to it plff & deft. The

party plff has the right [illegible]ced in a Court of law unless the deft. shows either that there is no such record, or that something has been done which discharges that judgment. As to what discharges the judgment, that is entirely matter of authority, for there are many defences against judgments, which cannot be set up in Courts of law, witness the cases above referred to. The interest acquired by Shackford by the assignment is not a legal but an equitable interest. This plea does not allege payment, nor accord and satisfaction, nor a release; does not state consideration of assignment. 10 John 400. 11 John. 488 show that deft cannot defeat suit by showing want of interest in nominal plaintiff.

5th This plea does not show a sufficient assignment. Fellows could not assign for his co-plaintiffs without being authorized to do: and no such authority is stated. It is not sufficiently alleged that he was a partner of his co-plaintiffs at the time at the time, nor is it stated that they in any way authorized him to assign. I have always understood by an assignment of a judgment, a sealed instrument; by which if Fellows was then a partner, he could not bind the others. But if Fellows assigned, he must have according to the plea, have subscribed his own name and not the name of the firm. Shackford then did not acquire by such a transfer, a right to the whole judgment but only to Fellows' part: & the plea is untrue by its own showing. 1 H. Black. 155

6. The statement of the effect of the assignment is vague & uncertain. "Sum recovered" has two meanings: the defendant must abide by that which is most unfavorable to him. The benefit assigned is also stated in the alternative, "all right under the judgment or to the sum thereby recovered." This is loose pleading

5 Com. Dig. Title, Pleader. 392. as to certainty of plea.

Bard in Fellows & Ruggles
vs.
Chs Savage

Points of plff in Error

Farris & Spalding
for plffs

23 April 1823

1891.52

STATE OF MISSOURI, }
Third Judicial District. } ss.

The State of Missouri to the honorable the Circuit *Court of* St. Louis *county*, GREETING:

FOR AS MUCH as in the record and process, as well as in the rendition of Judgment, on a certain plaint which was in our Circuit Court, for our county of St. Louis — before our judge thereof, between Caleb Fellows, Nathaniel F. Ruggles and Levi Bardin plaintiffs, and Charles Savage defendant, in a plea of Debt as it is said manifest error hath happened to the great damage of the said Fellows, Ruggles & Bardin as by their complaint we are informed: *We*, being willing that the error, if any there be, should be duly amended, and full and speedy justice done to the parties aforesaid in this behalf, *Command you*, that if judgment be thereupon given, then a transcript of the record of the judgment, with all things touching the same, and this writ, you certify and send to our Supreme Court, to be holden for the Third Judicial District, at the town of St. Louis, on the first Monday of November next, that our Judges of our said Court inspecting the record of the judgment aforesaid, may cause to be done therein, for correcting the said error, what to them of right, and according to law, shall seem meet to be done.

WITNESS THOMPSON DOUGLASS, Clerk of our Supreme Court for the Third Judicial District:

IN TESTIMONY WHEREOF, I have hereunto set my hand and seal of office, at office, this thirty first day of August in the year of our Lord one thousand eight hundred and twenty five and of the Independence of the United States of America, the fiftieth

T. Douglass Clk

In obedience to this Writ I herewith certify to the Honble the Supreme Court a correct transcript of the Record & proceedings required

A Gamble Clerk

Supreme Court
Novr Term 1825
Caleb Fellows et al
vs Writ of Error
Charles Savage

State of Missouri } ss Set;
County of St. Louis }

Be it Remembered that heretofore to wit on the first day of December in the Year One Thousand Eight hundred and twenty Three Caleb Fellows, Nathaniel F. Ruggles & Levi Bardin filed their declaration by Josiah Spalding their attorney in the office of the Clerk of the Circuit Court for the County of St. Louis against Charles Savage which said declaration is in the words and figures following to wit; St Louis Circuit Court - For the February Term thereof in the year of our Lord One Thousand Eight hundred and twenty four - County of St. Louis ss; Caleb Fellows, Nathaniel F. Ruggles & Levi Bardin lately doing business under the firm of Fellows, Ruggles & Bardin by Josiah Spalding their attorney complain of Charles Savage, late with John Shackford doing busineso under the firm of Savage &Co. of a plea that he said Savage render to the said Caleb, Nathaniel F & Levi, the sum of eighteen hundred and ninety one dollars & fifty two cents which he owes to and unjustly detains from them. For that whereas the said plaintiffs heretofore to wit at a Jeffersons Circuit Court holden before the Honorable John P. Oldham sole Judge of said last mentioned Court, at the Court house in Louisville in the State of Kentucky on the twenty third day of April in the Year of Our Lord One Thousand Eight hundred and twenty Three the said Oldham then and there sitting as Judge of said Jeffersoce Circuit Court, to wit at the City of St. Louis in the aforesaid County of St Louis by the Consideration and Judgement of the said Jefferson Circuit Court, recovered against the said defendant as well the sum of Eighteen hundred and ninety one dollars and fifty two cents The damages of said plaintiffs by the Juror then and there assessed on occassion of the non performance of certain promises and assumptions before that time made by the said defendant to the said plaintiffs as also their costs by them said plaintiffs about their suit in that behalf expended; whereof the said defendant is convicted, as by the record and proceedings thereof remaining in the said Jefferson Circuit Court at Louisville in the State of Kentucky aforesaid, to wit at the said County of St Louis, more fully appears; which said Judgement still remains in said Jefferson Circuit Court in full force and effect in no wise satisfied recovered or annulled, to wit at the County of St Louis aforesaid, and the said plaintiffs in fact say that they have not yet obtained execution of the aforesaid Judge-

-ment and that the damages and costs aforesaid recovered are of great value to wit of the Value of Eighteen hundred and ninety one dollars & fifty two cents, to wit at the County of St Louis aforesaid: whereby an action hath accrued to the said plaintiffs to demand and have of and from the said defendant the said sum of Eighteen hundred ninety one dollars and fifty two cents above demanded — Yet the said defendant although often requested so to do hath not as yet paid the said sum of Eighteen hundred ninety one dollars & fifty two cents above demanded or any part thereof to the said plaintiffs, but to do this hath hitherto wholly refused and still refuses, — To the damage of said plaintiffs of five hundred dollars & therefore they bring their suit &c — Farris & Spalding plffs attys — State of Missouri, County of St. Louis ss: Josiah Spalding being sworn saith that Caleb Fellows, Nathaniel H Buggles & Levi Bardin the plaintiffs in above declaration mentioned have a real subsisting and unsatisfied cause of action against the said Charles Savage defendant in above declaration to the amount of at least Thirteen hundred dollars on the Judgement set forth and described in above declaration, which said Judgement is for the sum of Eighteen hundred ninety one dollars fifty two cents & was rendered in the Jefferson Circuit Court in Kentucky in favor of said plaintiffs against the said defendant on the twenty third day of April last past; and that the cause of action herein sworn to is the same with that on which the above declaration is founded. This deponent further saith that the said plaintiffs will be in danger of losing their said debt herein sworn to as due from said defendant to them, the said defendant being in embarrassed circumstances and about to remove from this State in which he has no property to the knowledge of this deponent unless his said defendant Charles Savage be held to bail; and further saith not — Josiah Spalding — Sworn to and subscribed before me this first day of December in the year of our Lord 1823 two lines being previously interlined — Archibald Gamble Clerk — whereupon the Clerk of our said Circuit Court made the following endorsement to wit: Upon the within affidavit of Josiah Spalding it is ordered that a Capias issue against Charles Savage the defendant and he be held to bail in the sum of Two thousand dollars — Archibald Gamble Clerk and afterwards to wit on

the 1st day of December 1823 issued a writ of Capias in the words & figures following to wit: St. Louis County to wit: The State of Missouri To the Sheriff of St. Louis County Greeting. We Command you to take Charles Savage if he may be found within your County and him safely keep so that you may have his body before the Judge of our Circuit Court at the next term thereof to be held at the town of St. Louis within and for the County of St. Louis on the first Monday of February next then and there to answer unto Caleb Fellows Nathaniel F. Ruggles and Levi Bardin lately doing business under the name and Style of Fellows, Ruggles & Bardin of a plea that he render unto them the sum of Eighteen hundred and Ninety one dollars and fifty two cents which he owes to & unjustly detains from them to the damage of the said plaintiffs of five hundred dollars And have you then there this writ (Seal) Witness Archibald Gamble Clerk of our said Court at St. Louis this 1st day of December 1823 Archibald Gamble Clerk - and afterwards to wit on the return day of said writ the Sheriff to whom it was directed returned the same into Court with his return thereon endorsed in the words and figures following to wit Executed this Writ & took bail of the defendant 17th Jany 1824 Jno K Walker Shff - ~~and afterwards to wit~~ Whereupon said cause was continued to the June Term of said Court in the Year One Thousand eight hundred and twenty four at which said Term come the ~~plaintiff~~ Defendant by ~~His~~ attornies and filed ~~his~~ pleas in the words and figures following to wit: - Charles Savage ads Fellows Ruggles & Bardin and the said Charles Savage by his attorney comes and defends the wrong and injury when &c and says there is not any record of said supposed Judgement and recovery in said declaration in manner and form as the said plaintiffs have above in their said declaration alledged and this he the said Charles Savage is ready to verify wherefore he prays Judgement if &c - 2d plea - And for further plea in this behalf the said Charles Savage says that the said plaintiffs ought not to have or maintain their aforesaid action thereof against him because he says that after the recovery of said Judgement and before the commencement of this action by the said plaintiffs against said Charles Savage to wit on the Twenty Third day of Octr in the year 1823 at Louisville in the State of Kentucky he the said Charles Savage paid and satisfied to

the said plaintiffs the said sum of $1891-52 cents in form aforesaid recovered and this he is ready to verify Wherefore he prays Judgement if the said plaintiffs ought to have or maintain their aforesaid action thereof against him and for further plea in this behalf the said Charles Savage says that the said plaintiffs ought not to have or maintain their aforesaid action thereof against him because he says that heretofore and previous to the commencement of the present action to wit on the twenty Third day of November 1823 at Louisville in the State of Kentucky Caleb Fellows one of the said Plaintiffs and belonging to the firm aforesaid of Fellows, Ruggles and Bardin did for full and valuable consideration assign and make over the said Judgement in plaintiffs declaration mentioned and all right thereunder or to the sum thereby recovered to the said John Shackford of the firm of Savage and Co in declaration mentioned and said Charles Savage avers that the contract and cause of action upon which said Judgement was rendered was entered into and arose by and against the said partnership + or firm of Savage and Co of which firm said John Shackford was a member as in said declaration mentioned, and this the said Charles is ready to verify wherefore he prays Judgement if the said plaintiffs ought to have or maintain their aforesaid action thereof against him- And for further plea in this behalf the said Charles Savage says that the said plaintiffs ought not to have or maintain the aforesaid action thereof against him because he says that heretofore to wit on the twenty third of November 1823 at Louisville in the State of Kentucky previous to the commencement of the present action Caleb Fellows one of said plaintiffs and belonging to the firm aforesaid of Fellows Ruggles and Bardin did for full and valuable consideration assign and make over the said Judgement in plaintiffs declaration mentioned and all right thereunder or to the sum thereby recovered to the said John Shackford of the firm of Savage & Co in declaration mentioned which said Judgement was obtained and rendered on a contract made between said plaintiffs and said John Shackford and Charles Savage carrying on trade as aforesaid under the firm of Savage and Co at Louisville aforesaid and said Charles Savage avers that the said John Shackford after said assignment so made to him by said Caleb Ruggles did heretofore to wit on the 25th Decr 1823 at St Louis aforesaid together with the said Charles Savage for the purpose of effecting a final settlement

of all the Concerns between them the said John Shackford and Charles Savage growing out of or any way appertaining to the aforesaid firm of Savage and Co. Submit said Concerns to the Sole arbitration and award of one Joseph Hastings of Louisville aforesaid and this the said Charles is ready to verify wherefore he prays Judgement if the said plaintiffs ought to have or maintain their aforesaid action against him — L. E. Lawless, H. S. Geyer att'y for def^ts — and afterwards to wit at the said June Term of said Court in the Year aforesaid come the plaintiffs by their attornies who filed their replication and demurrers in the Words and figures following to wit; — Fellows Ruggles & Bardin v.s. Charles Savage; and the said plaintiffs as to the said plea of the said Savage by him first above pleaded saith, That they the said plaintiffs by reason of any thing by the said defendant in that plea alleged ought not to be barred from having and maintaining their aforesaid action thereof against him the said defendant because they say that there is such record of the said recovery as they the said plaintiffs have above in their said declaration in that behalf alleged: and this they the said plaintiffs are ready to verify by the said record, and they pray that the said record may be seen and inspected by the Court here &c — and as to the plea secondly above pleaded the said plaintiffs say that they ought not to be barred from having and maintaining their aforesaid action thereof against the said defendant, because they say, that the said Charles Savage did not pay and satisfy to the said plaintiffs the said sum of one thousand Eight hundred & ninety one dollars fifty two cents in manner and form as in said plea mentioned, and of this they put themselves upon the Country &c. — and the said plaintiffs as to the said plea of said defendant thirdly above pleaded say that the same and the matters therein contained in manner and form as the same are above pleaded and set forth are not sufficient in law to bar or preclude them the said plaintiffs from having or maintaining their aforesaid action thereof against him the said Savage & that they the said plaintiffs are not bound by the law of the Land to answer the same and this said plaintiffs are ready to verify: wherefore for want of a sufficient third plea in this behalf the said plaintiffs pray Judgement and their debt aforesaid together with their damages by them sustained on occasion of the detention thereof to be adjudged to them &c. — and for causes of demurrer said plaintiffs assign the following viz: 1 That the name of the Year in said plea is

in figures & not written at length. - 2 - That the persons composing the firm of Savage & Co are not specified - 3 it is not stated in said plea at what time the firm of Savage & Co was in Existence &c.

And the said plaintiffs as to the said plea of the said defendant by him fourthly above pleaded saith that the same and the matters therein contained in manner and form as the same are above pleaded and set forth are not sufficient in law to bar or preclude them the said plaintiffs from having or maintaining their aforesaid action thereof against him said Savage & that they said plaintiffs are not bound by the law of the land to answer the same & this said plaintiffs are ready to verify; wherefore for want of a sufficient fourth plea in this behalf the said Plaintiffs pray Judgement & their debt aforesaid together with their damages by them sustained on occasion of the detention thereof, to be adjudged to them &c - Cause of Demurrer to fourth count that the year is in figures and not written at Length - Davis & Spalding's pltffs atty's - Whereupon the said cause was continued to the March term of said Court in the Year One Thousand Eight hundred and twenty five at which said Term come the parties aforesaid by their respective attornies aforesaid Whereupon all and singular the matters whereof the parties have put themselves upon the court are by them submitted to the court which being seen and heard and by the Court here fully understood and mature deliberation being thereupon had for that it appears to the Court that the said plea of the said defendant by him thirdly above pleaded and the matters therein contained in manner and form as the same are above pleaded and set forth are good and sufficient in law to bar and preclude them the said plaintiffs from having and maintaining their aforesaid action thereof against him the said Savage and for that it further appears to the Court that the said plea of the said defendant by him fourthly above pleaded and the matters and things ~~therein contained in manner and form as the same are above pleaded and the matters and things~~ therein contained in manner and form as the same are above pleaded and set forth are not sufficient in law to bar or preclude them the said plaintiffs from having or maintaining their aforesaid action thereof against him said Savage and that

they the said plaintiffs are not bound by the law of the land to answer the same upon the whole matter it is considered that the said plaintiffs take nothing by their said writ and that the said defendant go thereof without day ~~and it is further considered that the said defendant go thereof without day~~, and it is further considered that the said Charles Savage recover against the said Caleb Fellows Nathaniel F. Ruggles and Levi Bardin his costs and charges by him about his defence in this behalf expended and that he have thereof Execution - and afterwards to wit at the same term of the said Court in the Year Eighteen hundred and twenty five aforesaid Come the parties aforesaid by their respective attornies aforesaid and neither of the parties requiring a jury all and singular the premises are by them submitted to the Court which being seen and heard and by the Court here fully understood the Court do find as to the first issue within joined between the parties aforesaid that there is such record of the said recovery as they the said plaintiffs have above in their said declaration in that behalf alledged and as to the second issue within joined between the parties aforesaid the Court do find that the said Charles Savage did not pay and satisfy to the said plaintiffs the said sum of One Thousand Eight hundred and ninety one dollars fifty two cents in manner and form as in said plea mentioned

State of Missouri }
County of St. Louis } ss. I Archibald Gamble Clerk of the Circuit Court for the County of St. Louis do certify the above to be a Correct Copy of the Record and proceedings in the Case of Caleb Fellows Nathaniel F. Ruggles & Levi Bardin against Charles Savage —

Given under my hand and Seal of Office at St. Louis this 25th day of October 1825

Archibald Gamble Clerk

No. 14 (29)

Fellows, Ruggles & Bardin
vs
Charles Savage

Transcript

17

Transcript	$	2 – 98
Tax & Certificate		1 " 50
		4 " 48

filed 9th Novr. 1825
Th Douglass Clk

Examined

Caleb Fellows
Nathaniel F. Ruggles &
Levi Bardin
vs.
Charley Savage

In Error

And the said Caleb, Nathaniel F. and Levi by Harding their attorney come and say that in the record and proceedings aforesaid there is manifest error in this to wit that the judgment in said Circuit Court was rendered against them said Caleb Nathaniel F. & Levi whereas by the law of the land it should have been rendered in their favor and against said Charles Savage: and also in this to wit that said Circuit Court gave judgment on said demurrer to said third plea against said plaintiffs in error in favor of said Savage whereas said Circuit Court should have sustained the demurrer to said third plea above, and given judgment against Savage thereon. Wherefore said and this said plaintiffs in error are ready to verify, Wherefore they pray that said judgment may be reversed, & that such judgment may be rendered as the law requires &c.

Harris & Harding

In Nullo est erratum

Sayers

Fellows & others

vs

C. Savage

filed 10th Novr 1825

H. Douglass Clk

Bardin Fellows & Ruggles
vs
Savage —

Error from St Louis Circuit Court

An action of debt was brought on a Judgment rendered on the State of Kentucky against Savage the defendant The defendant pleaded several pleas on which issues were made and found against him The third plea is in substance that the present plaintiffs were a firm in Ky in Louisville when they obtained the Judgment on which this action was brought That Fellows one of the firm died before the bringing of this action assign & Quit all the interest created by this Judgment to John Shackford who was a copartner of the firm of Savage and Company and that Savage & Shackford were jointly bound for the Original debt on which this Judgment was obtained & prays Judgment this plea is demured to and the Court gave Judgment for the defendant to reverse which the Cause is brought up

The question made is first is the Judgment assignable & secondly if not assignable at law does the assignment in equity extinguish the debt or have the effect of a payment & satisfaction of the Judgment

As to the first point it is conceded that the Judgment at law was not assignable The effect of an assignment of a chose in action not assignable at law is to authorise the assignee to receive the money It is also a press warrant to sue in the name of the assignor The cases cited by the defendants counsel give no light on the question of this assignment to Shackford being an extinguishment of the debt, but they all prove that after assignment the assignor cannot & shall not continue the action brought in his name by the assignee These cases are 1 J J R 432. 2 John Cases 121 1 Bos & Pul 447 and note 3 John R 421

none of these cases prove the thing necessary to be proved to make this plea good the cases prove that ~~[illegible]~~ the obligee of a bond cannot controul or do any thing about it after assignment. But that the assignment is an authority to use ~~their~~ his name here the Action is well brought

Then there could be no extinguishment for the Judgment is still in force against savage

The next thing is did the assignment to ~~savage~~ Shackford merge the Judgment, a member of a firm may lawfully buy rights on the firm & the firm must answer to him those demands.

When this Judgment was rendered against savage it became his separate debt & still remains his separate debt It is true ~~savage~~ Shackford may owe him on the partnership account but if he does if the partnership is ended he might perhaps have pleaded this as a distinct demand and offered to set it off but on this we give no opinion. The Judgment is wrong and ought to be and is reversed. ~~[illegible]~~

~~[illegible]~~

Mathias McGirk } Judgment
George Lompkins

and the Court proceeding to do what the court below should have ~~have~~ done give Judgment for Fellows &c

&c. costs &c

M McGirk } Judges
G Lompkins

3

Fellows et al
vs } Opinion of
Lanage the Court

17

filed 17th Novr 1825
Th. Douglass Clk

McGirk

Of the Petition of Nathaniel F. Ruggles Levi Bardin & Caleb Fellows to the Supreme Court represents

That they are plaintiffs in error in a suit against Charles Savage, which was decided in this Court this present Term, that the judgment in Court below may reversed and the cause remanded for further proceedings. Your petitioners state that sufficient appears on the record in said cause for this Court to give such judgment as the Court below should have given. Wherefore they pray that this Court will reconsider their judgment in the premises and enter such judgment here as should have been given in Court below

J Spalding for
pets in Error

Bardin Fellows & Ruggles
vs.
Lavage

Petition

filed 18th Novr. 1825
W. Douglass Clk

Boggles, Fellows & Barden
vs
Charles Savage } In error,

The plaintiffs in error brought an action of debt in the St Louis Circuit Court, against the defendant in error for the sum of $1891 52/100. The plaintiffs by their declaration complain of Charles Savage, late with John Shackford doing business under the firm of Savage & Co of a plea that he render unto them the sum of $1891. 52/100, — the cause of action set out is a judgment recovered by the plaintiffs in the Jeffers on Circuit Court State of Kentucky against defendant for $1891 52/100 — damages for the non performance of certain promises &c —

The defendant pleaded. 1st Nul tiel record — ~~to which the plaintiffs replied the record & issue was joined to the court,~~

2d. Payment generally after judgment —

3d. A special plea — Wales that before the commencement of the suit the plaintiffs did for full and valuable consideration assign and make over the judgment sued on and all right to the sum thereby recovered to John Shackford of the firm of Savage & Co. in declaration mentioned and averring that the cause of action upon which the judgment was rendered was entered into and arose by and against the said partnership or firm of Savage & Co, of which firm the said Shackford was one — concluding with a verification

4th a special plea, States the assignment of the judgment to Shackford as in the third plea and then proceeds as follows, "which said judgment was

was obtained and rendered on a contract made between said Plaintiffs and said John Shackford and Charles Savage carrying on trade as aforesaid under the firm of Savage and Co. at Louisville aforesaid and the said Charles Savage avers that said John Shackford after the said assignment so made to him; heretofore towit on the 25 Dec 1823 at St Louis together with said Charles Savage for the purpose of effecting a final settlement of all the concerns between them the said John Shackford & Charles Savage growing out of or appertaining in any way to the aforesaid firm of Savage and Co. did submit said concerns to the sole arbitration and award of one Joseph Hastings of Louisville aforesaid — concluding with a verification —

To the first plea the plaintiffs replied the record and issue was taken to the court — the second plea was traversed & issue taken to the country — to the third ~~& fourth~~ pleas the plaintiff demurred specially assigning for causes. 1st that the name ~~to the fourth~~ of the year in the plea was in figures — 2d that the persons composing the firm of Savage & Co are not specified — And 3d it is not stated at what time the firm of Savage & co was in existence &c

The the fourth plea there was a general demurrer. —

The Issues on the first and second pleas were found for the plaintiffs the demurrer to the third plea overruled — and that to the fourth sustained — And upon the whole matter judgment was rendered for defendant, to reverse which

this writ of error was prosecuted —

The defendant in error to support the judgment of the circuit Court insists, that the third plea is a good bar to the action and well pleaded in form & substance — and if not still the fourth plea and the matters therein stated are sufficient in law to bar and preclude the plaintiffs from having their said action — and the said judgment therefore upon the whole matter is according to the law of the land & the right of the cause as disclosed by the pleadings —

Geyer for defts

Ruggles & Fellows & Barden

vs

Charles Savage

Statement of case

for deft