Ferrara, John vs. Beck, Joshua 1853 St. Louis 320/5
Beck, Johanna (Admin)

566/3

debt $844
horse
Ryland
reversed + remanded
North Market House
reference Link v. Vaughn
no proof given for special request

The State of Missouri, ss.

The State of Missouri, *To the Honorable the* Court of Common Pleas in and for Saint Louis County *in said State, GREETING:*

WHEREAS, In the record and proceedings in a certain cause lately pending in the Court of Common Pleas in and for the County of Saint Louis

wherein Johanna Beck administratrix of John Beck deceased was plaintiff and John Ferrara was defendant

in an action of manifest error hath intervened, to the great damage of the said defendant 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 in the City of Saint Louis, in the County of Saint Louis, in said State, on the third Monday in October next, so that our Judges of our Supreme Court, on inspecting the record and proceedings aforesaid, may cause to be further done therein, for correcting the error, what of right and according to law, ought to be done.

Witness, WILLIAM S. GLANVILLE, Clerk of our said Supreme Court, at office, in the City of Saint Louis, the Sixteenth day of September in the year of our Lord one thousand eight hundred and fifty-three.

Wm S. Glanville,
CLERK.

State of Missouri
County of St Louis } ss. I Charles W Hicks
Clerk of the St Louis
Court of Common Pleas in and for
said County in obedience to the command
of the within writ herewith furnish a
true and complete transcript of the
record and proceedings in the case
therein named as the same remain in
my office.

In Testimony whereof I
hereto set my hand and
affix the seal of said
Court at office in the
City of St Louis this
1st day of October 1853

C W Hicks clerk

State of Missouri } S.S.
County of St Louis } Be it remembered that heretofore, to wit, on the 3rd day of September, 1852, there was filed, in the Office of the Clerk of the Saint Louis Court of Common Pleas, within and for the County of Saint Louis a Petition in the words and figures as follows to wit.

In the St Louis, Court of Common Pleas.

September, Term, 1852. St Louis, County.

Johanna Beck, administratrix of the Estate of John Beck deceased Pltff

against

John Ferrara Defendant.

Plaintiff, States that Defendant is indebted to the Estate of John Beck deceased, in the sum of eight hundred and forty four dollars. being for the board of Defendant, furnished by said John Beck, during his lifetime for the Defendant, and at his request, from the 18 day of December, A.D. 1849. to the 5th day of January, 1852, — being 24½ months, at the price and sum of eight dollars per month, also for the use and hire of a certain ~~horse~~ horse waggon and harness, of and belonging to the said John Beck deceased from January 5th 1850, to March 5th 1852, being 2 years & 2 months, at the hire and charge of five dollars per month, and for a certain State in the Merits Market, house known as State No 20, which said State No 20, was purchased by said John Beck, from one Kazens for the sum of five hundred dollars. for him the said Defendant, and at his special instance and request, and which said sum of five hundred dollars. the price of said State paid by said John Beck, as aforesaid he said Defendant promised to pay said John Beck, but which he has failed so to do,

2nd

The particulars of all which, and the costs thereon will more fully appear, by an account hereto annexed and made part of this Petition,

Plaintiff further states, that on the 13th day of January A.D. 1853, letters of administration, were granted to her by the Honorable Probate Court of St Louis, County as administratrix of the Estate of said John Beck, deceased which said letters of administration are herewith filed,

Wherefore, Plaintiff, as such administratrix as aforesaid demands judgment, against said Defendant, for the said sum of Eight hundred, and forty four dollars, being the balance due said Estate.

Henry H. Hart
Atty for Pltff

State of Missouri } ss
County of St Louis } Johanna Beck, Plaintiff makes oath and says, that he believes, the above Petition, and the matters as therein stated, are true,

Johanna Beck

Sworn to & subscribed before me this 3rd day of September, A.D. 1853.

Peter H. Johnstone Justice

Upon which issued the following Summons to wit.

The State of Missouri

To the Sheriff of St Louis, County, Greeting,

We command you to summon, John Ferrara to appear before the Judge of our St Louis Court of Common Pleas, on the first day of the next term thereof, to be held at the City of St Louis, within and for the County of St Louis, on the third Monday of September inst. then and there to answer the complaint of Johanna Beck, administratrix of the Estate of John Beck, deceased, as set forth in the annexed Petition and have you then there this writ,

The following account referred to and made part of the Petition.

John Herrara, To Johiamah Beck administratrix of the Estate of John Beck deceased Dr

To Boarding for himself from December 18th 1849 to January 5th " 1852 say 24½ months, at $5 per m.	$196.00
To use and enjoyment of horse, waggon and harness belonging to said John Beck, deceased from Jany 5th " 1850, to March 5th " 1852, say 2 years and 2 months at $5, per month.	$170.00
To Slave No 20, in the month market purchased by said John Beck deceased for him and at him request, from one Hagens, and for which said Beck, paid $500.00 and which he promised to pay	500.00
	$866.00

1849. Cr

Decr 1850 By Ballance due him	$ 8.00	
April 12 " Cash for Becks brother	12.00	
Sept 11th " do	2.00	22.00
		$844.00

Seal

Witness, Philip Tippett Clerk of our Said Court, with the Seal thereof hereto affixed, at Office in the City of St Louis, this 30° day of September in the year of our Lord, one thousand Eight hundred and fifty-two, P. Tippett Clerk

Upon which is the following Sheriffs return, to wit.

Sheriffs return, a copy

Executed this writ, in the County of St Louis, on the 4 day of September 1852, by delivering of the within writ, & Petition, as furnished by the Clerk to John Ferrara, personally.

Jno M. Winer
Sheriff.

Ans

Ans of Defendant filed Sept 21st 1852, as follows, to wit.

In the St Louis Court of Common Pleas, Sept. 2, 1852.

Defendant for answer to Plaintiffs Petition, States that he is not indebted to the Estate of John Beck deceased, in the Sum of Eight hundred, and forty four dollars, or any other Sum as Stated, and set forth, in Plaintiffs Petition,

And for a further answer, to Said Petition, in relation to the board, alleaged to have been furnished Deft. by Said John Beck, in his lifetime, Deft admits, that he boarded, with Said Beck about the length of time, Stated in Said Petition, but denies that it was, at the price and Sum of Eight dollars per month, and Says that Such board was furnished, Deft under, an agreement, between Deft, and Said John Beck, which Said agreement is hereinafter set forth,

4 Deft further says that Plaintiff ought not to recover against him, for said board, because he says, that heretofore, to wit., at the June Term of the Probate Court of St Louis County, this Deft exhibited an account, against the Estate of John Beck deceased, wherein he claimed a balance due him from said Estate, of $ 298,07, that on the 16 day of June, in that same term, the cause came on to be heard, before the Judge of said Court, the said Plaintiff being then & there present in. by her attorney file as a set off, to said account of Deff, the very same identical account for board that is, mentioned and set forth in the Petition in this cause, and the said Plaintiff did then and there cause witnesses, to be examined in support of the said claim, and did submit the same to the said Court, for judgement, and such proceedings were thereupon had, in the said Probate Court, that afterwards to wit, on the 16 day of June of that same term the said Defendant, by the consideration and judgement of the said Court, recovered against the Estate of said John Beck, deceased the sum of $ 298,07, as by the record and proceedings thereof, still remaining in the said Probate Court (A certified copy of which is herewith filed marked, Schedule, A.). more fully, and at large appears, which said judgement, still, remains in full force, and effect, not in the least, reversed, satisfied, or made void,
Wherefore, the said Defendant says, that the said claim for board, having been once fully adjudicated, upon, by a Court of competent jurisdiction at the instance of the said Plaintiff,

5th " the Said Plaintiff ought not to have, or maintain her aforesaid action, thereof against Deft. in this Cont.

And for a further answer to Said Petition in relation to the hire of a certain horse wagon & harness, belonging to Said John Beck deceased Deft denies that he hired them from the 05th Jann=ary, 1850. to March 5th 1852, at the hire and charge of five dollars per month, or for any other time, or at any other hire or charge,
And Says, that he never hired a horse wagon & harness of Pltff, for any time or at any price, whatever
And Deft further Says, that he made a verbal contr=act, with Said John Beck in his lifetime wherein the Said John Beck agreed to board Deft, and occasionally to carry his Defts Pork to Market in consideration that Deft would assist him Said Beck in preparing his Meat for Market, and occasionally assist him Said Beck, in selling the Same in Market. And Deft Says that he did board with Said Beck, under Such agreement and which is the Same board charged in Pltffs Petition,
And Deft Says that Said Beck, did occasionally carry Small quantities of Pork, to Market for Deft under Said agreement, in his Said Becks wagon and which is the only use Deft ever had of Said Becks horse wagon and harness,
And Deft Says that he did assist Said Beck in preparing his Meat for Market & in selling the Same in Market according to Said agreement And that the Services so rendered by Deft to Said Beck greatly exceed, in value the value of Defts board at Becks, and the transporting of Defts Pork to Market, by Said Beck,

6th And that Said Beck in his lifetime, never made or claimed to have, any charge against Deft. for board, or for the hire of his horse waggon & harness,

And Deft further answering, said Petition, expressly, and unequivocally denies, that Said John Beck ever purchased from one Hagens a certain Stall, in the North Market house known as Stall No 90, for the sum of five hundred dollars, or any other sum, for him the Said Defendant, and at his especial instance and request, Defendant denies, that he ever requested, Said Beck to buy Said Stall for him Said Deft. and Defendant, denies that he ever promised to pay Said Beck the sum of five hundred dollars, or any other sum for Said Stall,

And Deft further states that if Said Beck did purchase Said Stall, it was for his own use & Deft had no knowledge of or interest in the Same,

And Defendant further states that if Said Beck did purchase Said Stall, as in Said Petition, charges Said purchase, and transfer is and was illegal, void and of no effect,

Because of an ordinance in relation to Markets passed by the City Council, of the City of St Louis, numbered 2411, and approved April 21 1859, wherein it is provided among other things that the Stalls, in Said North Market shall not be transferable,

And Deft further states, that no such contract promise or agreement, in relation to Said Stall, as is set-forth in Said Petition or any memorandum or note thereof, in writing was ever signed, by this Deft, or any other person by him

7th thereto, lawfully authorised.

Wherefore Deft says if any such agreement was made it was and is illegal & void, & is within the Statue of frauds & perjuries and Deft is not bound by the same,

Wherefore said Defendant prays Judgement and his costs. Saml. H. Gardner, Atty for Deft.

State of Missouri } SS
County of St Louis } John Ferrara Defendant being duly sworn, on his oath says, he believes, the foregoing answer, and the matters therein as stated are true.

Subscribed & sworn to before John Ferrara
me this 20 day of September
A.D. 1853, Jacob D. Kurlbaum
Notary Public for and within said County and State,

Trial And at a Court of Common Pleas held in & for the City & County of St Louis, on the 2nd day of May 1853, the following proceedings were had to wit

Now at this day come the parties by these attornies, & thereupon came also a jury to wit, Francis Dolan R. J. Graham James Henancks Jr Joseph Hodgman, William J. Hammond Charles G Hamilton John Hutchison J. T. Handley, John Brotherton & S. S. Sperring, ten good and lawful men, who being duly elected tried and sworn, by consent of parties, well and truly to try the issue joined between the parties, aforesaid upon these Oaths aforesaid, the trial progressed and being unfinished, at the hour of the ~~judgement~~ adjournment, the same is laid over till to morrow,

18

Against a Court held as aforesaid on the 5th May, the following proceedings were had to wit, Now at this day come the parties again by their attorneys, and the Jury empannelled and sworn herein also come, the trial proceeded and being finished the jurors aforesaid, on their oaths aforesaid, do find in favor of the Plaintiff and assess her damages at the sum of five hundred, and ninety one dollars.

It is therefore, considered by the Court that said Plaintiff recover of the Defendant the damages aforesaid in form aforesaid by the jurors assessed and also her costs herein expended, and have thereof execution,

Again at a Court held as aforesaid on the 13 day of May 1853. the following proceedings were had to wit,

Leave to file affid. and reasons for new trial

On motion of Defendant leave is given him to file an affidavit, and additional reasons in support of his motion for a new trial herein, which are filed.

affid. and reasons for New trial,

which are as follows. to wit,

In the Court of Common Pleas of St Louis County.

And now comes the said Defendant by his attorneys, and by leave of the Court filed the annexed affidavit in support of his motion for a new trial, and says that a new trial ought to be granted him, because since the last trial of this cause, he has discovered new testimony material and necessary for his defence of this action, and for the other reasons and matters, set forth in said affidavit.

Gardner, & Bay, Attys. for Deft,

9 John Ferrara, Defendant, being duly sworn, on his oath, states, that on the 12 day of May, inst he had a conversation, with one Henry Peters, that said Peters informed Defendant that, he had held a conversation with said John Beck, a short time before his death, that said Beck told him, (Peters) that he had transfered his stall to Ferrara & that he was still owing said Ferrara, a small ballance, and said Defendant, further says that from conversations he, he has had, with one Joseph Stengel, and one Jacob Bittner, he believes he will be able to prove by said Stengel, & Bittner, if a new trial is granted him, that at the time said stall was transfered by Beck to Defendant, that said Beck was indebted to Defendant, more than the price of said stall, and that said stall was transfered to Deft, as part payment of Becks indebtedness to him, and Defendant further says, that said Henry Peters, lives in the State of Illinois, and Defendant did not know until the said 12 day of May that said Peters had any knowledge of Defts transactions with the deceased Beck or that he could prove the facts above stated,

Defendant further says that he is advised by Counsel, and verily believes that the testimony of the above named witnesses is material & necessary to his defence, and that he has a good and substantial defence, on the merits to the whole of Plaintiffs demand against him, that the testimony of the above named witnesses, can be procured at the next term of this Court, if a new trial is granted, Defendant further states that at the last trial of this case, he expected the Plaintiff would rely strictly, upon the averments, in the Petition,

10 that Beck, had purchased the Stall of Hagan for Deft, & at Defts request, and that he was surprised by Plaintiffs being allowed, to prove that Beck had sold Deft the Stall, on his own account,

And Deponent verily believes, that if a new trial is granted him, he will be enable to prove not only by the above named witnesses, but by others, that at the time the Stall was transfered, by Beck to Deft, said Beck was indebted to Defendant more than the price of said Stall, & that the Stall was transfered to Deft, as part payment of said indebtedness, and that nothing is now due Pff for said Stall.

Deponent further says, that this application for a new trial, is not made for vexation or delay but because the verdict of the jury is unjust and oppressive, this Deponent further states, that he used all diligence in his power, to obtain the witnesses necessary for his defence, at the last trial of this cause, and that he never knew until yesterday that said Peters had any knowledge of the matters, in controversy in this Suit,

John Ferrera

Subscribed & Sworn to before me
this 13 day of May, A.D. 1853,

John W. Colvin Law Com
By M. Williams, Deputy,

Motion for new trial overruled (herein

Again, at a Court held for the City & County of St Louis, on the 17 day of May, 1853, the following proceedings, were had to wit,

Now at this day come again the parties by their attorneys, and the Defendants motion for a new trial being heard, and by the Court fully understood, it is ordered that the same be overruled.

11 Bill of Exceptions filed 30 day of May, 1853, as follows, to wit, Court of Common Pleas,

April Term, 1853,

Bill of Exceptions

Be it remembered, that on the trial of the above cause the Plaintiff to maintain the issue, on his part, introduced, John Haas, as a witness who stated that he was acquainted, with Beck & Ferrara they butchered together, Deft boarded with Beck board, worth from $5. to $6 per month, they hauled these meat together about 3 years, Beck died about the 1st of January 1853, I worked for Beck commenced in June 1850, Deft was with him before me, I worked last 3 or 4 months for Beck, knew nothing of the business transactions of Beck, and Deft before or after I left, Deft. helped Beck, hauled Becks, & his own meat to market, in Becks waggon, Beck did much the largest business they helped each other have seen Deft attending Stall for Beck, he Beck purchased Stall No 20 from Hargans, and Ferrara got it from Beck,

John Haas.

hauled

I never saw Beck sell any meat, at Stall No 20, it was occupied all the time after Beck got it from Hargans by the Defendant, who was sole in Pork business, Beck dealt in beef rused Zollers Stall and then bought one from a man by name of Brooks which he occupied,

Defendant used Becks horse & waggon to haul his (Defts) meat, to market, Deft, had no horse & waggon, of his own.

Mr Forck

Mr Forck stated, that Deft boarded with Beck as long as he was in partnership with him, I mean partnership, in killing hogs, board worth from $5. to $6 per month,

12 Beck bought Stall No 20, and afterwards sold it, heard Defendant say sometime afterwards, that he bought Stall No 20 from Beck,
Deft used Becks waggon as long as he was in company with him, Beck said he bought Stall No 20 from Hargins, Beck & Deft. bought, & killed hogs together, Deft helped Beck, Witness is a Brother of Mrs Beck, lived during the time of these transaction in Illinois & still live in Illinois, but visit St Louis about once in 2 weeks,
Beck never occupied Stall No 20 it was allways used by Deft. after Pfff bought it,

Hargins Mr Hargins, States, I owned Stall No 20, I sold it to Beck, & he paid me for the Stall and the good will of the customers $500, the notes here shown me were give by Beck, for part of the purchase money, they bear date 9. August. 1850, I sold Stall No 20 to Beck some little time before the 9th August 1850
Ferrera told me he had bought the Stall from Pfff this was about a year after he purchased of me for I think he said $475, or $480,
there was a writing between Beck & myself by which I conveyed to Beck all my right & interest in the Stall, Saw Deft sell meat at the Stall in 1851
Beck had no Stall of his own at the time, he purchased of me, he rented Stall No 23.
I was very little in the market after I sold, to Beck No 20,

Shufer Mr Shufer, I endorsed these notes,
Notes here read to the Jury in evidence — Notes

Notes given for purchase of Stall No 20 by Beck from Hargin, Beck bought Stall some time before notes were given, Saw Deft at the Stall after I endorsed the notes Beck the same year bought another Stall, in same market,

13 and I also endorsed the notes, for that purchase, he
Defts Beck paid the notes,
Testimony The Defendant introduced the following evidence
Mr Zoller I ~~ascertained~~ returned from Europe
29th August 1850, Beck then told me, that he
had a short time before, bought Stall No 20 from
Hargins, Beck sold meat, at Stall No 20 for several
months, after he bought of Hargins, after this I
went to Beck to get money, & he Beck said he wanted
to sell the Stall to Ferrera, (Deft), and that if he
could sell to him there would be as little coming to him, that he owed
Ferrera (Deft, 375, dollars, this conversation
took place between 4 & 5 months, after my return
from Europe, went to Europe about 6th April 1850
I know that Beck was doing business, at Stall 20
in September, 1850, have seen him sell meat there at that time
Myer Mr Myer had a conversation with Beck, about
boarders, told him he charged so much for his meat
I could make nothing by boarding, he replied that
he thought I could at $2. per week,
I then said he could keep them for less than I could
he said he kept no boarders. I asked him if
John Ferrera did not board with him, he replied
no, that he did not charge John anything for his
board, as John frequently helped him & worked
for him,
I always bought my meat from Beck
when he was living, never sold meat at Stall No 20, he
occupied Stall of Zoller, when Zoller was in
Europe & after that he occupied the Stall opposite
that, but never sold meat at Stall No 20, that
Ferrera sold at,
Dixon Mr Dixon,
Beck in 1851, think it was in the Summer

14 told me, that he made no charge against John Ferrera, for boarding, or for the use of his horse & waggon, as John helped him in his business and John was a good man to attend to business, when he was absent John attended to all his business frequently helped him drive cattle, he also said he owed John some money.

John sometimes brought meat to my house for Beck, have seen John Ferrera drive cattle for Beck. I was a friend of Beck frequently conversed with him about his business.

I kept stall opposite stall No 20, for seven years Pfff had rented ½ of the stall. Deft was occupying to a man, who remained there with Ferrera few months, when he left, & Ferrera then occupied it alone, as I understood he had bought it of Beck

Petrie Mr Petrie I rented half of stall No 20 from Beck from the 1st of January, Eighteen hundred & fifty one, Defendant, occupied the other half I kept it 3 or 4 months, I paid rent to John Beck paid no rent to any other person, the last time I paid rent, Beck said the next time I paid any I must pay it to John Ferrera as he had sold him the stall. So I left & Ferrera occupied it alone.

On cross Examination witness said, the use of Becks horse & waggon to carry Defts meat to market, and for the other purposes it was used by Deft, would be worth from three to four dollars per month,

Hattie Mr Hattie, saw Beck, selling meat at stall No 20 in the fall of 1850. saw him sell there for some time, Hargin sold meat there before him,

15 Beck was the first one who sold after Hargin donot recollect precisely the time. Beck purchased of Hargin.

Reale Mr Reale, worked for Beck, and bought meat of him, had a conversation with him some two or three weeks before his death, in which he told me, he wanted to borrow some money from me, he said that John Ferrara, (Deft) was to pay him something between twenty and fifty dollars, which he owed on that stall, I let him have $18, which he afterwards paid back, and said he got it from Mr Shaefer

The Defendant also introduced the following record from the Probate Court, certified by the Judge of said Court, which is in the words & figures, following to wit.

Record of Probate Court

State of Missouri } S.S.
County of Saint Louis } At a term of the Probate Court begun and held, at the City of Saint Louis, within and for the County of Saint Louis, in the State of Missouri on the first Monday of June, being the seventh day of said month, in the year of our Lord, one thousand Eight hundred and fifty two, were present, Peter Ferguson Judge of said Court, William F. Ferguson Clerk, and David T. McCullough Esquire Marshall of the County of Saint Louis,

Court adjourned from day to day, until Saturday Morning 26 June 1852,

Saturday 26 June 1852, Court met pursuant to adjournment, present same Judge.

John Ferrara

vs.

Johanna Beck administratrix of John T Beck deceased, } $398,07 cents 5th class

16 Johanna Beck administratrix of John J. Beck deceased, and having waived the service of notice, of notice required by Law, on the demand of John Ferrara against the Estate of said deceased formerly, on an account for balance, due on money loaned and advances and purchases of hogs made in company, with deceased, whereupon, the same is exhibited for allowance, and neither party requiring a jury, the court examine and allow said demand, for the sum of two hundred and twenty eight dollars, seven cents, in favor of said Claimant, against said Estate, and order the same to be filed in the fifth class,

And the account aforesaid is in the words and figures following to wit.

Settlement between John T Beck (deceased) and John Ferrara, having bought hogs in Company and paid as stated hereafter

Aug 1857. 11	For a lot of Hogs and paid by Ferrara $64.65 (14) one ditto and paid by Ferrara $20.50.	$85.15
14th	Not other one and paid in Company $8.90, (20th) a lot of Hogs bought from Ashbrook & paid in Company $106.00	114.90
23d	One lot of Hogs and paid in Company $40.15, (25th) One lot ditto paid in Company $39.10.	79.25
26th	One lot ditto paid in Company $31 (27 & 28) 2 lots ditto paid in Company 34.35 54.50	119.85
Sept 2d	For one lot of Hogs paid in Company $10.10 (4th) One lot ditto paid by Ferrara $26.30	36.40
6th & 10th	Two lots ditto paid in Company $33.80 57.25 (14th) 2 Hogs paid by Ferrara $5.00	76.05
16th	For one lot of Hogs paid by Ferrara $46.40 (19th) 1 ditto paid in Company $89.00	135.40
25th	One ditto paid to wit by Ferrara $35.00 and by John T Beck $73.20	108.20
29th	One ditto paid in Company $42.00 (Octbr 2d) one ditto paid by Joh T Beck $31.	73.00
Octbr 4th	One ditto paid by John T Beck $40 (6th) One ditto paid by Ferrara $22.80	62.80
15th	One ditto paid by Ferrara $16 (16th) One ditto paid by Ferrara $65.40	81.40
20	one ditto paid by Ferrara $24.95. (21) One ditto paid by Ferrara $38.40	63.35
24th	One ditto paid by Ferrara $40.00 (25) One ditto from Ashbrook and paid by Ferrara $130.00	170.00
Novb 1st	One ditto paid in Company $120 (6th) One ditto paid in Company $35.00	155.00
11th	One ditto paid in Company $61.10 (13th) One ditto paid in Company $91.35	152.45
15th	One ditto paid by Ferrara $21.30 (19th & 20) two lots paid in Company $26.60 48.20	96.10
25th & 26th	Two ditto paid in Company $26.42 25.00 (27) for one lot paid by Ferrara $13.94	65.36
Decb 27th	2 Hogs paid in Company	244.00
	Settlement Total Amt	1918.66

17th From the above total amount is paid in company $1203.82
Dito Dito by John Beck paid 144.20
Dito Dito by John Ferrara paid 570.64
making the above total amount $1918.66
John T. Beck Debtor
To one half of the above total amount of $1918.66 959.33
John T. Beck Creditor
By one half of the above amt paid in Company $601.91
the amount paid by him above 144.20 746.11
John T. Beck's Balance as Debtor 213.22
John Ferrara Creditor
By one half of $1203.82 the amount paid in Company $601.91
" the amount paid by him alone, 570.64
$1172.55
John Ferrara Debtor,
To one half of the total amount, of $1918.66 or, 959.33
John Ferrara's balance as creditor. $213.22
List of John T Becks alone payments,
1851. Septbr 25, $73.20 Octbr 2 $31.00 Octbr 4. $40.00 total $144.20
List of John Ferrara alone payments, Total
1851 Aug 11 $64.65 Augt 14 $20.50. Fbre 4 $26.30 $111.45
Septbr 14, $5.00 Fbre 16. $46.40 Septbr 25, 35.00 86.40
Octbr 10 22.80 Octbr 15 16.00 Octbr 16 65.40 104.20
20 24.95 21 38.40 24 40.00 103.35
25 130.00 Mch 15 21.30 Mch 27 13.94 165.24
S Louis Co Mo, February 14th 1852. Total $570.64

The Estate of John T Beck deceased to John Ferrara, Debtor
1851
Aug 1, To cash paid to Charles Zoller, for Beck $18.85
" 24 Cash loaned to John T Beck 50.00
Octbr 10 Cash dito dito 20.00
Decbr 30 to Cash dito dito 10.00
$98.85

18 John T. Beck deceased Executor
Augt 8
By Cash received on the Zollers payment $14.00, $14.00
Ballance 84.85

John T. Beck Debtor.

Decbr 24,
To Ballance of the above Settlement, by buying hogs, or Company $215.22
John T Beck's debt in Total $298.07
S. Louis, Co Mo, February 14, 1852.
Filed 10 June, 1852, Peter Ferguson Judge of Probate,
account or offsett
Ferrara Dr To the Estate of John T Beck deceased
To Boarding from December 1849, to December, 1851,
being 24 months at the rate of 8 dollars per month, $192.00
To hogs Slaughtered by Mr Beck
Filed 21 June 1852, Peter Ferguson Judge of Probate
State of Missouri } SS
County of S Louis } I William F Ferguson
Clerk of the Probate Court of the
County of Saint Louis, in the State of Missouri, certify
that the foregoing is a true copy of the Judgment, in
favour of John Ferrara against the Estate of John T.
Beck deceased, as the same now remains amongst the
Records of said Probate Court, and a true copy of the
account on which said allowance was made, and
a true copy of an account in offsett, to the same
as the same now severally remains on file in the office
of the Judge of Probate of the County of St Louis,
Seal
In testimony whereof I hereto set
my hand and affix the seal of the
Probate Court of the County of Saint Louis at
Office in said County this Sixth day of September in the
year of our Lord one thousand Eight hundred and fifty
two,
William F Ferguson Clerk

19 Bill of Exceptions continued

The above is all the evidence given in the case.

And be it further remembered, that on said trial the Defendant objected to the introduction of any evidence going to show a sale of Stall No 20, from Beck to Defendant, which objection was overruled, and the evidence permitted to go to the Jury, and to the opinion of the Court in overruling said objection, and permitting such evidence, to go to the Jury. the Defendant at the time excepted,

And be it further remembered, that on the trial of said cause, and before the same, was submitted to the Jury, the Defendant asked the Court to instruct the Jury as follows

Instr asked by Deft & refused

The Deft moves the Court to instruct the Jury as follows

That the Plaintiff is not entitled to recover upon the first item in her account, for boarding the Same having been previously adjudicated, by the Probate Court,

2d that if the Jury believe from the evidence, that there was an understanding between Beck, in his life time and Defendant that Beck was not to charge Deft for his board, and the use of the horse & waggon in consideration of Services which the Deft rendered, him and was rendering him, then the Plaintiff is not entitled, to recover anything for the Same,

3rd that if the Jury believe from the evidence, that Beck in his life time purchased Stall No 20 from Hogan on his own account, and afterwards sold the Same to Defendant, then the Plaintiff, cannot recover for said Stall, in this form of Action,

That to entitle the Plaintiff, to recover, on the third item of the account, it is incumbent upon her to show that Beck in his lifetime, purchased Slave etc 38, of Hogan for Defendant and at the request of the Defendant, and paid the money out at the request of the Defendant, and not in his own right and for his own benefit,

5th

That if the Jury believe from the evidence, that the purchase of Slave etc 38 by Beck in his lifetime, from Hogan conferred no right upon Defendant, to use the same, but that Defendant only acquired such right by virtue of a sale from Beck to him, then the Plaintiff cannot recover, for said Slave in this action,

6th

If the Jury believe from the evidence, that Hogan conveyed his interest in Slave etc 38, to Beck by an instrument in writing,
they are instructed to disregard all verbal testimony, in regard to the purchase of said Slave by Beck and the price agreed to be paid therefor,

Bill of Exceptions continued

Bill of Exceptions

which the Court refused to do, and to the opinion of the Court, in so doing said Deft at the time excepted,

And be it further remembered, that the Court on its own motion gave the following instruction; in lieu of those asked for, and that the Deft at the time objected to and excepted to the opinion of the Court, in giving the, instruction which instructions so given and objected to are in the words and figures following,

21 Instruc given by Court

The Jury are instructed, that as to the item for board, the transcript of the Record of the Probate Court, offered in evidence, is conclusive against the Plaintiffs right, to recover in this Suit,

2nd If the Jury believe from the evidence that the Defendant used the horse as charged in the Petition, then the Plaintiff is intitled to recover a reasonable compensation for said use unless the same was used in an agreement, with Beck that Deft, should have the use thereof, for the services rendered by said Deft. to Beck, and that Deft rendered the services, agreed upon as compensation for the use of said horse &c

3rd

As to the third item, the purchase of Stall No 20, or of the right to use the same, if the Jury believe from the evidence, that the same was purchased by Beck of Hogan, for the Defendant, or that Beck bought the same of Hogan and then resold the same, to the Defendant, then the Plaintiff, has a right to recover, therefor, the value thereof, or the price agreed, unless the same has been paid for by the Defendant, and if a part only of the price has been paid by the Defendant, then only the Ballance due,

4th

The admission of Defendant, as to what he was to pay Plaintiff, for the use of said Stall, is competent evidence, before the Jury as are also the admissions of Beck, as to matters in controversy,

Bill of Exceptions continued

22 And be it further remembered, that Defendant moved the Court, for a new trial which motion, is in the words and figures following, to wit,

Motion & reasons for new trial

Said motion filed May 4th 1853.

In the Court of Common Pleas, of St Louis County,

And now at this day comes the said Defendant and moves the Court to set aside, the verdict & Judgement in this cause, and grant him a new trial for the reasons following to wit,

1st Because on the trial the Court permitted illegal improper & irrelevant testimony, to be introduced on the part of the Plaintiff

2nd Because the Court refused to give proper & legal instructions, asked by Defendants Counsel

3rd Because the Court on its own motion gave improper and illegal instructions

4th Because the verdict of the Jury was excessive

5th Because said verdict was against the law and the evidence and against the weight of Evidence,

6th Because said verdict was against the instructions of the Court,

7th Because the second instruction given by the Court was calculated to mislead the Jury and,

8th Because said 2nd instruction did mislead the Jury.

Gardner & Bay.
Attys for Deft.

Bill of Exceptns, Concluded

Bill of Exceptions continued,

And which motion was by the Court overruled and to the opinion of the Court, in overruling

Said Motion, Said Deft excepts, and tenders to the Court, this his Bill of Exceptions, & prays that the same may be signed, sealed & made a part of the Record, in said cause which is accordingly done,

Samuel, Treat, Judge. Seal.

State of Missouri } S.S.
County of St Louis } I, Charles, W. Hicks Clerk of the Saint Louis Court of Common Pleas, within and for the County aforesaid, do certify the above and foregoing to be a true and complete record of the proceedings had in the case of Johanna, Beck, administratrix of the Estate of John, J Beck, deceased, against, John Ferrara, as the same now remains of Record in my Office,

In testimony whereof I have hereto set my hand, and affixed the Seal of said Court at Office in the City of St Louis, this 17. day of September in the year of our Lord one thousand Eight hundred, & fifty three.

Chas. W. Hicks Clerk

Index

Petition	1st
Summons	2nd
Sheffs return	3rd
Ans	3rd
Trial	7
Leave to file aff & add reasons for new trial	8
Aff & add reasons for new trial	8

221	Motion for New trial overruled	10
	Bill of Exceptions	11
	Pleff's testimony John Haas	11
	" " Mr Forreck	11
	" " " Hargins	12
	" " " Shufer	12
	Defts "	15
	" " " Myer	15
	" " " Dixon	15
	" " " Petrie	14
	" " " Hartle	14
	" " " Reedle	15
	" " Record of Probate Court	15
	Bill of Exceptions cont	19
	Instruction asked by Deft & refused	19
	" given " Court	21
	Bill of Exceptions continued	22
	Motion & reasons for New trial	22
	Bill of Exceptions concluded	22

(3)

October. T. 1853

Johanna Beck

admr of John Beck

against { Trans=
=cript

John Ferrara

Recd 5th October 1853
W. J. Glanville
Clerk

Ex

$8.75 pr by atty Gardner

Johanna Beck admrx of John Beck deceased vs John Ferrara

In Supreme Court October Term 1853

Statement of Case

At the September Term of the St Louis Court of Common Pleas John Becks administratrix commenced this action against Ferrara upon an account of which the following is a copy

John Ferrara Co Johanna Beck administratrix of the Estate of John Beck deceased Dr

To Boarding for yourself from Dec 18th 1849 to Jany 5th 1852 Say 24 mo at $8.00 per mo	$ 196.00
To Use & Enjoyment of Horse Waggon & Harness belonging to Said John Beck deceased from Jany 5th 1850 to March 5th 1852 Say 2 Yrs & 2 months at $5.00 per mo	170.00
To Stall No 20 in the North Market purchased by Said John Beck deceased for you and at your request from One Hagens and for which Said Beck paid $500.00 and which you promised to pay	500.00
	$866.00

1849 Cr

Dec	By Balance due you	$8.00	8.00
1850 Aril 12	" Cash for Becks brother	12,00	
Sept 10	" " " " "	2,00	22,00
			844,00

The Petition States that Stall No 20 in the North Market was purchased by Said

John Beck from one Hagens for the Sum for the Sum of Five hundred dollars for him the said defendant and at his Especial instance and request and which said Sum of Five hundred dollars the price of said Stall paid by said John Beck as aforesaid he said Deft promised to pay said John Beck". And Claims a Balance due of $844.00.

Defendant filed his Answer at the return term denying any indebtedness whatever to Plff. And pleaded Specially that the item in relation to board had already been adjudicated upon, and filed a transcript from the Probate court of St Louis County in support of said plea. Defendant also denied that he ever hired a horse Waggon & harness as charged in the petition for any time or at any price But admitted that he occasionally had the use of John Becks horse & Wagon to carry his pork to Market, and that he also boarded with said Beck. And Deft claimed in his Answer that he had made a verbal agreement with said John Beck in his lifetime, to the effect that in consideration of Beck boarding Deft & carrying his pork to Market in his Becks Waggon Defendant would assist Beck

in preparing his (Beeks) meat for Market and in selling it in Market. and that the only use Defendant Ever had of said Horse & waggon was under said agreement.

In relation to the third item in Plffs account Defendant Expressly denied that said John Beck ever purchased from one Hagens a certain Stall in the North Market House known as Stall No 20 for the sum of five hundred dollars or any other sum for him the said Defendant and at his Especial instance and request or that he Ever requested said Beck to buy said Stall for him or that he Ever promised to pay said Beck the sum of $500. or any other sum for said Stall. as charged in the petition. And Deft charged that if said Beck did buy said Stall it was for his own use and that Deft had no knowledge of or interest in such purchase And also that any transfer of said Stall would be illegal & void by reason of an Ordinance in relation to Markets passed by the City Council of the City of St Louis numbered 2411 and approved April 1st 1850 wherein it is provided among other things that the Stalls in said North Market should not be transferable,

This case came on for trial before
said Court & a jury on the 2nd day
of May AD 1853
John Haas & Mr Fornek Plffs Witnesses
testified that Deft boarded with Beck and
that they (Beck & Deft) butchered together
that Deft helped Beck haul his meat
to Market and also hauled his own
meat with it in the same Waggon. Beck
did much the largest business — they helped
each other. Deft attended Beck Stall for
him. Board was worth $3 to $6 per month
Beck bought Stall No 20 from Hagens
Mr Hagens a witness for Plff testified I owned
Stall No 20. I sold it to Beck & he paid me
for the Stall and the good will of the
Customers $500. I sold the Stall to Beck
some little time before the 9th of August 1850
Ferrara told me he had bought the Stall
from Beck, this was about a year after
Beck purchased of me for. I think he said
$475, or $480. There was a writing between
Beck & Myself by which I conveyed to Beck
all my right & interest in the Stall. Saw
Deft sell meat at the Stall in 1851 — Beck
had no other Stall at the time he bought
of me he rented Stall No 20
Mr Schaefer's testimony goes to show that
Beck bought & paid for Stall No 20,

Here the Plffs Case was closed

Mr Zoller a witness for Dfft testified, I returned from Europe 29th August 1850 Beck then told me had a short time before bought Stall No 20 from Hagens Beck Sold Meat at Stall No 20 for Several Months after he bought of Hagens After this I went to Beck to get Money and he (Beck) said he wanted to sell the Stall to Ferrara (Dfft) and that if he could sell to him there would be a little coming to him, that he owed Ferrara (Dfft) $375.00 this conversation took place between 4 & 5 Months after My return from Europe, I know that Beck was doing business at Stall No 20 in September 1850 have seen him sell Meat there at that time

Mr Moyers a witness for Dfft Says I had a Conversation with Beck about boarders, He said he kept no boarders, I asked him if John Ferrara did not board with him he replied, no. that he did not charge John any thing for his board as John frequently helped him & worked for him Saw Ferrara sell Meat at Stall No 20 after Zoller Came back from Europe

Mr Dixon a witness for Deft testified, Beck told me, I think it was in the Summer of 1851. that he made no Charge against John Ferrara for boarding, or for the use of his horse and waggon as John helped him in his business and was a good man to attend to business. when he was absent John attended to all his business frequently helped him drive cattle he also said he owed John some Money. Deft sometimes brought Meat to my house for Beck. have seen him drive Cattle for Beck I was a friend of Becks & frequently conversed with him about business. Beck had rented ½ of Stall No 20 to a Man who occupied it with Ferrara a few months when he left & Ferrara occupied it Alone As I understood he had bought it of Beck

Mr Petrie A witness for Deft Says. I rented half of Stall No 20 from John Beck from the 1st of January 1851 Deft occupied the other half I kept it 3 or 4 months I paid rent to John Beck. paid no rent to any other person. the last time I paid rent Beck said the next time I must pay it to John Ferrara as he had sold him the Stall So I left and Ferrara occupied it alone

On cross Examination Witness said the use of Becks horse and Waggon to carry Defts Meat to Market, and for the other purposes it was used by Deft would be worth from $3,00 to $4,00 per month

Mr Hailer Defts Wit. Saw Beck Selling Meat at Stall No 20 in the fall of 1850 for some time Hagens Sold Meat there before him Beck was the first one who Sold after Hagens dont recollect precisely the time

Mr Rude Defts Wit worked for Beck. had a Conversation with him some two or three weeks before his death, in which he told me he wanted to borrow some Money from me He said that John Ferrara (Deft) was to pay him something between twenty & fifty dollars which he owed on that Stall I let him have $18.00 which he afterwards paid back and said he got it from Mr Schaefer

Defendant then gave in Evidence a record from the Probate Court of St Louis County duly Certified by the Judge of Said Court, which proved that the item in plaintiffs account relating to Boarding had already been adjudicated upon by Said Probate Court,

This was all the Evidence in the case

On the trial of this Cause the Defts Counsel objected to the introduction of any Evidence going to show

a sale of Stall No 20 from Beck to Deft. which objection was overruled by the Court & Defts Counsel Excepted

The Deft then moved the court to instruct the jury as follows

1st That the pltff is not Entitled to recover upon the first item in her account for boarding the Same having been previously adjudicated by the Probate Court

2nd That if the jury believe from the Evidence that there was an understanding between Beck in his life time and Defendant that Beck would not charge Defendant for his board and the use of the horse & waggon in Consideration of Services which the Deft rendered him and was rendering him then the Plaintiff is not Entitled to recover anything for the Same

3rd That if the jury believe from the Evidence that Beck in his life time purchased Stall No 20 from Hagan on his own account and afterwards Sold the Same to Defendant then the Plaintiff Cannot recover for Said Stall in this form of Action

4th That to Entitle the Pltff to recover on the 3rd item of the account It is incumbent upon her to Show that Beck in his life time purchased Stall No 20 of Hogan for Deft and at the request of Defendant and paid the Money out at the request of the Defendant and not in his own right And for his own benefit

5th That if the jury believe from the Evidence that the purchase of Stall No 20 by Beck in his lifetime from Hogan conferred No right upon Defendant to use the same but that Defendant only acquired such right by virtue of a sale from Beck to him then the Plaintiffs cannot recover for said Stall in this action,

6th If the Jury believe from the Evidence that Hagens conveyed his interest in Stall No 20 to Beck by an instrument in writing they are instructed to disregard all verbal testimony in regard to the purchase of said Stall by Beck and the price agreed to be paid by him

Which said instructions the Court refused to grant, to which refusal the Defts Counsel Excepted

The Court then on its own Motion gave the following instructions, to all of which Defendants Counsel Excepted viz

1st The jury are instructed that as to the item for board the transcript of the Records of the Probate Court offered in Evidence is conclusive against the Plaintiffs right to recover in this Suit

2nd If the Jury believe from the Evidence that the Defendant used the horse as

charged in the petition, then the Plaintiff is Entitled to recover a reasonable Compensation for Said use unless the Same was used in an agreement with Beck that Deft Should have the use thereof for the Services rendered by Said Deft to Beck and that Deft rendered the Services agreed upon as Compensation for the use of Said horse &c

3rd As to the third item. as to the purchase of Stall No 20 or of the right to use the Same. if the Jury believe from the Evidence that the Same was purchased by Beck of Hogan for the Defendant or that Beck bought the Same of Hogan and then resold the Same to the Deft then the plaintiff has a right to recover therefor the value thereof or the price agreed ~~to be~~ ~~paid~~ unless the Same has been paid for by the Defendant and if a part only of the price has been paid by the Deft then only the balance due

4th The admission of Deft as to what he was to pay Plaintiff for the use of Said Stall is competent Evidence, before the jury as are also the admissions of Beck as to Matters in Controversy

Thereupon the Jury found a verdict in favor of Plaintiff for $591,00

Afterwards and on the 4th day of May 1853 the Deft's Counsel filed in said Court a Motion to set aside said verdict and for a new trial for the following reasons

1st Because on the trial the Court permitted illegal improper & irrelevant testimony to be introduced on the part of Pltff

2nd Because the Court refused to give proper & legal instructions asked by Defendants Counsel

3rd Because the Court on its own Motion gave improper and illegal instructions

4th Because the verdict of the jury was Excessive

5th Because said verdict was against the law & the Evidence and the weight of Evidence

6 Because said verdict was against the instructions of the Court

7th Because the 2nd instruction given by the Court was calculated to Mislead the jury, and

8th Because said 2nd instruction did Mislead the jury

Afterwards and on the 13th day of May 1853 the Deft by leave of the Court filed the following additional reasons and affidavit in support of said Motion for a new Trial that is to say

And now comes the said Defendant by his attorneys and by leave of the Court files the annexed affidavit in support of his Motion for a new trial, and says that a new trial ought to be granted him because, since the last trial of this Cause he has discovered new testimony material & necessary for his defence of this action and for other reasons and matters set forth in said affidavit

Gardner & Bay attys for Deft

John Ferrara Defendant being duly sworn on his oath states that on the 12th day of May inst he had a Conversation with one Henry Peters, that said Peters informed Defendant that he had held a Conversation with said John Beck a short time before his death, that said Beck told him (Peters) that he had transferred his stall to Ferrara and that he was still owing said Ferrara a small balance, and said Deft further says that from Conversations he has had with one Lorenz Stengers and one Jacob Bittner he believes he will be able to prove by said Stengers & Bittner ~~that~~ if a new trial is granted him that at the time said stall was transferred by Beck to Defendant, that said Beck

was indebted to Defendant more than the price of said Stall, and that said Stall was transferred to Deft as part payment of Becks indebted-
-ness to him, And Deft further says that said Henry Peters lives in the State of Illinois and Deponent did not know until the said 12th day of May that said Peters had any knowledge of Defts transactions with the deceased Beck or that he could prove the facts above stated, Defendant further says that he is advised by Counsel and verily believes that the testimony of the above named Witnesses is Material and necessary to his defence and that he has a good and substantial defence on the merits to the whole of Plffs demand against him, that the testimony of the above named Witnesses can be procu-
-red at the next term of this court if a new trial is granted him
Defendant further states that at the last trial of this case he expected the plaintiff would rely strictly upon the averments in the petition that Beck had purchased the stall of Hagens for Deft and at Defts request and that he was surprised by plaintiffs being allowed

to prove that Beck had sold Deft the Stall on his own account And Deponent verily believes that if a new trial is granted him he will be able to prove not only by the above named witnesses but by others that at the time the Stall was transferred by Beck to Deft, said Beck was indebted to Defendant more than the price of said Stall and that the Stall was transferred to Defendant as part payment of said indebtedness to and that nothing is now due said Deft for said Stall, Deponent further says that this application for a new trial is not made for vexation or delay but because the verdict of the jury is unjust and oppressive, this Deponent further states that he used all diligence in his power to obtain the witnesses necessary for his defense at the last trial of this Cause and that he never knew until Yesterday that said Peters had any knowledge of the matters in controversy in this suit

Subscribed & Sworn to before me this 13th day of May A D 1853

John Hennara

John W Colvin Law Comr
By M Williams Deputy

Afterwards the said Motion came on to be heard and the Court refused to grant Deft a New trial, to which refusal Deft Excepted and has brought the Case to this Honorable Court, by Writ of Error

Gardner & Bay
Attys for Deft

65

Johanna Beck admrx of
John Beck deceased

vs

John Ferrara

Statement of Case

Gardner & Bay
Attys for Plff in Error

Filed 22nd Oct. 1853
Wm. L. Glonville
Clerk

Johanna Beck admrx
of John Beck deceased
Deft in Error
vs
John Ferrara
Pltff in Error

Supreme Court
Oct Term 1843

And now comes the said John Ferrara Plaintiff in Error and says that in the acts opinions decisions proceedings orders and judgments of the St Louis Court of Common Pleas in the above Entitled Cause there is Manifest Error and therefore prays that the same may be revised reviewed and reversed by this Honorable Court, and for Special Cause wherein said Pltff in Error prays for reversal of said judgment he says

1st The court below Erred in permitting improper and irrelevant testimony to be given before the jury on the part of the said Beck

2nd The Court below Erred in refusing to give to the jury the instructions asked for by Ferraras Counsel

3 The Court below Erred in giving illegal and improper instructions to the jury which instructions are numbered 2. 3 & 4

4 The Court below Erred in refusing to grant a New Trial on motion of Ferraras Counsel

Gardner & B[illegible]
Attys for Pltff in Error

Johanna Beck admrx
of John Beck decd
Deft in Error

vs

John Ferrara
Plff in Error

Abstract of Errors

Bay & Gardner
Counsel for Plff in Error

Filed 22nd October 1853
Wm L Glanville
Clerk

John Ferrara plaintiff in error } Supreme Court
vs. } October Term 1853
Johannah Beck adm. &c. defendant in error }

And now comes the said defendant in error and says that in the acts opinions and decisions of the Court of Common Pleas ~~there~~ of St. Louis County there is no error and therefore prays that the same may be in all things affirmed by this Honorable Court.

Henry N Hart
for defendant in error

65

Supreme Court

October Term 1853

John Ferrara

plaintiff, in error

vs.

Johannah Beck adm. &c

defendant in error

Joinder of errors

Filed 24th October 1853.

Wm L Glanville
Clerk

H N Hart

for deft in error

Johanna Beck adm'x &c respondent
vs
John Ferrara pltff in error
~~respondent~~

In Supreme Court of the State of Missouri

October Term 1853.

Respondents Statement of the case.

This was an action brought by Johanna Beck as administratrix upon the estate of her deceased hus. band John Beck, against John Ferrara to recover
1st the sum of One hundred and ninety six dollars for Board from December 18th 1849 to July 5th 1852 at $5 a month
2nd the sum of One hundred and seventy dollars for the use of Horse, Waggon and Harness from July 5th 1850 to March 5th 1852 at $5 a month
3rd the sum of Five hundred Dollars, for Stall No 20 in the North Market purchased by said Beck deceased from one Hagus for Ferrara & at his request & for which Beck paid to Hagus Five hundred Dollars which Ferrara promised to pay him. ~~[illegible]~~
Making in all the sum of Eight hundred and sixty six Dollars, a credit is given to Ferrara on this acct as follows Dec 18 49. Balance due had $8.00 April 12 1850 Cash for Becks brother $12. September 10th Cash $2.00 leaving a balance of Eight hundred and forty four dollars. due to said Becks estate by said Ferrara
The answer of Defendants, sets up the following defence.
1st That he is not indebted to the plaintiff in the sum of Eight hundred and forty four dollars or any other sum whatever as stated & set forth in plaintiffs petition

2nd admits the item of Boarding and denies the value of the same, and sets up that said Board was furnished by an agreement between said Beck in his life time and said Ferrara that said Board was to be paid for in work & labor by Ferrara and that said Ferrara did work & labor for said Beck under said agreement for said Board

3rd Set up a judgment of the St Louis Probate Court in bar of any recovery for said board

4th Denies the hiring of the Horse Mayson and Harness for any price or for any sum whatever states that occasionally Beck did haul pork to Market for Ferrara, but that this with the Board was given in consideration of services rendered to ~~Ferrara~~ Beck by Ferrara and which services Ferrara always has paid

5th Denies that Beck ever purchased a stall from Hargus for him Ferrara At 20. denies that he ever requested Beck to buy said stall for him and denies that he ever promised to pay Beck five hundred dollars or any other sum for said stall

1st ~~Denies~~ states that if Beck purchased said stall At 20 it was for his (Becks) own use and defendant had no knowledge of or interest in the same, that if Beck did purchase said stall from Hargus as stated in the petition, that said purchase & transfer was & is illegal, void and of no effect

7th Sets up the ordinance of the City of St Louis making leases of stalls in the North Market not assignable.

8th Sets up that no such contract, purchase or agreement in relation to said stalk as is set forth in the petition or any memorandum or note in writing was ever signed by Ferrara or any other person by him thereto lawfully authorized therefore if any such agreement was made it was and is illegal & void & within the statute of frauds & perjuries and Ferrara is not bound by the same

Upon the trial the plaintiff introduced evidence going to the support of the items of his account, the defendant offered a variety of evidence tending to show little or no amount due to plaintiff and the record of the probate court in bar of the 1st item in plaintiff account. the court instructed the jury that as to the item for board the plaintiff could not recover. the court on its own motion gave instructions to the jury, and refused instructions asked by defendant, a verdict and judgment was rendered in favor of plaintiff for the sum of Five hundred & ninety one dollars. the defendants moved for a new trial & filed affidavits in support of this motion, the court overruled the said motion & hence this case here by Writ of Error

Henry N Hart
for Respondents

65

Beck adv't &c
ulp^t

Ferrarra
Pt Offic Error

Resp^t Statement of Case

Henry L Hart
for respondent

Filed 31st October 1853
Wm L Glannin
Clerk

Johanna Beck admx of John Beck
vs
John Ferrara

The only question of importance for the consideration of this Court, is in relation to the 3rd item in the plaintiff's account. That is for the Stall in the North Market. The petition charges as follows, after stating the first item for board and the second for use and hire of a horse and waggon &c. "And for a certain stall in the North Market house, known as stall No. 20. which said Stall No 20 was purchased by said John Beck from one Hargens for the sum of five hundred dollars for him the said defendant, and at his especial instance and request; and which said sum of five hundred dollars, the price of said Stall, paid by said John Beck, as aforesaid he the said defendant promised to pay said John Beck, but which he has failed to do." The account of the particulars filed has the three items: the 3rd as follows. "To Stall No 20 in the North Market purchased by John Beck deceased for you and at your request, from one Hargens and for which said Beck paid $500. and which you promised to pay $500."

The defendant in his answer denies, that Beck ever purchased from one Hargens a stall in the North Market House, as Stall No 20 for the sum of five hundred dollars, or any other sum, for him the said defendant, and at his instance and request; denies that he ever requested said Beck to buy said Stall for him; and denies that he ever promised to pay said Beck the

sum of five hundred dollars or any other sum for said Stall" —

The proof shews, that Beck bought the Stall mentioned in the petition from Hargens, for himself and afterwards he sold the same to Ferrara — There is a total failure in the proof to sustain the charge and allegation in relation to the Stall as made and set forth in the petition — Sec. 3 - Art XI Code of practice, declares, that Where, however, the allegation of the cause of action or defence, to which the proof is directed is improved, not, in some particular or particulars only, but in its entire scope and meaning, it shall not be deemed a case of variance within the last two sections, but a failure of proof" — Here the petition avers, that Beck at the special instance and request of Ferrara bought a Stall for him in North Market House of one Hargens. Stall No 20. for the sum of five hundred dollars which he promised to pay to Beck — Now suppose instead of proving the Number of the Stall to be 20. or the Name of the person purchased of to be Hargens; or the Market House to be the North Market, the plaintiff has offered proof of the purchase of a Stall for the defendant in some other Market House, of some other person; but for the sum of five hundred dollars, and at the special request of the defendant; here would be a variance in some particulars from the allegation

but not in its entire scope and meaning; this would be such a variance as is contemplated in the 1st & 2nd sections of this same Article. But in this case, the entire allegation is unproved. There is no proof that the stall in any market house for any sum, of any person was ever purchased by ~~plaintiff~~ Beck for the Defendant at his special instance and request. But the proof is that Beck sold a stall to the Defendant.

This case is very similar to the one decided by this Court at last term Link vs Vaughan from Franklin County, and to the Opinion therein delivered reference is had.

In regard to amendments, it is thought proper to suggest that the proper place and time to ask for them as in the Court below, during the trial or before final judgment. If Counsel will not amend when amendments are necessary in order to reach the merits of the case, in the lower Courts, this Court will not incline a propitious ear to such applications when made here, for the first time in the cause.

The judgment of the lower Court is reversed and cause remanded. The other judges concurring.

John F. Rylands

65

Becki admt
v
Ferrara

Opinion

Ryland

Filed 1 December 1853
Wm L Glanville
Clerk

Johanna Beck admrx of John Beck deceased vs John Ferrara

Supreme Court
Oct Term 1853
Defts Brief & Points

1st The Court below Erred in permitting Evidence of the Sale of the Stall by Beck to Ferrara to go to the jury. Because no such question was raised by the pleadings. See case of Link vs Vaughn Mo. R. The only question raised by the pleadings on the 3rd item of Plffs account was. Did Beck acting as the agent of Deft. Buy Stall No 20 of Hagens for Deft. and at Defendants request pay Hagens $500.00 for Said Stall? This was in Effect Sueing Defendant for Money paid out by Plff for Deft and at Defts request. And to maintain the issue it was only Necessary to prove that Deft had requested Plff to buy this Stall for him and pay the purchase Money. All evidence not tending to Establish this point was irrelevant & Should have been Excluded.
(See Case of Vaughn vs Link decided at the last March Term of this Court)

If it was Sought to Establish a direct Sale from Beck to Deft. then Plff Should have asked leave at the trial to amend his petition. This would have Entitled Deft to a Continuance and would have given him an opportunity to procure testimony to meet the new issue

2nd It is insisted by the Counsel for the Plff in Error that the instructions asked by them presented the true issues in the case to the jury

I The 2nd instruction asked by Deft was in accordance with the defence set up in his Answer and was supported by the proof.

See testimony of Meyers & Dixon

II The 4th instruction asked by Deft embraces the material allegations of the Petition in relation to the 3rd item of the account, and should have been given. The 3rd instruction contained the converse of the proposition set out in the 4th and should also have been given.

III The 5th instruction asked contained a principle of law applicable to this case.

IV The 6th instruction asked by Defts counsel was eminently proper, and was called for by the pleadings & the Evidence, and the Court below committed a gross error in refusing to give it.

The Evidence shows that the transfer of Stall No 20 from Hagens to Beck was by an instrument in writing

(See, Hagens testimony)

This instrument was not produced, nor did Plff attempt to account for its absence or prove its contents. It is evident that had it been produced

it would either have substantiated Plffs petition or have entirely defeated this action so far as the 3rd item in the account was concerned. In either event all verbal testimony in regard to the transfer of said stall by Bagens to Beck was illegal & improper and should have been excluded from the jury

3rd The 1st instruction given by the court was proper & no objection to it is urged.

The 2nd instruction given by the court was calculated to mislead the jury because it declares the Plaintiff is entitled to recover a reasonable compensation for the use of the horse unless the same was used in an agreement with Beck that Deft should have the use thereof for the services rendered. Defts counsel insist it was not necessary for Deft to show a special agreement to that effect. But that evidence of ~~such~~ an understanding between the parties and of actions in accordance with it would be sufficient to warrant the jury in finding for the Deft as to the item of the account

(See testimony of Dixon & Meyers

The 3rd instruction given by the court below was illegal and improper. Because it presents to the jury an issue not made by the pleadings. It is nowhere stated in the

petition that Beck bought the Stall of Hagens and then resold it to Deft. The idea Embodied in this instruction Could only have been Suggested by the Evidence. It was authorizing the jury to find a verdict upon a Cause of action Entirely different from any Contained in the petition It is Evident the jury founded their verdict upon this portion of Said instruction. But the instruction was illegal because the cause of action for which the plaintiff recovers Must be the Same Cause of action which he Charges against the Defendant and which Must be Stated. Either in an Original or in an Amended petition

(See Butcher vs Death & Teasdale 15th Mo R p 271-275. also Vaughn vs Link Cited before)

Pltff Sues for Money paid out at Defts request. He is allowed to recover for an Article Sold & delivered.

The 4th instruction given by the Court below was illegal and improper for the Same reason that the 3rd instruction was illegal & improper. It is nowhere Charged in the petition that Deft was to pay Plaintiff any thing for the use of Stall No 20. And Defts Counsel Cannot perceive what bearing Such an admission would have upon the issue in this Case. if any Such admission Ever

was made.

4th The Court below Erred in refusing to grant Deft a New trial for the reasons set forth above. and further because

I Even if Plff was entitled to recover the verdict of the jury was Excessive. The only witness who spoke of the value of the Stall or Defts admission as to what he was to pay was the Witness Stagens. He says Deft told him he purchased the Stall for $475 or $480.00. The only Witness who testified as to what the use of the Horse &c was worth was Mr Petrem He said it would be worth from $3.00 to $4.00 per month. The account would stand as follows

Verdict of the jury		$591.00
Value of Stall, highest Sum	$480.00	571.00
Use of Horse &c at $3.30 per month 26 months	91.00	
Excess		$ 20.00
Add amount of Credit as per Account		22.00
Amount of Excess		42.00

To which amount should also be added $7.00 for two months use of Horse & waggon. Deft is charged in the account with the use of Horse &c 2 months after Becks death. the proof shows only a use up to the time of Becks death about 1st Jany 1852. this would show the verdict to be Excessive to the amount of $49.00.
(See Pratt vs Blakely 5 Mn R 205)

II The verdict of the jury was against the law & the Evidence and the weight

of Evidence. It was proven on the trial, by Becks admissions that at the time of the Sale of the Stall, by Beck to Deft Beck was largely indebted to Deft

(See Testimony of Zoller.)

It was also proven that 2 or 3 weeks before Becks death he Stated that Deft Still owed him between $20.00 & $50.00 on the Stall, (See Testimony of Mr Rudle) Showing Conclusively in the absence of other ~~testimony~~ Evidence of indebtedness that not More than $50.00 could be due Pltff from Deft on account of ~~the Stall~~ and yet the jury gave Pltff the full amount Claimed, against the instructions of the Court. (See New Code Art XI § 3)

Clemens vs Loveille 4 Mo R p 80

IIII The Counsel for Deft insist that independent of all the other Errors Complained of, the Court below Should have granted the Defendant a new trial upon the facts Set forth in his affidavit filed in Support of the Motion for a new trial The affidavit contains a positive Averment of Merits, and Shows Newly discovered Evidence necessary to the defence upon the issue as it was made up by the Court below But which Evidence would not have been material had the Pltff been Confined to the allegations Contained in his petition The

Deft might well claim to have been surprised by the decision of the Court below permitting the Plff to give Evidence in Support of an entirely different Cause of action from that Stated in the Petition. The variance between the Allegation in the Petition and the Proof was material. The Deft Should Either have had judgment or the Plaintiff Should have amended his petition so as to correspond with the proofs. In this case the Deft would have had an Opportunity to prepare his testimony to meet the new issue

(See Article XI new Code of Practice)

Where verdict in this case was clearly against the Evidence

Where the verdict is clearly against the Evidence the judgment will be reversed.

Hart vs Learnmath 11 Mo Rep. p. 629

Gardner & Bay
for Plff in Error

Johanna Beck admrx
of John Beck

vs

John Ferrara

Gardner & Bay
Counsel for Deft

Deft Brief

Johanna Beck admx &c
respt
vs
John Ferrara
pltff in Error

} Supreme Court of Missouri

Respondents points & Authorities

The first error which the pltff in error complains of is that the Court below committed error in allowing evidence to go to the jury tending to shew that Ferrara bought the Stall No 20 in North Market from Beck. ~~[illegible]~~ I contend that the court in looking into the pleadings in this case properly permitted the evidence to prove this fact to go before the jury. and whilst I admit that by the petition the language as to the charge for the stall is as follows" For a certain stall in the North Market house known as Stall No 20 which said stall No 20 was purchased by said John Beck from One Hargens for the sum of Five Hundred Dollars for him the said defendant and at his special instance and request and which said sum of Five hundred Dollars the price of said Stall so paid by said Beck as aforesaid he said defendant promised to pay said John Beck & which he has failed to do &c." ~~[illegible]~~ to this charge the answer says. that ~~Beck~~ Ferrara never promised to pay Beck five hundred Dollars or any other sum whatever for said Stall - and the evidence on the part of plaintiff went to establish the fact that the said Stall No 20 was occupied by Ferrara ever since the purchase by Beck from Hargens. John Haas the first witness establishes

this fact (reference is hereto made to pag 11. of the Manuscript) also testimony of Foreck to the same point (reference is made to pag 12 of Manuscript) this fact is also established by one of Defendants witnesses, Mr Meyer (set forth on pag 13 of the Manuscript, by this it appears that Beck bought a stall from Harpers for five hundred Dollars and that he Beck never used or occupied the stall. but that from the moment of the purchase Ferrara occupied it, and told the plaintiffs witnesses he had bought it from Beck, and we contend that this testimony was very properly before the Jury and that the defendant was not misled by the admission of the same, if there is any variance between the pleading in the case and the proof that Ferrara bought the stall from Beck it is not a material variance, Ferrara is informed by our actions that we charge him five hundred Dollars for a stall which we allege we bought from Harpers for him & which he promised to pay us for. and proof such as we have given, showing that from the moment we purchased from Harpers Ferrara occupied it is a very strong circumstance to establish the fact that the purchase from Harpers by Beck was for the use & benefit of Ferrara at his special instance and request. There is a witness whose testimony went to establish, that he rented 1/2 of the stall from Beck for some time and paid him rent therefor until Beck told him he would after April or May 1851 have to pay rent to Ferrara, this fact went to show that on account of Ferrara's inability to pay Beck either the five

hundred Dollars on interest on the same and for the purpose of paying his interest allowed Beck to rent out 1/2 of the Stall for the same

The court below committed no error in giving the third instruction as to the question of the liability of the Stall, set forth in page 21 of the Transcript

The second instruction given by the court is proper the evidence of Petre to be found on page 14 of the Transcript establishes the value of the horse mare and harness worth from three to four dollars a month for the use the defendants Ferrana had of it and the question of the amount if any existed in fact is fairly put to the jury in this instruction

The court below properly refused the defendants instructions for the following reasons.

1st The first instruction refused for defts was given by the court on its own motion.

2nd The second instruction refused defendants was incorporated in the second instruction given by the Court on its own motion

3. All the other instructions refused defendants were properly rejected by the Court, they go to the point that if Mr Langel the Stall from Harper and then sold it to defendant, or unless Beck purchased it & paid for it by the special instance and request of defendants, that non cannot recover. Now I contend that

the third instruction given by the court properly & fairly presents the rights of the parties under the evidence before the jury.

There is nothing in the affidavit of Ferrara requiring the court to set aside the verdict and grant a new trial, he had offered evidence to prove the same facts that he did attempt to prove to the satisfaction of the Court & jury below and though there was men who did by word and under the solemnity of an oath make statements as to what Beck had said to them about his affairs & dealings with Ferrara, yet the judge and jury on the trial in the court below who could see the witnesses face to face properly concluded from their action, course and demeanor that all was not right, and come to the conclusion that their testimony was entitled to very little weight indeed

If Ferrara was surprised at the admission of any evidence offered by plaintiff in the court below he ought to have made the affidavit at the time on the trial, of his being misled by the admission of such evidence which he neither did nor offered to do

Statutes 1849. Art XI Sec 1. Practice Act.

But we find that instead of being surprised by the admission of evidence, that Ferrara brings up several witnesses to rebut the fact of surprise altogether

The verdict of the jury was not excessive, and

Hargus a witness for plaintiff proves that Ferrara told him he was to give 475 or 480 for the stall, Petre another witness puts a value on the defendants use and occupation of Horse Wagon and Harness at three to four dollars a month and when we include in this the interest up to the time of the verdict we will then find no excess in the verdict

Having disposed of the exceptions and assignments of error on the part of the plaintiff in error I have but one point to present to this court and that is - that whilst it will appear from the record and the fact to be that a great many witnesses are produced by the defendant tending to prove admissions and statements of Beck before his death - if I could in any manner let this Honorable Bench witness the manner - deamanor - hesitancy at times and quickness at others of some of those same witnesses, I venture to assert that this court would give the same weight to such testimony as the Jury did below, and that the judge below who sat on the trial, considered in his legal discretion that the verdict of the Jury was justified by the evidence, which discretion on this point I think this court will not disturb. Lackey vs Lane & McCabe 7 Mo 220
Fulkerson sur. & Co. Bolinger 9 Mo 828
~~[illegible]~~
Watts vs Douglass 10 Mo 676
~~for respondent~~

Henry W Hart
for respondent

Supreme Court
of the
State of Missouri

Johanna Beck admx &c
respondent

v

John Fenerman
pltff in Error

Points & authorities
by respondent

Henry W Hart
for respt