Lousia Campbell; exect. for Campbell, S.P. vs Ramsours, Michael 1854 Greene Co 195/15

Debt

State of Missouri
County of Greene } Be it remembered that on the 11th day of September in the year of Our Lord 1850 the following Petition was filed in the Office of the Clerk of the Circuit Court within and for said County of Greene which said Petition is in the words and figures following towit.

"Michael Ramsours Plff } Greene County State of Missouri
VS } In the Circuit Court
John P. Campbell Deft } Decr Term A D 1850.

The Plaintiff states Defendant on the 27th day of August AD 1844 made executed and delivered his receipt in Writing to said Plaintiff which is hereto annexed and which said Receipt is in the following words and figures towit. "Recd of Michael Ramsours a receipt for a joint note on R. W. Carr & C. O. Barton, transfered by Seth Sheldon due the first day of Jay 1843 dated Sept 24th 1842 and bearing interest from May 6th 1842. at 10 per cent interest for One hundred and fifty dollars with a credit of Fifty dollars Sept 24th 1842. which I promise to collect or return. Greenwood Jany 26th 1844. Wm A. Pegram. for the purpose of collecting the proceeds of the note of Pegram who is now in Louisiana, if not collected the receipt to be returned. Springfield Augt 27. 1844. said Receipt has a Credit of Forty Dollars May 18th 1846

The Plaintiff states that the Money due according to the tenor and effect of the above receipt has long since been ~~received~~ collected by the said John P. Campbell Deft. Yet the said J P Campbell has failed to pay over the same or any part thereof (except as above stated) to the said Plaintiff. Altho he said Defendant has often been requested so to do. Nor has the said Campbell returned the receipt for which the above receipt was given according to his agreement. The said Plaintiff states that the said Defendant collected all the money due on said receipt, which was One hundred dollars besides interest towit at the County aforesaid. Yet the said Defendant failed to pay the same to the said Plaintiff. The said Plaintiff states that there is now due on said receipt above named about One hundred and twenty seven dollars and 75 cts, which the said Plaintiff asks Judgment for the said sum, together with interest and costs.

Michael Ramsours Plff

John M. Donnell agent for the Plaintiff Michael Ramsours Makes Oath and says he believes the above petition and the matters therein as stated are true. J M Donnell.

sworn to and subscribed before me this 11th day of September 1850. J. Davis Clerk,
And be it also remembered that on the same day (11th Septr 1850) the following summons issued from the Office of the Clerk of the Circuit Court of said County of Greene towit.

"The State of Missouri,

To the Sheriff of Greene County Greeting

You are hereby commanded to summon John P. Campbell to be and appear before the Honorable Judge of the Greene Circuit Court at the Court house in the Town of Springfield on the first day of the next term thereof which will be holden on the fifth Monday after the fourth Monday in October A.D. 1850. to answer unto Michael Ramsours in the foregoing complaint, and do you certify to our said Court how you execute this writ and have you then and there this writ.

In testimony whereof I Joshua Davis Clerk of our said Circuit Court have hereunto set my hand and affixed the seal of said Court done at Office in the City of Springfield this 11th day of Septr AD 1850. Joshua Davis Clerk

And on the back of said petition is the following endorsement in the words and figures following towit.

State of Missouri }
County of Greene } I G. W. Kelley sheriff of the said County of Greene do hereby certify that I executed the within petition and summons by reading and delivering a written copy of the same to the within named John P. Campbell on this 13th day of September AD 1850 done in the County of Greene this date above Written

G. W. Kelley Shff
By Wm. Potter Dept

And be it remembered that at a regular term of the Circuit Court within and for said County of Greene begun and held at the Court house in the City of Springfield on the 5th Monday after the 4th Monday of October 1850. (it being the 2nd day of Decr 1850) present the Honorable Charles S. Yancey Circuit Judge John T. Coffee Esqr Circuit attorney George W. Kelley Esqr Sheriff of said County and Joshua Davis Clerk of said Court Amongst other the following proceedings were had on the 4th day of said Decr Term 1850 in the words and figures following towit

Michall Ramsours
Agt
Jno P. Campbell } Leave is given Deft to file herein his answer 40 days before the next term of this Court.

And be it also remembered that on the 12th day of December 1850 the said Deft filed his answer in the above named Cause in the Office of the Clerk of said Greene Circuit Court which said Answer is in the words and figures following towit.

Michael Ramsours Plf
against } Civil Action in the Greene Circuit Court
John P. Campbell Deft

Defendant states that he never has received the money specified in the petition of the plaintiff or any part thereof with the exception of the forty dollars paid over as stated in said petition. L. Hendrick Atty for Deft

The Defendant John P Campbell makes Oath and says he believes the above answer and the matters therein as stated are true.

sworn to and subscribed before me
Septr 30th 1850 J Davis Clk. } John P. Campbell

And be it also remembered that at the regular Spring Term of the Circuit Court begun and held at the Court house in Springfield in said County of Greene on the 5th Monday after the 4th Monday in April 1851 present as at the Decr Term of said Court on the 4th day of said Term (it being the 5th day of June 1851) amongst other the following Record was made in the words and figures following towit.

Michael Ramsours
vs
John P Campbell } By consent this cause is continued until the next term

And at the regular Fall term of said Circuit Court within and for said County of Greene begun and held at the Court house in Springfield on the 5th Monday after the 4th Monday in October 1851 present as at the last term of said Court, amongst other the following proceedings were had in the words and figures following towit.

Michael Ramsours
against } Civil Action
John P. Campbell } Now at this day comes the plaintiff by his

his Attorney, and by leave of the Court files herein the agreement of John M Donnell as security for costs in this suit

which said Agreement is in the words and figures following towit

M Ramsours to use J Donnell

vs } Civil Action.

Jno P Campbell } I John M Donnell do hereby bind myself to pay the costs that have or may accrue in the above cause and that may be adjudged against the said plaintiff. Given under my hand this 16th day of Dec 1857. John M Donnell.

And on the same day (it being the 16th day of Dec 1857) the following Record was made in the words and figures following towit.

Michael Ramsours

against } Civil Action

John P Campbell } Now at this day come again the parties in this cause by their respective attorneys and the cause being ready for ~~trial~~ hearing thereupon come a jury towit. John S Kimbrough Joseph Moss William Townsend Thos W Anderson. Elijah Gray. A.M. Julian. Samuel Fulbright. E.R. Fulbright James S. McQuerter. Benjamin W Cameron, Erastus McMurray and Tapley Daniel 12. good and lawful men duly elected tried and sworn after hearing the evidence and arguments returned into Court the following verdict towit. We the jury find the issues for the plaintiff and assess the damages at the sum of Ninety three 45/100 dollars. It is therefore considered by the Court that the said plaintiff have and recover of and from the said Defendant the aforesaid sum of Ninety three 45/100 dollars, together with his costs and charges expended for all of which execution may issue.

And on the next day (17th Dec 1857) the following Record was made in the words and figures following towit.

Michael Ramsours

against } Civil Action.

John P. Campbell } Now at this day comes again the Defendant by his attorney, and by leave of the Court files herein his Bill of exceptions in this cause. And also with like leave files herein his motion for a new trial of this cause which said motion was taken up and overruled by the Court. Which said Motion & Bill of Exceptions are in the words and figures following towit

"M Ramsours Pltff
against } Civil Action in the Greene Circuit Court
A. P. Campbell Deft

The Defendant comes and moves the Court to set aside the verdict in this case and grant a New trial

1st Because the evidence was irrelevant. 2° Because the evidence permitted to go to the jury ought not to have been so permitted to go to the jury.
3rd Because the Court permitted improper evidence to go to the jury
4th Because there was no evidence conducing to prove a breach of the contract on the part of the Defendant. 5th Because the Court refused to give the instructions asked for by Defendant. 6th Because the Court gave improper instructions
7th Because the Verdict is against and against evidence and against the instructions of the Court."

L. Hendrick Ally for Deft

Michael Ramsours Pltff
against } Civil Action in the Greene Circuit Court
John P Campbell Deft

Be it remembered that on the trial of the above Cause the Plaintiff called on James K. Allsup as a Witness, showed him the receipt of the Defendant filed in the cause, and proved by Witness that Defendant signed the said receipt.
The plaintiff then read the receipt to the jury, and a Credit on it which receipt and Credit are as follows. "Received of Michael Ramsower a receipt for a joint note on R. W. Carr and C. O. Barton transfered by Seth Sheldon, due the first day of Jany 1843 dated Sept 24th 1842, and bearing interest from May 6th 1842 at ten per cent interest, for One hundred and fifty dollars with a credit of fifty dollars Sept 24th 1842 which I promise to Collect or return. Greenwood Jany 26th 1844. Wm A. Pegram — for the purpose of collecting the proceeds of the note of Pegram who is now in Louisiana, if not collected the receipt to be returned.

Springfield August 27. 1844 John P Campbell"

"May 18th 1846. Recd of John P Campbell Forty Dollars on the within Rect"

Witness stated that about 18 May in the year 1846 he had said receipt in his possession and showed it to Defendant and Defendant paid him forty dollars which was credited on the receipt. Witness said Defendant told him that the whole of the amount of the receipt had been collected under his directions and he had ordered it in two separate parcels to be sent to New Orleans.

and to be frowarded up here Greene County, and that it would all the balance be here by the next August following. The forty dollars which was paid being one of said parcels, and which he had recewed and paid over. Plaintiff asked witness to state whether he demanded all the money from Defendant and whether Defend-ant paid it or not. To this Defendant objected. The Court overruled the objection and permitted the question to be answered, to which decision of the Court in per-mitting said questions to be answered the Defendant excepted. The Witness answered, that he demanded said Money from said Defendant, and that Defend-ant paid him the forty dollars, and never paid the resedue to him, while he held the receipt, this was at the time the Forty dollars was paid. This evidence Defendant moved the Court to exclude from the jury which the Court refused to do, and to that decision Defendant excepted. This was all the evidence in the case. And thereupon the Defendant moved the Court to give the following instructions to the jury

1st Admitting every thing that is proved to be true, the plaintiff cannot recover.

2. That if the Money was collected under Campbells direction, and ordered by him to be sent to New Orleans to be frowarded to Greene County, he is not liable in this ac-tion, unless the Money actually come to his hands. Which instructions the Court refused to give, to which decision in refusing to give said instructions Defendant excepted. The Court gave at the instance of the Defendant the following instructions

1st That unless it was proved that Defendant did actually recewe the Money over and above the 40 dollars credited on the receipt the Plaintiff cannot recover.

2d That even if Defendant had actually recewed the money he is not liable in this Action unless he was afterwards called on and requested to pay it by the plaintiff or by the owner or holder of the receipt. The Court also gave the following instructions which were objected to by Defendant "That if Defendant Campbell had in his possession the Money of Pltff and failed to pay it when demanded the Jury must find for the Plaintiff the amt. witheld with interest from the date of his refusal to pay. — That every allegation in Plaintiffs petition not denied in Defendants answer is admitted to be true. to the giving of which Defendant excepted. And now prays that this his Bill of exceptions may be signed sealed and enroled and made a part of the Record in this case which is accordingly done.

C S Yancey Ct Judge (Seal)

And also on the said 17th day of December 1851 the following Record was made in the words and figures following towit.

Same
against } Civil Action
Same

Now at this day comes again the Defendant by his attorney and by leave of the Court files herein his ~~Bill of exceptions~~ Motion in arrest of the judgment in this case, Which said Motion was taken up and by the Court overruled

Which said Motion is in the Words and figures following towit

M Ramsour Pltff
against } Civil Action in the Greene Circuit Court
I P Campbell Deft

The Defendant moves the Court to arrest the judgment in this case. Because there is no sufficient statement of a cause of action in said petition. Because the facts stated in the petition do not constitute a cause of Action.

L. Hendrick atty
for Deft.

And on the 19th day of Decr 1851 the following Bill of exceptions was filed in the words and figures following towit

M Ramsour Pltff
against } Civil Action in the Greene Circuit Court
I P Campbell Deft

Be it remembered that on the trial of this cause after the instructions of the Court were given to the jury, the jury retired and returned into Court the following verdict. "We the jury find the issues for the plaintiff and assess his Damages to the sum of Ninety three dollars and 45 cts

John S. Kimbrough foreman

And thereupon the Defendant insisted that the Court ought to render judgment for the Defendant notwithstanding the finding of the jury was for the plaintiff But the Court refused to do so. to the decision of the Court in refusing to do so the Defendant excepted. The Defendant then moved the Court to award a repleader. This the Court refused to do. And to the decision of the Court in so refusing the Defendant excepted. Afterwards during the term Defendant filed his motions one for a new trial as follows

M. Ramsours Pltff
against } Civil Action in the Greene Circuit Court
J. P. Campbell Deft } The Defendant comes and moves the Court to set aside the verdict in this case and Grant a new trial.

1st Because the evidence was irrelevant. 2d Because the evidence permitted to go to the jury, ought not to have been so permitted to go to the jury. 3d Because the Court permitted improper evidence to go to the jury. 4 Because there was no evidence conducing to prove a breach of the contract on the part of the Defendant. 5th Because the Court refused to give the instructions asked for by Defendant. 6th Because the Court gave improper instructions. 7 Because the verdict is against and against evidence & against the instructions of the Court

L. Hendrick Atty for Deft

And one to arrest the judgment as follows

M. Ramsours Pltff
against } Civil Action in the Greene Circuit Court
J. P. Campbell Deft } The Defendant moves the Court to arrest the judgment in this case. Because there is no sufficient statement of a cause of action in said petition. Because the facts stated in the petition do not constitute a cause of action.

L. Hendrick Atty for Deft.

both of which were by the Court overruled, to said decisions of the Court in overruling said Motions for a new trial and arrest of Judgment the Defendant excepted. And prays that this his Bill of exceptions may be signed sealed and enrolled and made a part of the record in this case which is accordingly done.

C. S. Yancey Ct Judge.

And be it also remembered that on the 10th day of April 1852 the following affidavit was filed in the Office of the Clerk of the Circuit Court within and for said County of Greene which said Affidavit is in the words and figures following to wit.

State of Missouri }
County of Greene } Before Joshua Davis Clerk of the Greene Circuit Court in Vacation.— This Affiant John P. who prays for an appeal from the judgement of the Circuit Court of Greene County in the State of Missouri rendered at the December Term thereof in the year 1851. in a case wherein Michael Ramsours was plaintiff and said Campbell was defendant being duly sworn makes oath and says that his appeal in this case is not made

for vexation or delay but because this affiant believes himself the appellant is ag-grieved by the judgment of the Court

John P. Campbell

sworn to and subscribed before me
this 10th day of April 1852.
J. Davis Clk

And on the same day the following Bond was filed in the office of the Clerk of the Circuit Court within and for said County of Greene which said Bond is in the words and figures following. to wit. (the object of which is to take an appeal to the Supreme Court)

Know all men by these presents that I John P. Campbell as principal and R. J. McElhaney and G. P. Shackelford as securities are held and firmly bound to Michael Ramsours in the sum of Five hundred dollars for the payment of which we bind our-selves firmly by these presents signed with our hands and sealed with our seals this 10th day of April 1852.

The Condition of this Bond is such whereas the said John P. Campbell is about to appeal from the Judgment of the Circuit Court of the County of Greene in the State of Missouri rendered at the last December Term of said Court in a case wherein the said Ramsours was plaintiff and said John P. Campbell was Defendant Now if said John P. Campbell the appellant will pay all costs and damages which may be awarded against him occasioned by such appeal, and also prosecute his appeal and perform such Judgment as shall be given by the supreme Court and such as the Supreme Court may direct the Circuit Court to give, and if the Judgement or any part thereof be affirmed he will comply with and perform the same so far as it may be affirmed, and pay all damages which may be awarded against the appellant by the Supreme Court; then and in that case this bond is to be void else to remain in force

John P. Campbell (seal)
R. J. McElhaney (seal)
G. P. Shackelford (seal)

And upon the said Bond is the following endorsement in the words and figures following Viz

I Joshua Davis Clerk of the Greene Circuit Court in vacation do certify that the amount in the above Bond fixed by me is by me deemed sufficient. The security appeared, and the said Bond was acknowledged by them before me

Joshua Davis Clk

1817

State of Missouri }
County of Greene }

I Joshua Davis Clerk of the Circuit Court within and for said County of Greene do certify that the foregoing pages contain a full true and perfect transcript of all the Record and proceedings had in the aforesaid cause

In Witness whereof I hereto set my hand and affixed the seal of said Court done at my Office this 27th day of May 1852.

Joshua Davis Clerk

55 = 34 44 = 24

34.

McRamsours, Resp'dt
vs Transcript
J. P. Campbell, app'ts

Filed June 5th 1852
Wm C Dunscomb
Clerk

Greene
= 13th =
Clerks fee for this Transcript (4131) $4.13
Certy & seal 50 | 50
4 63

Michael Ramsay appellee
vs
John P. Campbell appellant

The appellee asks the Court to dismiss this ~~Court~~ appeal because there is no assignment of Error filed - which should have been done at the July Term of this Court 1842. And because the parties have not prosecuted their appeal

Medill Atty for Ramsay

58

M Ransom

J. P. Campbell

Motion to dismiss appeal

filed Jan. 20 1853

Wm E Duncomb

Clerk

Supreme Court
January Term 1854.

Michael Ramsours appellee
vs
Laura Campbell executrix of the estate of John C Campbell and appellant } appeal from Green County

The appellants comes and assigns for error in the judgment &c of the Circuit court

1st

The judgment &c is given for appellee when by the law of the land it ought to have been given for the appellant

2d The court erred in permitting improper evidence to be given to the jury on the part of plaintiff

3d. The Court erred in giving instructions on the part of the plaintiff and in refusing instructions asked by Deft—

4. The court erred in refusing to grant defendant a new trial upon his motion therefor—

5. The court erred in not rendering judgment in favor of defendant notwithstanding the verdict, as well as in refusing to award a repleader.

6. The court erred in refusing to arrest the Judgment upon motion of the defendant therefor,

And for all which errors & other errors manifestly appearing in ~~the record~~ in the record and proceedings

and prays for a reversal of said Judgment. and that he may be restored to all things which he has lost by reason of said Judgment & errors.

J P Wright
Atty for appellant

55

Louisa Campbell
ex trix of John P
Campbell deced -
appellant
~~Appellant~~
Errors
ato assignment of
Michael Ramsons
Appellee -

Filed Jany 17th 1854
Wm E. Dunscomb
Clk

Ramsours
vs }
Campbell

Ramsours held a receipt given to him by one Pegram, in which Pegram acknowledged to have received for collection a note for $150 with a credit of $50 describing the note. Campbell obtained this receipt from Ramsours and gave him a receipt for it. In this receipt Campbell acknowledged that the object in his getting the receipt, was to collect the proceeds of the note from Pegram, and if not collected the receipt was to be returned. ~~After Ramsours~~ This action was brought against Campbell on the receipt, and it was alleged in the petition, that he had collected all the money, and that with the exception of $40. he had not paid it over, nor had he returned the receipt. Campbell answered and his answer contained but a single denial, and no other defence. He denied that he had ever received any more of the money than the $40 which it was admitted he had paid over. There was a trial by jury, and the instructions given upon the only point in issue were as favorable to the defendant as he could have asked. There is here no complaint of the instructions. A motion in arrest of judgment was made and a motion for a new trial. The motion in arrest of judgment presents the only question which has been discussed before us and that rests upon the sufficiency of the petition. Campbell received Pegrams receipt from Ramsours, and received it for the purpose of collecting the money from Pegram, and ~~not~~ he was to return the receipt if the money was not collected. To whom was he to return the receipt? Clearly, to Ramsours. To whom was he to pay the money if it was collected? Clearly to Ramsours when the whole

transaction was with him and when he was the owner of the receipt - The idea that there is no contract stated with Ramsours and no consideration for a contract with him is a mere mistake.

We do not review the decision refusing a new trial

The judgment is with the concurrence of the other judges affirmed

H R Gamble

55

Ramsours
v
Campbell
Opinion
HRG

filed Jan. 2 to 1884
Wm E Dunscomb
Clerk

M. Ramsours —
v
Louisa Campbell, Ex^x.
of Jno. P Campbell, dec'd.

On the Supreme Court on appeal from Greene Circuit Court.

Fee bill of costs in the Supreme Court to be paid by the said Louisa Campbell, Executrix as aforesaid.

Wm E Dunscomb's costs as Clerk of said Sup. Court.

filing transcript & docketting case	.50
appearance .20, continuance & order 50	70
continuance & order 50 appearance 20	70
Errors & joinder 90, argument & submission 50	1.40
trial & judgment 1.00 entering opinion filed .25	1.25
filing papers .20 certifying judgment .75	95
	5.50
R B Jackson Marshall	.90
Joshua Davis for transcript	4.63
Total	$11.03

Attest
Wm E Dunscomb, Clerk
of Sup. Court of Mo.

To the sheriff of
Greene County, Mo.

Ramsours

N J Feekill

Campbell's Ex^t

Costs

I. Davis	4.63
R B Jackson	90
Wm E Dunscomb	5.50
Receive in full for the Clerk & mas Shelts	$ 11.03
fees Samuel Fulbright Sheriff	7 00
	4 03

Come to hand 26 of August 1854

Samuel Fulbright Sheriff

Greene

To the Supreme court

Michael Ransours
vs
Louisa Campbell executrix
of John P Campbell decd,

appeal from Green

Michael Ransours sued John P Campbell in the green circuit court by petition; Campbell answered; the cause was submitted to a jury, who found a verdict for the plaintiff. —

The Petition states that defendant on the 27th day of August AD 1844. made executed and delivered his receipt in writing to said plaintiff which is hereto annexed and which said receipt is in the following words & figures to wit "Recd of Michael Ransours a receipt for a joint note on R W Carr & Co Boston transferred by Seth Shelton due the first day of Jany 1843 dated Sept 24 1842 and bearing interest from May 6 1842 at 10 percent interest for one hundred and fifty with a credit of fifty dollars dollars Sept 24 1842. which I promise to collect or return — Greenwood Jany 26 1844 — Wm A Pegram — for the purpose of collecting the proceeds of the note of Pegram who is now in Louisiana, if not collected the receipt to be returned — Sprengfield August 27 1844 — said receipt has a credit of forty dollars May 18th 1846 ——

There was no signature to the receipt set out — but upon the trial plaintiff called one Allsup as a witness and showed him the receipt filed in the cause and proved by him that Campbell signed the same

It varied from the one set out by having the signature of John P Campbell immediately after the words 1846 —
Witness ~~Defendant~~ further stated he had the receipt in his possession, & showed it to Campbell who paid him 40 dollars and that Campbell told him the whole of the amount of the receipt had been collected under his directions & he had ordered to be sent to New Orleans & to be forwarded to green county and that the balance would be here in August — that he demanded the money —
Campbell by his attorney moved the court to exclude this evidence — which motion the court overruled — exceptions taken & refused to instructions given
After verdict Campbell moved for a new trial which was overruled — He then moved for judgment in his favor notwithstanding the verdict this motion, too, was overruled — and exceptions taken —
on the trial exceptions were taken to the refusing and giving instructions
Defendant John P Campbell then moved in arrest of judgment which was overruled & exceptions taken and the cause brought here by appeal
—
Since the appeal John P Campbell has died and Louisa Campbell executrix of his estate substituted as party defendant —

Points and authorities

1st Wright for Dept.

The judgment should have been arrested: The petition does not state facts sufficient to constitute a cause of action — It does not appear that plaintiff is entitled to the money, or to have the same paid over to him when collected — There is no contract, nor any consideration of a contract, or any promise stated; nor is there any liability on the part of defendant to plaintiff alledged, and such liability no where appears by the record, either by the petition, or by the receipt recited or filed, or by the answer or even by implication — But such defects in substance can not be impliedly cured —

II The facts which are stated, are set forth in a manner, too uncertain to enable a person of ordinary understanding to know what is intended — It is not averred on what account or when the money was to be collected, nor of whom it was to be collected — nor to whom, nor when it was to be ~~collected~~ paid over when so collected. Certainty and verity are requisites of good pleading, but the facts are here stated with such uncertainty and repugnancy as to destroy their verity —

III The answer barely denies the collection of the money sued for — and the issue joined was not such as necessarily required, on the trial, proof of the facts defectively or imperfectly stated or omitted; consequently the defect is not cured by verdict — nor can it be aided by intendment — Intendment which aids defective pleading must arise, not merely from the verdict but from the united effect of the verdict, and the issue upon which

such verdict was rendered — No facts omitted can be presumed to have been proved, except such as can be implied from the allegations on the record, by fair and reasonable intendment, — The facts wanting, must necessarily be implied from facts which are stated, — at least, no fact will be presumed which is not fairly inferred or reasonably implied by what is alledged —

The principles involved, were aptly discussed in the case of Moore & Hunt vs. Platte county 8. Mo R 467, hence I quote another authority —

IV A new trial should have been granted. There was no evidence to support the verdict. There being no allegation to the contrary, it must be presumed that the evidence was in accordance with defendants promise and supported it, if he had made any — Besides, the evidence should have been excluded, The petition proposed to set out the receipt in hæc verba — The one offered in evidence varied from the one set out, but the latter having the name of Campbell attached to it — Hence the receipt offered and the evidence relative to it should have been excluded — The court also committed error in giving and in refusing instructions

Michael Ramsvars
vs
Louisa Campbell
Ex^trix of John P Campbell
dec^d –

Dep. Brief

This brief need
not be copied.
Rep.

Wright

John P Campbell Apt. } In the supreme
vs } Court. by ap-
Michael Ramsaurs appl. } peal from Greene.

It is agreed between the attys for the parties that this case stand continued until the January Term 1853 -

L Hendrick atty
for appellant

John S Wardell
atty for appellee

55

John P. Campbell

per Agreement

Michael Ramsaur