

REPORTED FOR THE STATE SENTINEL BY L. BOLLMAN.

Walker vs. Prather and others. Error to the Jennings Circuit.

This was an action of debt before Kelsey, a Justice. Judgment was rendered for the plaintiff. This case was appealed to the Circuit Court, where the case was dismissed for want of a sufficient cause of action.

Before the appeal from the Justice was taken, Kelsey had resigned his office, and deposited his docket with the Justice of the Peace in an adjacent township. His certificate to the transcript shows these facts, and also, that he had not transferred the case to his own docket.

In the Circuit Court the plaintiff offered to prove, in support of a motion to dismiss the appeal, by the defendant, that the case had not been transferred to his docket. The Circuit Court rejected this evidence.

Judge BLACKBURN held: 1. That by the Revised Statutes, p. 917, a Justice, with whom a docket of another is deposited, on account of resignation of office or absence, and a party interested in a case thereon, desires a transcript, must procure such a case to his own docket.

2. That it was competent for the plaintiff in this case to show, by the evidence, that such transfer had not been made, and that, therefore, the Circuit Court had erred in rejecting the testimony offered.

3. This suit was brought against the defendants on a bond given by Prather with the administrator of the estate of the plaintiff's husband. A copy of the bond, and a statement that the plaintiff was the widow of the intestate, and as such entitled to certain personal property of the estate, which was the subject of the suit, were introduced as evidence of the cause of action.

Held, That these constituted a sufficient cause of action, under the provisions of the R. S. pp. 870, 1049.

Judge REVERE held: Error to the Tippecanoe Circuit Court.

In 1845 Shultz agreed with Van Patton to build a flat boat, and furnish a pilot and six hands, to freight corn from the Walnut River to Van Patton's mill on the same river. He was to receive his freight at a certain place named in their written agreement, deliver it at such place to the said river as Van Patton might desire, for which he was to be paid \$50, Shultz was to have the surplus. The declaration alleges that Shultz provided the boat according to agreement, but that Van Patton refused to furnish a pilot, &c. Verdict and judgment for the plaintiff for \$150.

On the trial of the cause the judge instructed the jury, that if they believed the plaintiff was entitled to recover, and if no circumstances were proved by the defendant to the contrary, they should award to the plaintiff all he would have made and cleared had he been furnished with the corn and taken it to New Orleans or other points of destination, from which the present value of the boat should be deducted.

Judge PERKINS held: 1. That this instruction was erroneous, because it placed the plaintiff in as good condition, at the time the contract was broken, as he possibly could have been in, had he made a successful voyage. This would not be equitable. The plaintiff, when the contract was broken, ought to have employed himself to the best advantage, and to have sold his boat, or have procured another, and to have reasonably sold at the time of the breach of the agreement, all the circumstances of the case being considered.

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34. That the cause of action did not accrue within six months next before the commencement of this suit, and if the said term of six years expired after the time of the death of the said Samuel A. Duncan, that this action be brought within eighteen months after the time of the death of said Samuel.

To the 2d, 3d, and 4th pleas the plaintiff replied that during his whole life time, he said Samuel concealed from the knowledge of the said plaintiff the cause of action, &c. To which the defendant rejoined that said Samuel did not conceal.

On the trial, the plaintiff offered to prove by his first witness, that in 1842, Samuel A. Duncan admitted to him the existence of a part of the cause of action. The suit was commenced in 1849. The Probate Court refused to hear the proof, and gave judgment for the defendant.

This testimony was erroneously rejected, because under the general issue the plaintiff was bound to prove the existence of his cause of action, and afterwards the issue of concealment. The 2d, 3d and 4th pleas, being a court of error would require that the party should show he had other evidence ready to offer, which, with that rejected, might make out his case, but this was not one of those cases.

Judge REVERE reversed, &c.

Berry vs. Makepeace. Error to the Madison Circuit Court.

This was an action of Assumpsit, to recover an excess of interest, paid on three judgments, rendered by a Justice of the Peace, in 1840, by agreement of parties, the defendant conveyed to Kiser a life estate only in the general issue, and that the defendant did not receive the money, &c., within one year previous to the commencement of the suit. Trial and judgment for the defendant.

The judgments of the Justice were rendered against Berry and Williams, and Kinde became replevin bail. A portion of them was made by execution, various payments had been made, and in 1848, Berry received \$200, which Makepeace received as in full satisfaction of them.

Judge SMITH held: 1. That the Justice had no authority to render a judgment against the plaintiff for more than 6 per cent interest, then in force, allowing 10 per cent interest, was on contract, reduced to writing, and signed by the party to be charged, and that the judgments of the Justice were such contracts.

2. That the defendant on the second plea was immaterial, it being authorized by the R. S., p. 581, in cases only in which the whole of the interest paid is sought to be recovered, as illegal.

3. That this action was properly brought by Berry alone; neither Williams nor Kinde need be joined, as the last payment of 300 dollars covered the excess of interest, which being received without consideration by Makepeace, he is to be considered as holding it for the person from whom he received it.

Judge REVERE reversed, &c.

Irons vs. Hussy. Error to the Hendricks Circuit Court.

The trial of this cause was submitted to the Circuit Court, two judges only being present, namely, the President and one of the Associates. They disagreed, the former being of opinion that judgment ought to be rendered for the plaintiff, and the latter for the defendant. The Circuit Court rendered a judgment for the defendant, as being the legal result of this division.

Judge SMITH held: That when a cause is submitted to the Court, under the provisions of the R. S., p. 731, the finding of the Court takes the place of the verdict of the jury. A finding, 311; that when the jury disagree there can be no judgment; and that, therefore, the Court below should have continued the cause for a new trial.

Judge REVERE reversed.

Ruth Owings and others vs. Nicholas Owings. Error to the Grant Circuit Court.

This was a suit in Chancery, brought by Nicholas Owings, the bill stating that George W. Owings, the son of Nicholas, in conjunction with one Carter, entered into a contract with the said Nicholas, by which the interest of Nicholas, the said George purchased the interest of Carter, with money furnished by Nicholas, who, afterwards, moved on half the land, it being divided by him and Nicholas, but that Nicholas never made to Nicholas, having full confidence in his son George, &c., that in 1847 George died, leaving a wife, the said Ruth, and two minor children.

Ruth denied, in her answer, having any knowledge of the facts relating to the purchase, but she believed that her husband, at the time of the purchase, was in possession of the land, and that if Nicholas had furnished the money, it was in payment of a debt owing to her husband by him, and that a lease, for life only, had been given by her husband to the said George, &c. The Court below entered a decree for the complainant.

Judge SMITH held: That this decree was erroneous; for although the principal facts in the bill were sufficiently proved, yet there was no proof that the consideration of George having paid money for the complainant, the title to the land should remain in him, but that the complainant and his wife should reside on the part occupied by them during the life of the said George.

Decree reversed, with directions to dismiss the bill, &c.

Tollinger and wife vs. The Heirs of James Wylie. Appeal from the Probate Court.

This was the fourth trial that James Wylie died in 1838, leaving a large real estate, valued at \$58 dollars worth of personal property more than was necessary to pay his debts; that the administrator allowed the widow, her mother, to take this real estate for her life, and that afterwards he gave her money and goods belonging to the estate about 80 dollars, and that 17 acres of the farm were cleared with the complainant's money, costing them \$2,000 dollars; that in 1844 the mother intermarried with Tollinger, and since the marriage they have wasted the property, &c.

The defendants, in their answer, allege that the personal property left by the deceased amounted to about 2,000 dollars, and that the money received was no more than she was entitled to, &c.

A decree was rendered in favor of the complainants for \$187.30.

Judge SMITH held: 1. That if the defendants were liable to account for the personal property, the administrator was the proper person to bring the suit, he not having yet made final settlement.

2. That if the administrator neglected to make settlement in due time, or permitted the property to be wrongfully taken, the appropriate remedy was against him.

3. That the rents and profits of the land in this case, more than the widow was entitled to, was not more than she was entitled to, and that the money received was no more than she was entitled to.

Decree reversed, with directions to the Probate Court to dismiss the bill.

Orford's Adms. vs. McFarland. Error to the Vermillion Circuit Court.

This was an action of assumpsit against the administrator for work and labor, and corn sold to the decedent. The evidence as to the labor performed, showed that McFarland had been in the possession of the land after his marriage, residing in the house of his father-in-law, and whilst there was seen to work occasionally. The jury allowed pay for these services.

Judge SMITH held: That if the defendant, that a son or son-in-law, living with the parents as members of the family, cannot recover for occasional services performed in that capacity, without proof of an express contract that they were to be paid for.

Judge REVERE reversed.

Strong Whig Faith.

The editor of the Indiana State Sentinel is probably the best specimen of strong, unfeigned faith in the importance of whiggery, that is now to be found in all this great country. He says:

"We believe a majority of the people of this State are favorable to the measures of public policy advocated by the Whig party, and that, if they can be brought to the polls, uninfused by any collateral questions, the electoral vote will be given to the Whig candidate for the Presidency next November."

Faith like that ought to be able to "move mountains." Faith like that ought to be able to "move mountains." Faith like that ought to be able to "move mountains."

A Free-Soil National Convention.

It has been arranged by the Free-Soil members of Congress, shall be held next spring at Pittsburg, after the Whig and Democratic National Conventions shall have been held. Among those named as candidates for the Presidency, the following are prominent: Hon. John A. Dix, of New York, Joshua R. Giddings and John P. Hale—Dayton Journal.

Death of a Distinguished Man.

The Hon. Joel R. Poinsett, Secretary of War under Mr. Van Buren, died at his residence at Statesburg, S. C. on the 21st inst. He was 72 years of age. Mr. Poinsett was a native of Charleston, and served in the South Carolina Legislature and in Congress, and subsequently as Minister to Mexico, upon a memorable occasion, he so nobly upheld our national flag, that the act of painting was perpetuated the incident. During the days of nullification, he was the leader of the Union party in South Carolina.

MARRIED.

In Bedford, on the 13th inst., by Rev. Sampson Tinker, Mr. Jas C. CARLTON to Miss CHARLES MITCHELL, both of that place.

On the 30th inst., by Wm. Sullivan, Esq., Mr. Geo. HERROD and Mrs. HARRISON PRINCE, both of Marion County.

An Impossibility.

There was a preacher once, I've often heard, Who lived, I think, some where 'out west' or 'south,' And to the heathen preached the sacred word,

Whom heaven had blessed with an extensive mouth Wide-spread as the fame of Uncle Ned.

Forever yawning, like the sinner's doom— No whippers could be raised not the "first rod," Because to tell the truth there wasn't room.

A wag, one day, hearing this genius preaching, Touching the boundless height and power of God, Took his side when he had closed his teaching— "Oh by the way,"—his name was Capt. Todd;

"Do you think God made all things?" he cried; "My views upon that point are rather dim."

"Think that he can?" the minister replied; "I know all things are possible with him."

"There's one thing I'll bet you can't do," "What is it?" cried the preacher in a crack— "Without making your mouth an atom wider, Without sending your ears, friend, further back!"

Sorrow.

The flowers live by the tears that fall From the eyes of the child and the aged; And life would have no joys at all, Where there were no water-ways.

Love that by sorrow's grief shall bring Its own excuse in after years; The rainbow—see how fair a thing God hath built up from tears.

Waiting for Offers.

When ladies are waiting for offers from chaps They should always be neat and well dressed. If their heads are adorned with perambulation caps, They'd go in for a crowd—if hard pressed.

To Willing by Half.

A BOARDING HOUSE SKETCH.

Many of our readers will recognize the point of the following joke, which we heard related a long time ago, and which we never saw in print. It's a good 'un, and will bear re-telling.

While General Jackson was President of the United States, he was tormented day after day by importunate visitors, (as most Chief Magistrates of this green country are,) and he at length determined to see—and in consequence, he gave strict directions to the messenger at his door to admit only certain persons on a particular day.

In spite of this peremptory order, however, the attendant bolted into his apartment during the forenoon, and informed the General that a person was outside whom he could not control, who claimed to see him, orders or no orders.

"By eternal!" exclaimed the old man, nervously; "I won't submit to this annoyance. Who is it?" "Don't know, sir."

"Don't know, sir, it's a woman."

"Oh, you mean, I mean, in James; show her in," said the President, wiping his face; and the next moment there entered the General's apartment, a neatly clad female of past the "middle age," who advanced courteously towards the old man, and accepted the chair proffered her.

"Be seated, madam," he said.

"Thank you," responded the lady, throwing aside her veil, revealing a handsome face to her entertainer.

"My mistake," she said, "I am not a stranger, but the fair speaker," is a novel one, and you can aid me, perhaps."

"Madame," said the General, "command me."

"I am a very kind, sir. I am a poor woman, General."

"Poverty is no crime, Madam."

"No, sir; but I have a little family to care for—I am a widow, sir; and a clerk employed in one of the departments of the Government is indebted to me for a considerable amount, which I cannot collect. I need the money, sadly, and come to ask if a portion of his pay cannot be stopped, from time to time, until this claim of mine—an honest one, General, of which he had full notice—is cancelled."

"I really—Madame—that is, I have no control in that way—how much is the bill?"

"Seventy dollars, sir; here it is."

"My mistake," she said, "I am not a stranger, but the fair speaker," is a novel one, and you can aid me, perhaps."

"And you pay his board bill?"

"As not yet, sir, this has been standing five months unpaid. Three days hence he will draw his monthly pay; and I thought, sir, if you would be kind enough to stop it for me, I should be very much obliged."

"Yes, I will do it, to him again, and get his note today for thirty days."

"But he will give me his note—will he not, Madam?"

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NEW HARDWARE AND TOOL STORE.

HAVING permanently located in Indianapolis, on Washington street, four doors east of the Wright House, and next door to the Stage Office, and having furnished his establishment with a splendid assortment of

NEW HARDWARE AND TOOL STORE.

It is prepared to furnish his customers on the most reasonable terms. His stock consists of Builders Hardware, Carpenters' Tools, Wagon Makers', and Cabinet Makers' Edge Tools of every variety and description, which he warrants equal to any purchased in the west. He is also engaged in manufacturing

PLANKS AND EDGE TOOLS.

Also, Picks, Shovels, Spades, Axes, &c., for Farmers' use.

A large variety of House Furnishing Goods, of all sorts and sizes. Hinges, Screws, and Door Locks of superior quality, and in short every other article which is usually to be found in a hardware establishment.

Having been engaged in the business for a period of six years in Cincinnati, he feels himself warranted in saying, most positively, that he can furnish his customers with goods of the best quality, and at the lowest prices of goods. Customers are invited to call and convince themselves of the truth of what he states. Call and see.

&lt;