Watson, Rengrose D vs Penn, Worden P. 1851 St. Louis Co. 311/1
Cadmun of Penn, Shadrock

560/2

W. indebted to Penn for advertisements in newspaper for $28.56.
Ryland R&R for P admitting ~~mother~~ self as witness

THE STATE OF MISSOURI, ss.

The State of Missouri, To the Judge of the Law Commissioner's Court in said State, GREETING:

Whereas, In the record and proceedings in a certain cause lately pending in the Law Commissioner's Court in and for the County of Saint Louis wherein Worden P. Penn Administrator of Shadrach Penn deceased was plaintiffs and Ringrose D. Watson was dependant

in an action of Petition in debt manifest error hath intervened, to the great damage of the said dependant as by his complaint, we are informed.

NOW, we being willing that the error, if any there be, should be corrected, and full and speedy justice done to the parties aforesaid, in that behalf, COMMAND YOU, that you send to us, certified under your seal, the record and proceedings in the cause aforesaid, as fully as the same remain of record before you in said Court, so that we may have them before us at our Supreme Court, ~~to be~~ begun and held at the City of ~~Jefferson~~ St Louis, in the county of ~~Cole~~ St Louis, in said State, on the Third Monday in March ~~next~~ instant, and now being held, so that our Judges of our Supreme Court, on inspecting the record and proceedings aforesaid, may cause to be further done therein, for correcting the error, what of right and according to law ought to be done.

Witness, ~~HAMPTON L. BOON~~ William S. Glanville, Clerk of our said Supreme Court, at office, in the City of ~~Jefferson~~ St Louis, the ~~Sixth~~ day of April, in the year of our Lord one thousand eight hundred and ~~forty-~~ fifty two.

William S. Glanville
Clerk.

State of Missouri County of Saint Louis / Sc
Pleas held before Jno. A. Watson the Law Commissioner
of Saint Louis County — In the Law Commissioners
Court of Saint Louis County — Be it remembered
that on the Twenty ninth day of April A D 1851
was filed in my office a petition which is in words and
figures as follows to wit
Worden S. Penn Surviving administrator of the Estate of Shadrack
Penn Jr. Decd Plaintiff
vs.
Ringrose D. Watson
In the St Louis Law Commissioners Court

Petition

County of St Louis ss. April 1851.

Plaintiff states that the Defendant is indebted to the Estate of the late Schadrack Penn Jr., of which the Plaintiff is surviving administrator, for advertisements in the newspaper formerly published by said Schadrack Penn Jr. known as the Missouri Reporter and also for printing and subscription to said paper: that the balance due said Estate is Twenty eight Dollars and fifty six cents, which the defendant though often requested has not paid & still refuses to pay. The particulars of said account with the credits thereon will appear by an account hereto annexed & made part of this petition. Plaintiff asks judgment for Twenty Eight Dollars & fifty six cents the balance due said Estate.

S. C. Grace
Atty for Plaintiff

Account

Ringrose D. Watson To.
Estate of Schadrack Penn Jr. Decd Dr.

1844.		
Jany 1.	To advg Crockery & Queensware business in the Missouri Reporter & subscription thereto at 40$ per annum to April 11th 1845.	51.11
Sept. 3.	" advg in the M. Reporter fruit trees 1/2 sq. for 1 Mo.	4.00
Dec 5.	" printing 50 Cards for W. Jd. Supper	2.37

1845.
Apl. 7. To Adverg. Auction Notice in M Reporter 12 lines 2 times 1.12
" " " daily Subscription to M Reporter from Apl 11. 1845 to
" " " May 1845. .75
1846
Apl 20 " Advg. in M Rep. Runaway Negress 3 times 1.00
" " " Subscription to M Rep. (Weekly) from Nov 21 1845
" " " to July 27. 1846. 2.06
Amt brought over. $ 62.41

Credits

By Sundries at different times during
pends Aforesaid $ 21.75
" products per orders of W. P. Penn during
" Aug 1849 12.10
$ 33.85 33.85

Balance due Estate $ 28.56

Worden P. Penn makes oath and states that he believes that the matters & things in the above petition are true as therein stated.

W. P. Penn.

Sworn to and subscribed before me this 29 th day of April 1851.

Jno. H. Watson
The Law Commissioner of St Louis County.

upon which petition issued a writ of Summons which is in words and figures following to wit.

State of Missouri. To the Marshal of Saint Louis County Greeting We command you to summon Ringrose D. Watson to appear before the Law Commissioners Court of Saint Louis County on the 17th day of May A D 1851. to be held at the Office of said Commissioner in the City of St Louis within and for the County of St Louis then and there to answer the complaint of Worden P. Penn as set forth in the annexed petition and have you then there this writ. (Seal) Witness John H. Watson, The Law Commissioner of Saint Louis County with the seal of said Court hereto affixed at Office, in the City of St Louis this 29th day of April in the year of our Lord One thousand eight hundred and fifty one John H Watson Law Commissioner of St Louis County by Henry N Dedman Dy.

upon which writ the Marshal made the following return.
Executed this writ in Saint Louis County on the 1 day of May 1851 by leaving a copy of it and the petition with a white person of the family of R. D. Watson over 15 years at his usual place of abode D. T. McCullough Marshall
by J. H. Douglass Depty.
And now to wit on the 23d day of May 1851 comes the Defendant and files his answer to the Petition of the Plaintiff which is in the words following to wit.
Worden. P. Penn Surviving administrator of the Estate of
Shadrack Penn Jr. Decd. } In the Law Commissioners
vs. } Court Saint Louis County.
Ringrose D. Watson }
The Defendant in the above entitled cause for answer to the Petition filed by the Plaintiff in the said cause says that he does not owe the Plaintiff the sum of Thirty eight Dollars and fifty six cents and for further answer said defendant prays the court to allow him the benefit of the act of Limitation in such cases made and provided.
A P & V D. Gareiché
R. D. Watson makes oath and says that he believes the above answer and matters therein as stated are true. R. D. Watson.
Sworn to and subscribed before me this 23d day of May 1851. Jno H Watson.
And now on the 26th day of May 1851 comes the Plaintiff by his attorney and files his replication to the Defendants answer which is in the following words to wit.
Worden. P. Penn Survg. admr. Estate of S. Penn Jr.
vs.
Ringrose D. Watson.
St Louis County. S.S. Plaintiff says that the charges

set up as an offset in the answer of the Defendant ought not to be allowed as a setoff against the Plaintiffs demand, because the Plaintiff says that such of them as the Defendant is entitled to have already been allowed in the credits given by Plaintiff in his petition: Plaintiff says that all the credits to which Defendant is entitled have been allowed him in his Petition.

Pierce C. Grace
Atty for Plaintiff

Pierce C. Grace states on oath that he believes the above replication is true. P. C. Grace.

Sworn to and subscribed before me this 26th day of May 1851.
John H. Watson C.C.

And now to wit on the 28th day of May 1851 came the parties by their Attorneys and by consent the cause is continued to the 4th day of June 1851. And now to wit on the 4th day June 1851 come again the parties by their attorneys and there upon came the Jury to wit James M. Butler Charles Paynter and Ludson Condon who being duly elected tried and sworn well and truly to try the issue joined between the parties and having heard the evidence and argument, depart from the bar here to consider of their verdict; who having considered and agreed among themselves return the following verdict: We the Jury find for the Plaintiff and assess the damages at Twenty Six Dollars and Nineteen cents. It is thereupon ordered by the Court that the Plaintiff recover against the Defendant the sum of Twenty Six Dollars and Nineteen cents for his damages the sum assessed by the Jury in their verdict aforesaid and also his costs in this behalf expended and that he have execution therefor. And thereupon the Defendant by his Attorney filed his motion for a new trial. Which motion being heard and argued and the Court being sufficiently advised, it is ordered by the Court that the said motion be overruled. And now to wit.

on the 11th day of June 1851 comes the Defendant by his Attorney and files his bill of exceptions which is in words as following. Worden P. Penn Admr. of Shadrack Penn deceased. Plaintiff. vs. Kingrose D.

Bill of Excep. Watson defendant. In the Law Commissioner's Court Saint Louis County.

This was a cause of action instituted by the Admr. of Shadrack Penn dec'd. on an account (which acct. see on page No. 1) before the trial defendant filed the following offset. which is in words and figures following: Worden P. Penn Admr.

Offset. of Shadrack Penn dec'd. vs. Kingrose D. Watson. In the Law Commissioner's Court of Saint Louis County. And the defendant for further answer in the above cause files the offset hereto annexed.

Saint Louis Mo. Aug. 16th 1849.

Mr R. D. Watson

Dr. Sir. Please let beaver have five ($5.) dollars worth of fruit vegetables and other articles and the amount (five dollars) shall be credited upon your account due to the estate of Shadrack Penn Jr. deceased. Yours W. P. Penn

Admr.

Saint Louis Mo. Aug 27 1849.

Mr R. D. Watson Please let the beaver have such articles as he may choose, amounting to five or eight dollars for which he will receipt and the amount shall be credited on your account due the estate of

Shadrack Penn Jr Esq. dec'd. W. P. Penn. adm.

Estate of Shadrack Penn

1844	Jo R. D. Watson	
Mar. 4	Soap tray & brush stand	1.25
" "	Ewer & basin	2.00
" 15	1 Doz. W.G. Coffees	2.50
	1 Pr. China fruit baskets	4.50
	1/2 doz lemonades	.30
	3/4 doz. lemonades $17 per	5.25
	Commission on loaned ware $61.08	4.88
May 10	1 Tea pot	.63
June 3	1 Doz. W.G. Soap triflers	1.38
	" " Tumblers	2.25
	1 W.G. Ewer & basin & covered chamber	3.25
	1 Soap box.	.62
Sep. 16	2 chambers	.75
" 21	1 C.C. Ewer & basin	1.00
	1 Chamber .50c Glass lamps 2.50	3.00
	3 Pressed tumblers	.38
Nov. 11	1 ogd plaine lamp	.75
Dec 28	1 fine plaine Hall lamp	3.50
1845	1 pair cut oil lamps	2.50
Feb. 26	1/2 doz. cups & saucers	.50
	1 doz. plates $1.00 1/2 1.25 1/2	1.12
	1/2 doz. tumblers 1.00 & 1 tea pot .50	1.50
		$44 01

R. D. Watson makes oath and says that he believes the above answer and matters therein as stated are true. Signed

R. D. Watson

Sworn to and subscribed before me this 23d day of May AD 1851.

Jno. H Watson
Law Com. St Louis

Upon the trial the defendant waived all evidence as to the items of plaintiff's account except those of the 3 Sep. & 5th Dec. 1844 consenting that with the exception of these the Acct. might be taken as proven. Plaintiff read ~~received~~ letters of administration appointing him the Admr. of Shadrack Penn.

It was further agreed between the parties that as to the item of the 30th Sept. the files of the paper need not be produced, but that the testimony of any witness who should have seen the advertisement, would be sufficient.

James Brown being sworn and examined proved that he had at the period mentioned, seen an advertisment in the Mo. Reporter as charged in Plaintiff's account: that on searching the files of the paper he found it had been published near two months = that appended to the bottom of the (printed) advertisement was defendant's name. Does not know if defendant ever authorised the use of his name never saw the manuscript of the advertisement = at the time defendant was in the queensware business in this city was possessor of the "Fruit Hill" farm where it was advertised the fruit trees were for sale, but did not know that defendant was carrying on either the farm or nursery.

Plaintiff then offered himself as a witness sworn upon his voire dire he testified that he was the son of Shadrack Penn in whose name the suit was instituted - that he was one of the heirs of his Father - that he believed the

"the" estate to be solvent. Defendant then objected to him as a witness - the Court overruled the objection and defendant excepted. Plaintiff being sworn in chief testified that the name of the defendant was written to the original manuscript of the advertisement in question = though the name ~~was~~ not the advertisement was in the hand writing of defendant - that the charge made was the usual one and the advertisement published for the period mentioned = that it was handed in by as plaintiff thinks some of the members of Mr Watson's family though not by defendant himself. Abandoning the item of the 5th Dec. 1844 = plaintiff here closed his case. Defendant then introduced a witness his nephew who proved that at the period for which the item of advertisement in dispute is charged, defendant though the owner was not the occupier of Fruit Hill farm = that the farm was carried on by a brother and the nursery by a son of defendant, that the town business of the said Fruit Hill farm was transacted at the store of the defendant in this city = and that at that time defendant was carrying on the queensware business - Defendant further proved that he knew neither of the items of defendant's offset - but knew that defendant's books were kept by his (defendant's) sons all of whom were then in California.

Filley an other witness for defendant proved that he had been himself engaged in the queensware business during the years 1841 to 1846 that the items of defendant's offset are charged at the usual prices current at the time

knew nothing however of the sale or delivery of these articles. Defendant then introduced Mr Joseph Southack to establish that his books were always kept by his clerks Sons & that from the course of dealings between the house of witness and that of Watson, he believed the books of Mr Watson to have ben correctly kept - Defendant then offered his books of original entries to the inspection of the Court and offered also his journal and Ledger with his suppletory oath that his books had ben correctly and regularly kept by clerks, who were his sons, and that all these had now removed to California, and offered then his books in evidence - the court excluded them and defendant excepted. Defendant then called upon plaintiff who proved that shortly after the removal of Shadrack Penn to this City he his Father had dealt with defendant - That the general method of dealing ~~had bene~~ was by orders given by himself on R. D. Watson, though this was not always the case, that he knew the articles & items of defendant's offset to be correct except those of the 4th and 15th March 1841 and of June 30 1844 that of these he knew nothing they may have ben procured, there were at other times articles procured. Defendant then again offered his books in evidence accompanied with his oath and c. as before but plaintiff objected, and Court sustaining the objection defendant excepted. Defendant also offered to prove by one Simpson ~~~~ a merchant who had dealings with him that his books had been correctly kept so far as witness could

judge from dealings with defendant, but plaintiff objected to the evidence and Court sustaining the objection - defendant excepted.

Defendant thereupon closed his case and asked for the following instructions.

Refused The jury will find for the defendant as to those items in the plaintiff's account which accrued due more than five years prior to the date when the suit was instituted, unless they believe that there has since been an acknowledgement or promise on the part of the defendant to pay the ~~sum~~ same contained, or made by, or in some writing subscribed by the Defendant.

If the jury believe from the evidence, that the items in plaintiff's account of 30th Sep. 1848 was

Refused for other persons or societies than plaintiff any parole promise ~~m~~ made after the creation of the indebtedness is not evidence & the jury ~~should find for the plaintiff~~ as to these two items must find for the Defendant unless they believe that his promise to pay the same was in writing signed by himself.

Refused If the jury believe from the evidence there was an agreement existing between plaintiff & defendant's ~~store~~ by which plaintiff's family was to get articles from defendant's store, that such articles were from time to time taken, that the articles in defendant's offset are articles of family use, defendant is not required to make strict proof of every article furnished unless the jury believe from the evidence there is reason to infer extortion or fraud on the part of the defendant.

If the jury believe from the evidence that the nursery belonged to ~~Hollen~~ Felton P. Watson and defendant was the agent in this city of ~~Hollen~~ Felton P. Watson they must find for the defendant as the item of 3d Sept. unless they find in writing other than the advertisement defendant agreed to pay for the same, or before insertion of the advertisement expresly sanctioned same.

Granted

Plaintiff asked for no instructions, and waived the item of the 5th Decem. 144 as not being proved. Defendant excepted to the action of the court for refusing the above instructions. The cause was then submitted to the jury who found a virdict for the plaintiff of $

Defendant then moved for a new trial in the following words.

Worden P. Penn Adm. of
Shadrack Penn dec. Plf.
vs.
Rinigrose D. Watson Deft.

In the Law commissioner's court of St. Louis County.
June 5th 1851.

And now at this day comes the Defendant in the above entitled cause and moves the court to grant him a new trial for the following reasons;

1st Because the virdict is against evidence.
2d Because the virdict is against the weight of evidence.
3d Because the virdict is against Law.

4 Because the court refused defendant instructions that should have been granted.

5th Because the Court excluded evidence for the defendant that ought to have been admitted, and permitted evidence to be introduced on the part of the plaintiff which ought to have been excluded.

A. P. & P. B. Gareschi.
Attys for Deft.

The Court having heard the motion overruled the same, and defendant excepted, and filed this his bill of exceptions in the cause and also filed his bond for an appeal.

Ino H. Watson
Law Commiss.
for St. Louis county.

Appeal Bond

Which appeal bond is in words and following. Know all men by these presents that we Ringrose D. Watson as principal and Ino Watson as security are indebted to Worden P. Penn in the sum of one hundred dollars for the payment whereff we bind ourselves our heirs executors and administrators jointly and severally firmly by these presents sealed with our seals and dated at Saint Louis this the 20th day of June 1857.

The condition of this obligation is such that whereas the above bounden Ringrose D. Watson has appealed from the judgment rendered against him and in favor of Worden P. Penn Adm. of Shadrack Penn Jr. deed.

In the Law Commissioner's court of the County of Saint Louis. for the sum of twenty six dollars and 19/100 together with the costs in said suit expended. Now appellant will pay all costs and damages that may be awarded against him occasioned by such appeal, and shall prosecute his appeal and shall perform such judgment as shall be given by the Supreme Court and such as the Supreme Court may direct the Law Commissioner's Court of the county of Saint Louis to give and if the judgment or any part thereof be affirmed that he will comply with. and perform the same so far as it may be affirmed and will pay all damages and costs which may be awarded against him by the Supreme Court, then this obligation to be void. Otherwise to remain in full force and effect.

Kingrose D. Watson (L.S.)
John Watson (L.S.)

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

I. Jno H. Watson Law Commissioner of St Louis County do certify the foregoing to be a true and perfect Transcript of the record and proceedings had in the case of Worden T. Penn Adm. of the estate of Shadrack Penn jr. decd. vs. Kingrose D. Watson. as the

same remains of record in my office.
In testimony whereof I have
hereto set my hand and affix
ed my official seal at my
office in the city & county
of Saint Louis on this the
15th day of August A.D.
1851.

Mo H Watson
The Law Commissioner
St. Louis county

39 ~~120~~

(7) March 3. 1852

Worden P. Penn adm.
of
Shadrack Penn
vs.
Ringrose D. Watson.

File

Filed Oct 9th 1851
Wm. B. Starke by Wm. S. Glanville
Clk. D.C.

Writ of error filed 6 April 1852 – Wm. S. Glanville Clerk

Com. fees $4.50 Pd. by Defts.
to H. U. Dedman.

(18)

Worden P. Penn administrator of Shadrack Penn Dec^d Plaintiff
vs
Ringrose D. Watson Defendant

In the supreme Court
Appeal from the Law Commissioner's Court of St. Louis County.

The Plaintiff in Error, defendant below by his attorneys comes and assigns for Error that on the trial of this cause the court below erred in the following particulars.

1st Because the court admitted the testimony of Worden P. Penn in favor of the Plaintiff

2nd Because the court excluded the books of original entry of the defendant as evidence offered as evidence in his favor

3rd because the court refused to grant the instructions asked for by the Defendant—

A. P. & P. B. Gareschi
attys for Plf. in Error
Deft. below.

120

Worden P. Penn adm^tor of Shadrack
Penn Dec^d
vs
Ringrose D. Watson

assignment of Errors

Filed 21. Oct 1851.
W. B. Starke clk

Worden P. Penn administrator of Shadrack Penn dec^d vs Ringrose D. Watson } Appeal from the Law Commissioner's Court of St. Louis County. In the Supreme Court.

Statement of the Case

This was a suit instituted by the Administrator of S. Penn dec^d in the Law Com^rs Court ~~against~~ to recover the amount alledged to be due on an old account for advertisements which had been published during the life time of the dec^d in the Missouri Reporter - the Defendant pleaded the statute of limitations against all those items which had accrued due more than five years before the bringing of the suit, and the question of limitations having been by agreement argued and determined before the trial was entered into, the court overruling the instruction asked with reference to the plea, to which Defendant excepted, by consent the Defendant filed an offset and waived proof ~~admitted~~ all the items of Plaintiffs account except two - on the trial the administrator was admitted by the court as a witness for the Estate to prove the two items disputed, to which the Defendant excepted - and Plaintiff having closed his case Defendant offered his original books of account as evidence to support his offset, having first proved that the books had been kept by a person other than himself - the court excluded the books as evidence to which the Defendant likewise excepted, as also to the refusal of the court to grant certain instructions asked for by Defendant, and thereupon took his appeal to this court.

A. P. & P. B. Gareschi
Attys for Pltff. in Error

Penn administrator of Penn
vs
R. D. Watson } Appeal from the Law Commissioners Court of St. Louis County.

For the reversal of the judgment in this case the counsel of the Plaintiff in error the defendant below, rely upon the following points

1st Warden P. Penn having been offered as a witness for the Plaintiff below was sworn upon his voir dire, when he testified that he is a son and one of the heirs of Shadrack Penn dec.d and that the Estate of Shadrack Penn is solvent. he is therefore a person for whose immediate benefit the ~~above~~ suit is prosecuted and should ~~therefore~~ have been excluded as a witness. see act concerning Practice in Courts of Justice of 24th Feb. 1849 Art. 25. sec. 2d

2nd The books of original entry of the Deft. proof having been made that they were kept by a person other than the defendant were ~~competent~~ admissible as evidence for defendant and were improperly excluded by the Court they were offered to prove the sale & delivery of goods and from the nature of the subject no better evidence was attainable. see 1st Greenleaf on Evi. page 137. Part 2d Chap. V. sec. 117 = also 1st Phillipps page 264. chap. 7. sec. 7

3rd The Plaintiff in error defendant below pleaded the statute of limitations against all those items of the Account of the Plaintiff below which had accrued due more than five years prior to the commencement of the suit, ~~and~~ upon the trial of the cause asked the court to instruct the jury that ~~upon~~ as to such items they must find for Defendant ~~with~~ which the court refused to do. by such refusal the counterred because 1st if this had been an action founded upon an open account for goods wares or merchandize or upon a store account it would have been barred after the lapse of two years. 2d not being ~~founded~~ upon such

an account the doctrine of mutual credits does not apply, unless there are items on both sides within the period of limitation 2nd Greenleaf 422. Part 4th Section 445. Now the only credit given to the Defendant in Plaintiffs account is a general one for sundries at different times during the period through which the account runs, (and another credit which will be presently noticed) it is submitted that this general credit given by the Plaintiff in which no items are particularized is hardly sufficient to save his account from the operation of the statute. And if this general credit does not save the account it is believed that the products delivered on the order of Warden P. Penn, a different person from the Plaintiff, the only other credit cannot have that effect.

A. P. & O. B. Zaeschi
Attys for Pltff. in Error

120

Worden P. Penn admtor of
S. Penn Decd
vs
Ringrose D. Watson

Statement & Brief –

Filed November 26th 1851
Wm. S. Glanville
Clerk

Worden P. Penn Adtor of Shadrack
Penn Decd Deft in Error
vs
Ringrose D. Watson Plaintiff in Error

Supreme Court
Error from
Law Commissioner's
Court of St. Louis County

And now at this day comes the Defendant in error Plaintiff below by his attorney and says there is no error in the judgment and proceedings below and prays the court that the said judgment be in all things affirmed.

Pierce C. Grace
Atty for Defendant
in Error

39

Worden P. Penn Adm^tor of the
Shadrach Penn Dec^d
vs
R. D. Watson

Sounder in Error

Filed 9th April 1852
Wm. G. Glanville, Clerk

Penn adm. vs Watson –

This was an action brought by the plaintiff Warden P. Penn as administrator of S. Penn Jr. deceased against Eugene D. Watson on an account for advertising and for subscription to the Missouri Republican, extending from January 1844 up to July 27. 1846 – for the sum of $62.41. On which account are credits for sundries at different times during the periods aforesaid $21.75 – Products per orders of W. P. Penn during August 1849 $12.10 making credits amount to $33.85 cents leaving a balance of $28.56 due the estate –

The defendant relies upon the Statute of limitations, & called by his counsel, upon the Court to allow him the benefit of that Statute and also his set off against the account – This set off consists of two orders from the plaintiff as administrator of the Estate of S. Penn Jr. dec. One is "for five dollars worth of fruit, vegetables "and other articles – which shall be credited upon your "account due the estate of Meadrach Penn Jr "deceased" – the order is dated August 16. 1849 – The other is dated August 27. 1849 – and requests the defendant "to let the bearer have such articles "as he may choose amounting to five or eight "dollars, for which he will receipt, and the "amount shall be credited on your account "due the estate of Meadrach Penn Jr. deceased" – and an account from March 1844 up to February 26 – 1845 for Queensware, &c amounting to $44.01 –

The Court refused to declare that the plaintiffs account was barred by the Statute of limitations – The Court also refused to permit the Books of the Accounts of the defendants to be read in evidence

as proof of the items in the account ~~contained in~~ of the set off —

Upon the trial, the plaintiff was introduced as a witness to prove ~~the~~ some of the items in the account against the defendant. He was first sworn on his voir dire, and stated he was a son of the deceased Shadrach Penn Sr. and that the Estate was solvent. The defendant then objected to him as a witness, his objection was overruled exceptions taken — The jury found for plaintiff — a motion was made for new trial overruled and exceptions filed — The defendant brings the case here by writ of Error —

The Court properly ~~overruled~~ refused to declare that the Statute of limitations barred the plaintiff right of action — Here were ~~the~~ mutual accounts — some of the items coming down to the period within the limitation — Here was a set off — expressly admitting, that the two first items ~~of the~~ thereof were to be credited on the account of the Estate against the defendant — these items bringing down his account within the ~~lim~~ period of the limitations. The Statute then was properly declared to have nothing to do with the case —

The Court also properly excluded the Books of Accounts of the defendant — He had made no case for their admission — the authorities

cited by the Counsel for the defendant do not support his view of this matter. The Clerks of the defendant were absent in a Sister State. No proof was offered by him to show, that the items of the account were charged at the time of the sale, or even to the time. See 1 Greenl. Ev. Sec. 117. Part 2.

The only remaining point is the admissibility of the plaintiff as a witness to support his action. On this point we think the Court erred. The XXV Art. of the Code of Practice of 1849. Sec 1 declares that "No person offered as a witness shall be excluded by reason, of his interest in the event of the action.

Sec. 2. The last section shall not apply to a party to the action; nor to any person for whose immediate benefit it is prosecuted or defended. Nor to any assignor of a thing in action, assigned for the purpose of making him a witness".

The witness here was the plaintiff, "a party to the suit". He was called to prove the account due to the estate of his deceased father, which was solvent, and consequently was called to increase the fund from which he was in law to receive his distributive share. He was expressly within the first clause of the second section above cited, he was "party to the action". He was also within the second clause. The suit was prosecuted for his benefit as well as the benefit of others. Under this Statute then he was clearly incompetent.

The Statute concerning administration Art. II. Sec. 24 page 76 Digest 1845

declares that "In all actions prosecuted or defended by or against any Executor or Administrator, he shall not be disqualified from being a witness, as to facts, occurring anterior to his qualification, on account of his being such Executor or Administrator. That is the bare ~~Character~~ office of administrator or Executor shall not disqualify him as a witness to such facts. Although he be a party to the suit. But when interest attaches to the ~~[illegible]~~ administrator or Executor, he is not ~~[illegible]~~ competent to be a witness. His office of Executor or Administrator does not disqualify him as a witness; but this office will not qualify him by rendering him competent, when he is ~~[illegible]~~ in the suit.

The Court therefore erred in admitting the Plaintiff to testify for himself in this case, on his own motion. ~~[illegible]~~ The other judges concurring, the judgment below is reversed and cause remanded for further proceedings in accordance with this opinion.

J. F. Ryland

Alexander Leitch

vs

Steam Boat [illegible] side of the W[illegible]

This was an action on a contract of affreightment from New

Compiled 39

Penn
vs
Watson

Opinion of the
Court by Ryland

Filed 3 May 1852
W. L. Glanville
Clerk