

1854
NEW JERSEY COURT OF ERRORS AND APPEALS. *Clark*

MARCH TERM, 1854. *Table*

JOHN S. WOOD,

vs.

SAMUEL L. FITHIAN,
and ROBERT J. FITHIAN. }

In Error to Supreme Court.

ALPHONZO L. EAKIN, Att'y for Plt'ff.
JOHN T. NIXON, Att'y for Defts.

CASE FOR HEARING.

The defendants in error, S. L. and R. J. Fithian, prosecuted the plaintiff in error, J. S. Wood, in a court for the trial of small causes—in debt—by Summons, as follows, to wit:—

STATE OF NEW JERSEY, }
CUMBERLAND COUNTY, SS. } TO ANY CONSTABLE OF SAID COUNTY.

[L. s.] SUMMON *John S Wood owner of sloop General Jackson to be and appear before me, the Subscriber, one of the Justices of the Peace, in and for said County at my office in Bridgeton township, on the 23d day of November at two o'clock in the afternoon, to answer the complaint of Samuel L Fithian and Robert J Fithian in a plea of debt for thirty dollars*
Given under my hand and seal, the 16th day of November 1849

A E Hughes Justice of the Peace. 10

The following is the transcript of the proceedings had before the Justice in the premises:

State of New Jersey, } Court for the trial of small causes before
Cumberland County, ss. } A. E. Hughes, Justice.

Samuel L. Fithian and Robert J. Fithian, }
vs. } In Debt 08
John S. Wood, owner of sloop Gen. Jackson, } demand \$30.00

1849, Nov. 16, I issued a summons in the above case returned before me the 23d inst., at two o'clock, P. M. Summons returned, endorsed Nov. 16, 1849, served the within summons on defendant by reading 20 the same to him and giving him a copy. B. C. WEST, Constable.

Nov. 23d—Parties appeared, plaintiffs filed their demand. Defendant demanded a nonsuit on the ground of the summons not being signed in full by Justice, his name being signed A E Hughes, that not being the name of any Justice in the county, which I overruled. Defendant not being ready for trial, I adjourned this cause by request of defendant to the 7th of December next, at two o'clock, P. M.

Dec. 7—Parties appeared, proceeded to trial. Robert Parvin and Ephraim Buck were sworn as witnesses on the part of the plaintiffs; plaintiffs also offered in evidence their books of account and proved the 30

same. Plaintiffs also offered or produced the records of the Customs and offered the same in evidence and proved. The defendant demanded a nonsuit on the following grounds, viz :—1st, because no Justice's name to original summons, being signed A. E. Hughes. 2d, action brought in the name of two individuals, and cannot be maintained for the same cause of action, unless they are copartners in trade in the transaction, or have a community of interest, which case they are bound to show it, and if partners, should have brought their action accordingly. 3d, the demand varies from book and is not true copy; 10 extraneous proof cannot be allowed to make out charge. 4th, because this court has not jurisdiction, which said pleas I overruled.

Richard Hann was sworn as a witness on the part of the defendant. After hearing the witnesses and allegations of parties, I give judgment that the plaintiff recover of the defendant the sum of twenty-one dollars and ninety-four cents, debt, and two dollars and fifty-five and a half cents, cost.

Dec. 27, 1849—Defendant appeared, presented an appeal bond with sufficient security, and demanded an appeal. I accepted the same and granted the appeal.

20 I certify the above to be a true transcript of proceedings in the above case on my docket.

Given under my hand and seal, Feb. 11th, 1850.

[L. s.] A. E. HUGHES Justice of the Peace.

The demand filed by the plaintiffs before the Justice, Nov. 23d, 1849, is as follows, to wit :—

Cumberland County, ss. } Court for the trial of small causes before
 Artis E Hughes Justice of the Peace

30 Samuel L Fithian and
 Robert J Fithian }
 against } In Debt on Book Account.
 John S Wood, owner of
 Sloop General Jackson. }

Sloop General Jackson and owner, *per Hann*
 To Samuel L Fithian and Robert J Fithian, Dr.

April 17, 1848,	To 25 lbs. Oakum at 8	2.00
" 23, "	To 7 " Putty, " 6½	0.44
" " "	To 2 " Gals. Oil, at 80	1.60
" " "	To 1 Qt. " at 80	0.20
40 " " "	To 1 lb. Litherage	0.12½
" " "	To Keg W. Lead,	1.12½
" 24, "	To 2 lbs. Verdigrease, at 50	1.00
" 27, "	To 1 Keg 12½ lbs W Lead,	1.12½
" " "	To 1 Pt. Japan, 2.00	0.25
" " "	To 2 lbs. Oakum, 8	0.16

" 28,	"	To 2 Gals. Oil, 80	1.60
" "	"	To 5 lbs. Putty, 6½	0.31
" 29,	"	To 1 Keg 12½ Pure Lead,	1.12½
" "	"	To 1 lb. Red Lead,	0.12½
" "	"	To 2 lbs. Litherage,	0.25
May 1,	"	To 1 Keg 12½ W. Lead,	1.12½
" "	"	To 2 Gals. Oil, 80	1.60
" "	"	To Pt. Japan, 2.00	0.25
" "	"	To 1 Qt. Sp. Turpentine,	0.16
" "	"	To 12½ Keg Pure Lead,	1.12½10
" "	"	To 5 lbs. Putty,	0.31½
" "	"	To 5 " do	0.31½ <i>under 100</i>
		Amount Brot forward,	16.32
May 3,	"	To 1 lb. Min. Green.	0.60
" "	"	To 1 Gal. Oil,	0.80
" "	"	To 1 Pt. Varnish,	0.31
6,	"	To ½ Gal. Oil, 80	0.40
8,	"	To 3 " Fish Oil, 50	1.50
" "	"	To 1 lb. Litherage,	0.12½
" "	"	To 2 Gals. Fish Oil, 50	1.00 20
" "	"	To 6 lbs. W. Lead, 10	0.60
August 17,	"	To 3 lbs Oakum, 8	0.24
			<hr/>
			\$21.89
Credit Aug't 7th, 1849, by Freight,			1.00
			<hr/>
			\$20.89
Interest from May 8th, 1848 to November 23d, 1849,			1.30
			<hr/>
November 23d, 1849.			\$22.19 30

From this judgment the said J. S. Wood appealed to the Court of Common Pleas of Cumberland County, and the record from that Court is as follows, viz :

VACATION AND FEBRUARY TERM, A. D. 1851.

COURT OF COMMON PLEAS, FEB. 20th, 1851.

The Court meet : Present Philip Fithian, Joseph W. Woodruff, Ephraim H. Whitecar and William *Bevan* Judges of said Court.

John S. Wood, app't.

vs.

Samuel L. Fithian and

Robert J. Fithian, app'ee.

} On appeal from the judgment of 40
A. E. Hughes, Esqr.

This appeal coming on to be heard in the presence of the parties, the appellant demanded a nonsuit on the following grounds :

First—Because no Justice's name was signed to original summons it being signed A. E. Hughes, and that not being the name of any Justice of the Peace in the said County of Cumberland.

Second—Because the action is brought in the name of two individuals, and cannot be maintained unless they are copartners in trade or have a community of interest, in which case they are bound to show it, and if partners should have brought their action accordingly.

Third—Because this Court has not jurisdiction of the case, which application for a nonsuit was overruled by the Court. The appellee then offered in evidence the books of account, and produced Robert Parvin, who was sworn to prove the same. Appellees also offered in evidence the record of the customs to show that at the time the account claimed by appellees in their state of demand was contracted that the appellant was according to said record owner of the Sloop General Jackson, and produced Ephraim Buck, Collector, who was sworn to prove said records. Appellant then demanded a nonsuit because the state of demand varied from the book of account of appellees, and was not a true copy of said books, and extraneous proof cannot be allowed to make out charge, which application for a nonsuit was overruled by the Court, the appellant then offered as a witness on his part Richard Hann, who was sworn and examined, and who declared that he was the owner of the said Sloop General Jackson at the time the account claimed by appellees in their state of demand was contracted, and he produced a written paper* purporting to be an agreement of sale for Sloop General Jackson from the appellant, John S. Wood, to him the said Hann, which agreement of sale he had testified to.

Whereupon the Court having heard and considered the same and the allegations of the parties, it is ordered that the judgment of the Justice be affirmed, and that judgment be now rendered for the said Samuel L. Fithian and Robert J. Fithian for the sum of twenty three dollars and sixty-nine cents of debt and two dollars and fifty five cents and a half costs before the said Justice and the costs of this appeal.

Therefore it is considered that the said Samuel L. Fithian and Robert J. Fithian do recover against the said John S. Wood the said

* The written paper produced by Richard Hann on the trial of the appeal is as follows:

"This writing witnesseth that I, John S. Wood, do hereby agree to let Richard Hann, of Bridgeton, have my sloop Gen. Jackson, to use, occupy and possess from the date hereof, and I do further agree and promise to make a bill of sale of the said sloop to the said Richard, when the said Richard Hann shall pay to the sum of Five hundred and fifty dollars, agreeably to the condition of a certain obligation given to me by the said Richard Hann, for the payment of the aforesaid sum of money, and bearing even date herewith.

Witness my hand,

JOHN S. WOOD

Dated Jan. 12, 1848.

[Copy.]

sums of twenty-six dollars and twenty-four cents, and the further sum of four dollars and nine cents for the costs of this appeal.

February 20th, 1851.

Judgment before Justice	\$21.94	
Costs,	2.55½	
Interest,	1.75	26.24
Costs of appeal,	4.09	10
	<hr/>	
	\$30.33½	
Philip Fithian, Judge.	[L. s.]	

Whereupon the said J. S. Wood brought a writ of certiorari to remove said Judgment to the Supreme Court, returnable to February Term, 1852, and the following reasons for reversal filed, etc. :

1st. Because the Court of Common Pleas refused to nonsuit the appellees (the plaintiffs) on motion of appellant.

2d. Because the said Court affirmed the Judgment of the Justice, when by Law the facts and the evidence said Judgment ought to have been reversed. 20

3d. Because the said Court rendered Judgment in favor of the appellees, when by the law the evidence and the facts of the Case, Judgment should have been rendered for the appellant.

4th. Because the process and proceedings of the appellees (the plaintiffs below) in the Court before the Justice below and the proceedings and Judgment of the said Court, and of said Court of Common Pleas therein had and rendered, are in divers other respects, matters and things, informal, erroneous, improper and illegal, and ought to be reversed, set aside and for nothing holden.

ALPHONSO L. EAKIN, 30
Attorney for plaintiff in Certiorari.

And the following rule was allowed :

SUPREME COURT, N. J.

FEBRUARY TERM, 1852.

John S. Wood, }
vs. } Certiorari to Cumberland
Samuel L. and Robert J. Fithian, } Pleas, Sur Appeal.

The Certiorari in this case being duly returned, and the reasons filed therein. It is ordered that the plaintiff in Certiorari have leave to take depositions to be used in the argument of the above-stated Certiorari—

On motion of Alphonso L. Eakin, Att'y of plaintiff in Certiorari.

By virtue of which rule the following depositions, &c., were taken, to wit :

NEW JERSEY SUPREME COURT.

John S. Wood, plaintiff in Certiorari,	} Defendants, &c. }	On Certiorari to the Cumberland Court of Common Pleas.
<i>vs.</i>		
Samuel L. Fithian & Robert J. Fithian,		

Examination of witnesses taken this twenty-seventh day of May, A. D. 1852; before me, James G. Hampton, one of the Commissioners to take special bail and administer oaths and affirmations in the Supreme Court, pursuant to a rule of said Court hereunto annexed, in the presence of John S. Wood, who appears per se, and of John T. Nixon, Esq., attorney of Samuel L. Fithian and Robert J. Fithian, the said depositions being taken in behalf of the Plaintiff in Certiorari.

Richard Hann, a witness produced on the part of the plaintiff, being duly sworn according to law, on his oath saith:—I was the owner of the Sloop General Jackson at the time the articles, goods and merchandise were charged in Samuel L. and Robert J. Fithian's demand against John S. Wood, as the owner of said sloop. I went to Mr. Fithian's store to buy paints, as I concluded to paint my vessel, and Mr. Fithian said I could have them. I had entered into articles of agreement with John S. Wood for the sale of the Sloop General Jackson, and had given my bond for the price of the said sloop. I think the amount of the bond was five hundred and fifty dollars. John S. Wood delivered to me the article of agreement at the same time that I delivered to him my bond. I did pay a part of one of the instalments of the bond to Mr. Wood in freights in carrying stone. Immediately after the sale I took possession of the said sloop, and sailed her on my own account, and received the freight, issues and profits, without accounting to the said John S. Wood for the same in any way whatever. I spoke for and bought all things for the said sloop for repairs, provisions and necessaries at my own expense, without any orders from John S. Wood. I never asked Mr. Wood, or consulted him with regard to the vessel, and did not care anything about Mr. Wood. I bought myself the articles charged in Samuel L. & Robert J. Fithian's state of demand against John S. Wood. I bought the articles on my own credit, and never directed them to charge the articles to John S. Wood, and when I purchased them I did not mention John S. Wood's name in connection with the articles. I bought the goods for myself, and used them on the vessel and in the house where I lived, what I wanted. I am the same Richard Hann that was examined in this case before Justice Hughes, and in the Court of Common Pleas, of the County of Cumberland.

And being cross examined, further saith. The article of agreement that I spoke about in my examination in chief, I gave to Mr. Hampton. The article of agreement contained that I was to pay Mr. Wood five

hundred and fifty dollars, and then the vessel was to be mine. I paid something like ninety or one hundred dollars in freight on the bond which I gave for said vessel, but cannot tell exactly how much I paid. The whole of the said bond has never been paid by me. I do not know where it is. I never received any other paper or bill of sale for said vessel besides the article of agreement before mentioned, and the bargain was between myself and Mr. Wood alone—I cannot read writing. I did not sail the sloop Gen. Jackson before I purchased her of Mr. Wood, for him or on his account. I used some of the paints I purchased of the Fithians, about my house. I do not collect what were the first articles I purchased of the Fithians, whether paints or rosin or oakum.

Witness my hand and subscribed before me,

May 27th, 1852,

James G. Hampton, Commissioner, &c.

his

Richard X Hann.

mark.

Upon notice being served upon the defendants in Certiorari by plaintiff to produce their books of accounts, the books of original entry of the defendants in Certiorari were brought before me by the defendants, and I having examined the said books, find the following charges in the said books under their respective dates: 20

18 April 17th,	Sloop Gen. Jackson and owner, (per Hann)	
	To 25 lbs Oakum,	2.00
" 23th,	Sloop Gen. Jackson, Dr.	
	To 2 gallons of Oil,	1.60
	To 5 lbs. putty,	0.31
" 29th,	Sloop Gen. Jackson and owners, Dr.	
	To 12½ K Lead,	1.12½
	To 1 lb. Litharge,	0.12½
	To 5 lbs. putty	0.31
18 May 1st,	Sloop Gen. Jackson and owners,	30
	To 1 Kg 12½ W Lead,	1.12½
	2 Gal of Oil,	1.60
	1 pt Japan,	0.25
	1 qt Turpentine,	0.16
	12½ keg Lead,	1.12½
	5 lbs putty,	0.31
18 May 3d,	Sloop Gen Jackson and owner, Dr.	
	To 5 lbs putty,	0.31

The above charges taken from the said books of the defendants in Certiorari are the only entries in said books concerning the Sloop Gen. Jackson which do not agree with the certified copy of the State of Maryland of the defendants in Certiorari hereunto annexed, all the other charges in the said books agree exactly with the said copy of the State of Maryland.

JAMES G. HAMPTON,
Commissioner, &c.

May 27th, 1852.

not in demand

not in demand 95

At November Term, 1852, the motion on Certiorari came up for hearing before the Hon. L. Q. C. Elmer, one of the Justices of the Supreme Court of New Jersey, sitting alone in a separate apartment in the State House in Trenton, separate and apart from three of the Justices of said Court, then holding a stated Term of said Court, hearing and deciding causes in another room of said State House, and at February Term, 1853, the said Justice Elmer, alone, affirmed the Judgment against the said J. S. Wood, who thereupon brought writ of Error to this honorable Court and filed the following reasons:

ERROR.

10 Afterwards, to wit, on the 3d Tuesday in November, A. D., 1853, before the Court of Errors in the last resort in all causes at law, of the said J. S. Wood by A. L. Eakin, his Attorney and says that the record and proceedings aforesaid, and also in the giving the Judgment aforesaid, there is manifest Error in this, to wit:

1st, Because the argument in Certiorari was heard, and the case decided by his Hon. L. Q. C. Elmer, (one of the Justices of the Supreme Court) at November Term, 1852, (at February Term, 1853, decided) being a regular stated Term of the Supreme Court of the State of New Jersey. The said Justice sitting alone in a separate apartment from that in which, at that time, three or more of the Justices of said Supreme Court were then holding a stated Term of said Court, hearing and deciding causes, whereby two Supreme Courts were in session at the same time, the same not being warranted or authorized by the Constitution of the State of New Jersey.

2d, There is also error in this, to wit: Because the said Court affirmed the judgment of the Court of Common Pleas of the County of Cumberland, when by law and the evidence the said judgment should have been reversed.

30 3d, Because by the record aforesaid it appears that the judgment aforesaid, in Certiorari aforesaid in form aforesaid was given against the said John S. Wood, whereas by the law of the land, the said judgment should have been given for him.

4th, There is also error in this, to wit: That the proceedings and done in the premises, and the decision or judgment thereon, in divers other respects erroneous and illegal.

And the plaintiff in error prays, that the decision and judgment aforesaid for the errors aforesaid, and of other errors in the record and proceedings in the premises aforesaid, may be reversed, and 40 and set aside, and the party be restored in all things which he has lost by reason of said judgment.

ALPHONSO L. EAKIN,
Att'y for plaintiff in Error.

A true copy.

THOS. S. ALLISON, C'k.

The Defendants joined in Error.

SUPREME COURT.

FEBRUARY TERM, 1853.

JOHN S. WOOD,

vs.

SAMUEL L. FITHIAN,
and ROBERT J. FITHIAN.

Certri to Cumberland Pleas.

Submitted in the Branch Court, sur brevts.

A. L. EAKIN, Att'y for Plt'ff.

J. T. NIXON, Att'y for Defts.

Opinion delivered by his Honor, Justice ELMER.

The first reason assigned for the reversal of the case is, that the Court of Common Pleas refused to nonsuit the plaintiff in that Court; and upon referring to the proceedings as returned, it appears that one of the grounds insisted on was, that no Justice's name was signed to the original Summons. The Justice, instead of signing his full christian name, has written only the initial letter, followed by his surname in full. Many authorities are cited by the counsel of the plaintiff in certiorari, in his brief submitted to the court, which prove that suits must be brought in the full christian name of the parties, but none of those touch the present question. It was not alleged that the defendants below was misled or prejudiced by the signature; indeed, it appears by the Justice's transcript that he appeared on the return day, at the proper place, and then made the objection now insisted on, which was overruled. Signatures of the Justices and other officers of this court, as well as of the Judges and Justices of the Peace, have been made in this abbreviated form, time immemorial, and as far as appears, until now, without objection. No injury has resulted or seems likely to result from this practice. Much inconvenience would be produced by allowing such an objection to prevail after an acquiescence so long and so universal.

A second ground of nonsuit was that the action was brought in the name of two persons, who were not stated to have been copartners or to have had a community of interest. The state of demand claims a book account for certain goods, wares and merchandize charged in the usual manner, as articles sold by the plaintiffs to the owner of the Sloop General Jackson, and sets forth that the defendant was such owner. Whether the plaintiffs were general copartners is immaterial. If the defendants bought the goods of them jointly, as the State of demand alleges in substance, the plaintiffs have thereby a community of interest in that transaction, and are not only compelled to bring a joint action, but can only maintain an action in that form. It must

be presumed that proof was made of a contract with the plaintiffs jointly. This court, it has often been decided, does not undertake upon a certiorari to try the case over again upon the merits, or to award a new trial upon the ground that the judgment was contrary to the weight of the evidence; but only to determine whether any principles of law has been violated, and the party complaining of any such violation, must make it clearly appear that the fact was so. One of the witnesses produced on the trial of the appeal, has been examined in support of this ground filed for reversal, but he was not the only witness, and this court cannot undertake to say how far his statements are in accordance with the other evidence in the case, whether he gave the same testimony on the trial as now, or whether the Court of Common Pleas, who were the judges of his credibility, believed what he said.

A third ground of reversal was, that the court had no jurisdiction of the case. It would have been difficult for this court to conjecture what was meant by this objection, if it did not appear by the brief of counsel, that inasmuch as the charge in plaintiff's books of accounts, is not against the defendant by name, but against the Sloop General Jackson, and owner, contended that no action can be brought against the owner by his proper name, but if the plaintiffs have any right of action at all on such a charge, it must be against the Sloop itself. It is certainly true that no action could be sustained, against the defendant, upon this charge unsupported by other proof. But several witnesses were examined and as appears by the record of the proceedings and by the depositions now produced on behalf of the plaintiffs in certiorari, their testimony related to this very question of the real ownership of the vessel. It must therefore be taken for granted by this court, that the defendant in the court below, the now plaintiff, was proved by satisfactory evidence to have been the owner of the Sloop at the time the articles were purchased for her, is and as such liable for them. Indeed if that was necessary to sustain the judgment, it might very properly be assumed that the defendant was proved to have expressly authorized them to be procured for the use of his vessel, for all the evidence is not before us, and we cannot infer to the contrary because one of the witnesses and perhaps the witness who knows the most about the transaction, now states the matter differently. But without assuming that more was proved than the express obligations of the state of demand, which are that certain articles were sold by the plaintiffs to the owner of the Sloop General Jackson, and that defendant was such owner, the court not only had jurisdiction of the case but in the absence of contradictory evidence to them, were right in giving judgment as they did. Nothing is more common than for mechanics or traders, to charge their services or goods furnished, to the owners of a particular vessel

without naming them, and I see no reason why such a charge is not as legal as if made against the owners by name, provided it be shown by proof who were the owners. A book is not sufficient evidence to charge a defendant with goods delivered to a third person, without proof of an order for such delivery, but accompanied by such proof it has been received. (Coxe 288, 577. 10 Shepl 475.) In the case of *Rich vs. Cox* (Cowp 636) the plaintiff appears to have charged the Captain by name and "the owners of the Ship," without naming them or knowing who they were, and upon proof that the defendants were in fact the owners, he recovered. And a similar charge appears to have been sustained in the case of *Schemerhorn & Loines* (7 John. R. 311.) Many authorities are cited by the counsel, on the subject of the liability of ship owners for supplies, and of the liability of purchasers who have not perfected their title or obtained a register. But it is not necessary to review them. It is not disputed but that the owner of a vessel may be liable, although he did not personally act in procuring the supplies and was not in fact known to the person furnishing them. It was a matter of fact tried before the court, who was the owner of the Sloop General Jackson, and as such liable for the articles charged in the books of account,²⁰ and it is not our province to enquire whether they determined that fact in accordance with the weight of the evidence or not. It is not alleged that they admitted illegal or overruled legal evidence, nor is it shown that in arriving at the result they did, they violated any principle of law.

Another objection to the proceedings was, that the state of demand is not a true copy of the book; that is to say, the book does not charge the defendant by name. The state of demand fairly interpreted, does not so imply. After stating the names of the parties, and that defendant is owner of the Sloop General Jackson, it commences: "Sloop General Jackson and owner Dr. to plaintiff," and this copies the several charges substantially as they stand so charged in the book, have not misled or in any prejudiced the plaintiff in certiorari." The objection that more interest was charged and allowed them was proper, is not shown to be true in fact. The judgment of the common Pleas must be affirmed.

NEW JERSEY COURT OF ERRORS AND APPEALS.

John S. Wood

vs.

S. L. & R. J. Fithian,

} In Error, &c.

ALPHONSO L. EAKIN, for pl'tff. in Error.

The first reason assigned for the reversal in this case, if sustained, will be sufficient *per se*.

It is that—"the argument in *Certri*. was heard and the cause decided by one of the Just. of the Sup. Ct. at Nov'r T. 1852, and judgment rendered at Feb. Term, 1853, being stated Terms of the Supreme Court of this state." "That the said Just. sat alone in a separate apartment from that in which, at that time, three or more of the Justices of said Sup. Ct. were then and there holding a stated Term of said court, hearing and deciding causes, whereby two Sup. Courts were in session at the same time—the same not being warranted, or authorized by the constitution of the state, &c."

By the VI. Art. Const. S. 1, it is made the paramount law of the land, that "The judicial powers shall be vested in—a—court of Errors & Appeals, &c.; a court for the trial of impeachments;—a—court of chancery; a prerogative Court;—a—supreme Court," etc.

The present constitution, framed June 29, 1844, went into operation Sept. 2, 1844, R. Sts. 34 s. 4. The framers of this clause have evinced a marked particularity in the phraseology thereof. The article 'a,' equivalent to the numeral 'one,' is with special care and caution affixed to each of the several courts, tantamount to a prohibition of more than—one—of such Courts. This is too self-evident to fear the shadow of contradiction—it is too high and supereminent for cavil.

By the 5th sec. it is decreed that "The Supreme Court shall consist of a Chief Just. and four Associate Justices. The number of associates may be increased or decreased by law, but shall never be less than two." No other power or authority is bestowed, to change or alter in any other manner than allowed by this edict—it is as inviolable as the laws of the Medes, &c.

The fiat constituting—one—sup. court, made the Court of Errors to "consist of the Chancellor, the Justices of the Supreme Court, and six Judges, or a majority of them," with appellate powers to review the decisions of the Chancellor and Justices of the Sup. Court. The fallibility incident to humanity, it is presumed by many, was the cause of the non-introduction of some enlarging clause or remedy, so that in case of Error to the Sup. Court, every Justice of said court "who had given a judicial opinion in the cause," should not be prevented to "sit as a member, or have a voice in the hearing." To remedy such casual omission, a former functionary of said court (as 'tis said) framed and introduced the 3d section of the Act of April 16, 1846, empowering the Sup. Court, "at any Term, to designate

'and appoint one or more of their number to sit in a separate apartment, for the purpose of hearing and deciding common business,'—Rev. Sts. 196—thereby virtually carving two courts out of one indivisible, contravening the constitution, and assuming a power not vested, nor required "to carry into effect the provisions of the constitution," in whom alone such power is vested, and if not, may be amended, &c.

It is admitted that it is a matter of convenience, and expedites business; but it is a separate and distinct court, contradictory in its decisions, and for some reason unreported. The decisions of one Term are not known at or by, the next. The advocates needed in the Main, are called in another court, called the "Branch." It is believed to be unconstitutional, by more than one eminent jurist; and although it may not have been before mooted, after a period of some years, a trite adage is that "it is never too late to do good." This very case, it is believed, had it been argued at Bar, would not have been here. Every suitor, under the constitution, is entitled to have his cause heard in the Sup. Court, as said by Blackstone, "freely without sale, and speedily without denial," and ought not to be turned off to a mistletoe of the Court. It may well be doubted, if, under the wording of the 5th sec., "that the Sup. Court shall consist of a C. J. and four associates," any less number can form a Sup. Court.—There is, certainly, no power for division, and no provision was made for contingencies, doubtless inadvertently.

2d. Another reason for setting aside this judgment is, because the Justice did not sign his name to the summons. The letters "A. E. Hughes" was subscribed thereto, and is not the name of any Justice in Cumberland County.

As Justices' Courts are altogether regulated by statute, the requirements thereof must be observed and a deviation therefrom is fatal.—The Stat. [Rev. Stats. 230 s. 4,] El. Dig. 270 s. 4—R. Laws 629 'directs that all precepts, summons, &c., shall be signed and sealed by the Justice who issued the same.' See Gr. Tr. 48, N. J. Just. 27, Penn Tr. The question arises whether the "sign manual" of "A. E. Hughes" (aside of its incorrectness) is a compliance with such requisition. The mandate that the "Summons shall be signed" evidently means by the language of the 5th sec. that the word signed means sign his name thereto, or that, his name be signed thereto, R. Sts. 230, and a penalty is inflicted if he signs his name to blank process.—Then are these initials A E, such a name as is required by this Stat. and by law, in such legal proceedings? Webster defines a name to be 'The letters written or engraved expressing the sound by which a person or thing is known or distinguished.'—p. 550.

C. J. K. in Penn 75, requidiates the principle of using initials for names, and adds "Names are the only marks and indicia of men and
*a name is only a more word used
 distinguish a particular individ
 as Benjamin Franklin 2 Boro
 24 1847*"

"things that human kind can understand each other by," and such was the opinion of the whole court in *Seeley vs. O' Schenck & Denise*,

It is not denied that in the ordinary transactions of life and business between and amongst men that the initials of mens' surnames may be used to bills, bonds, notes, grants, &c., "the same nicety therein not being required as in legal proceeding; wherein it is certain that persons must appear in *courts* by name of baptism and surname," and although sufficient in cases before admitted, "yet if so to a writ. (which is a summons) or pleading it is fatal"—Penn 116, 17-500, 5 Hals. 324; Bl. Com. 475; and as "in all *Courts* there must at least be three constituents, the *Actor* (plft.) *Reus* the deft. and *Judex* the Judge or Justice, [3 Bl. com. Arch. 23.] the name is equally required by one as the other. And in suits at law brought upon such bills, bonds, notes, &c., the proceedings must be in the full christian and surname of all parties, pro or con, and by proper and apt averments used in pleadings specifying that the parties who signed the initials and the parties in the suit are same persons—Penn 117, 500, 5, Hals. 328.

So particular is the law in this respect that even partners cannot sue in partnership name, or persons by *initials*, the christian name and surname must be used. [Coxe 130; *Seeley, &c., vs. Boon*; Penn 75; *Seeley vs. O'Denise, &c.,* Ib. 137, *Crandull vs. Denny*, Ib. 870 and 984; *Barnes vs. Smith*, and was fully confirmed by C. J. Ewing in 5 Hals. 295] 1 H. D. 292 pl. 17, 55. Neither can suits be defended by parties by *initials* [4 Hals. 252, *Clayton vs. Tompkins*, Exrs. 5 H. D. 230; *Bowen vs. Mulford*. And in 3 Gr. 132 *Dilts vs. Kinney*; 1 H. D. 284, the Sup. Court. said N is no name; "it is a letter or mark, and, in Arch. Pr. 59, it is written that "great care should be taken that the name be inserted correctly in the *prapice*, and a writ will be set aside, and the bail bond cancelled, if the initials and not the name be used." The name used was E. D. Colville, sed per cur: "E. D. is no christian name; no man was ever baptised by such a name."

To such an extent is this rule, that the Christian and surnames must be inserted in an affidavit to show cause. T. R. 657 *Fores vs. Diemar*.

As was remarked by the court in 4 H. 253, "the initials A. E. may stand for a variety of names: it is impossible to tell from the record, as in this case, what is the name."

The section of the stat. requires that the summons shall be "signed and sealed" by the Justice, and it is held that if not sealed, after verdict it is cause for reversal—Penn 72, *Veal vs. Brown*. Justice Elmer in his Dig. of the Statutes, P. 300 adds: "All process issued by a Justice must have a wafer or wax seal, and the Constable serving a copy must put a seal or scrawl, or it will not be a copy."

Further, "The time Deft. is to appear and the sum demanded ought

3 Baillie 378.

to be set forth *in words* and not in figures" *Ib.* 301, 1 *Havr.* 23, *Zab.* 36. *Sic.* If a judgment is entered in figures it will be reversed. *Penn* 60, 67-73, and ten other cases; 3 *Hals.* 174, 2 *Zab.* 36.

By analogy, &c., if a scrawl will not answer as a substitute for wax or wafer, or figures designate time or a sum of money; by parity, initials cannot stand for names. There is as much magical effect in one as in the other. The Stat. is equally imperative as to each, and the decisions thereon in conformity therewith. In *Penn* 61 (approved by C. J. Gr. in 2 *Zab.* 36.) Kirkpatrick, C. J. said relative to entering judgment in figures: "It would seem to be absurd that all the rest of the proceedings should of necessity be written *in words at length*, and the judgment only entered in figures." The summons and the Justice's name are a part of the proceedings."

But this is undoubtedly the rule and practice since the Stat. 4 *Geo.* 2, from which our Stat. (*Rev. Stat.* 991) is taken, by which it is expressly enacted, "That all proceedings whatsoever in every court in this State shall be in English, &c., and shall be written or printed in a good, strong, legible hand, &c., and *in words at length*, and not abbreviated," and this Stat. applies to Justices' courts *Penn* 60, 2 *Zab.* 36.

From this there is neither remedy or appeal. The stat., as said by *Ld. Hobart*, "is like a tyrant, wherever it came it made all void;" and "There is no relief against a stat. in any Court." 2 *Havr.* 458, 462 *pr.* *Just. Dayton*, 2 *H. D.* 837 *pl.* 23. The assertion that it has been done a long time, and will work no wrong, is futile and evasive. The substitution of a scrawl by way of seal, or a summons without either attached, altho' merely a notice to a party to appear, is of less importance than the name of the Justice or Court before whom he is to appear, will vitiate the process. And if it is a custom "so to sign process contrary to law, it is a bad custom, and ought to be no longer used, [*malus usus abolendus est.*] if even it be immemorial, is an established maxim of the law." 1 *Bl. Com.* 70, *Litt.* §212, 4 *Ins.* 6, 274. *292, 276*

The same stat. in appeal cases requires the Justice to enter in his transcript, when and by whom the appeal was demanded. Yet *Ewing*, C. J., reversed a judgment because the Justice entered it on instead of *in* his transcript. 4 *Hals.* 107 *Bennett vs. Kite*, he remarked, "This, at first sight, may seem to savor of rigor; But it is not so. It is the duty of parties to take care that the proceedings are conformable to law. And it is only in careful conformity to the law by the Courts, whenever questions are presented before them, that guide or safety can be found for them or for the parties." *Sic.* 292 *ib.*, 7 *Hals.* 184.

Such an objection may be looked upon also by some as the very apex litigandi, and technical. This may be so. "But (as was said by C. J. H. in 2 *Gr.* 400) we have no right to overrule it on that

Whichever a wrong practice comes before a Court, and especially if it be contrary to a statute, it is the duty to correct it. *sup. Ord.*

account. Plaintiffs are nonsuited, judgments are given, causes are put off, and many other things done in the progress of suits, deeply affecting, and often concluding, the rights of parties, upon grounds equally technical." In this case it cannot savor of rigor. The objection was raised before the Justice, opposed and overruled; the plaintiff then took the risk, and in those Courts the party proceeds at his peril. Penn. 65 245, So 77, 102.

3d. The action is brought in the name of two individuals, to maintain which they must be copartners in trade, or have a community of interest in the premises. If partners, the suit should have been so brought, or disclosed their joint right of action to the matter in dispute. Such is the general rule and practice, [2 S. on P. & E. 710.] Kirkpatrick, C. J., remarked that "it would be of exceedingly pernicious tendency if men were permitted to assume a hundred different forms in courts of justice; it would render all proceedings uncertain and inconclusive."—Penn 75 Seeley vs. Denise.

This course may lead to serious mischief, if in course of time the demand should be lost, or another somewhat different substituted, and a suit brought by one of the said plaintiffs against defendant.—"He would have to accomplish an unreasonable, if not an insuperable task, to sustain a plea of former recovery." And either of the defendants might testify that no joint interest or partnership existed in first suit. [Carey on Part. 97.] "To these hazards and burthens the defendant ought not to be exposed." The objection was made in the very onset of the cause, opposed and overruled, and no further notice of the same had or taken by plaintiffs. They have no right to complain, "and proceeded at their own peril." Penn. 247 So. 76 102, 3 Hals. 88, 5 H. 231.

The state of demand "must disclose a right of action in those who sue," to wit: a joint right, if such is the fact,—1 H. D. 292 pl. 12, 2 S. on P. & E. [704]—and the partnership proved by parol, or production and proof of the articles of partnership: 2 S. on P. & E. [710] 263.

That such "partnership was established," although disputed, does not appear throughout the proceedings, and cannot be presumed—"Quod non apparet non est"—Penn 63 Bayton vs. Cooper. Nothing can be supplied by conjecture—*ib.*—and "the necessary inference is, that no such partnership or joint cause of action was established."—So. 488 Clark vs. Reed.

There is a difference "in the power of partners to sue in an action *ex contractor* not coextensive with that of individuals. That power may be lost by the death or succession of a partner. The same may be a member of two different firms, and one could not then sue the other, as he could not be both plaintiff and defendant, it being a rule

of law that a man cannot sue himself."—2 Kinne's L. Comp. 422
 citz. 2 B. & P. 124, 6 Taunt. 598, 1 B. & Ald. 664 & other cases.

Sic.—In cases of bankruptcy or insolvency, their right to sue is so
 affected that they cannot sue *ex contractor*, without the assignee as
 plaintiff. 2 K. L. C. 422.

If one partner buys goods in an adventure and he fails, &c., and
 the vendor stops the goods *in transitu*, the solvent partner is then
 tenant in com. of the goods with vendor, and cannot sue him in
 Trover for the same.—*Ibid.*

Semb.—"It is incumbent on the plffs. to prove that they were all
 partners at the time of the contract, otherwise they will be nonsuited"
 2 K. L. C. 426—citing Cowp. 569—3 Camp. 239, 5 T. R. 709, 2
 Stewart 222.

4th, The demand varies from plffs. book of account and is not a
 true copy from said book which was produced, (as 'tis said) to prove
 the charges in Demand. It is manifest from the evidence taken under
 oath in this case that there then is a material, marked difference be-
 tween them. The Commissioner sends to the Court 18 instances of
 variances from the plffs book of account and their state of demand.—
 Two parts of their action is against "Sloop Gen. Jackson and owner,"
 and two against "Sloop Gen. Jackson and owners."

The plffs demand was not legally proved "If the account filed is not
 a true copy, the books of account are inadmissible to prove it." So
 73 McCormick vs. Brookfield, 150; Hoppuck vs. Wilson. *Semb.*—
 "A book without prices is not evidence of a demand containing items
 and prices," So 370 Hagaman vs. Case, 1 H. D. 449, pl. 8. By Stat.
 234 s. 16, "the plft shall deliver to the Justice a copy of his ac-
 count or state of demand, or be nonsuited." El. Dig. 278, s. 14.—
 It is manifest that plffs did not "deliver a copy of their account," and
 by statute must be nonsuited.

The charge against "The Sloop Gen. Jackson" is not a legitimate
 charge to be used against an individual, but such as may subject the
 Sloop to a libel to charge her in specie; after such charge to cast about
 to find one to pay, is certainly an anomaly in jurisprudence. Either
 the owners should have been first ascertained and then charged or the
 person buying held accountable.

Sic.—A book is not admissible to charge deflt. for delivery of goods
 to a 3d person unless proceeded by proof of an order for such de-
 livery, Coxe 288, Tenbrook vs. Johnson, 377; Townley vs. Woolsey
 Young vs. Shough, 2 Gr. 27, 28. *IN D 127*

This was obviously the true course from the circumstances of this
 case. R. Hann, a competent witness for Mr. Wood, (as by this testi-
 mony he charges himself) Coxe 377, [1 H. D. 450 pl. 10] and whose
 evidence is correctly brought before the court by his affidavit, as sanc-
 tioned by the cases of Goldsmith vs. Dane, 3 Hals. 87; 3 Gr. 28

Young vs. Shough, and other cases, testifies: that he was the owner of the sloop; had, used and possessed her; had bought her, paid in part, given his bond for her, and had an article in the nature of a bill of sale for her (prout the same); that he bought the articles in plaintiff's demand specified, for himself personally, and used them at home and for the vessel, as each was required; he did not buy in J. S. W.'s name, for him, or mention his name to plaintiffs. Yet this demand contains items not charged to J. S. W.; and judgment, with interest, has been rendered against him for charges of which he was entirely ignorant, and which he never sanctioned and did not require, hence these proceedings to test this principle and end this protracted contest.

But admitting for the argument that J. S. W. was liable for items charged to the Sloop, yet these items cannot legally render him liable for other items not charged to him. Such defective charges are "not cured by being mingled with correct items." 7 Hals. 125, South vs. Decon; 1 Harr. 396, Danser vs. Bogle, 1 H. D. 296, pl. 61. "The demand must contain everything in itself independent of proof; evidence cannot support or destroy its legality, it must stand or fall by itself." So. 73, El. Dig. 296; 5 Hals. 140; 7 H. 68: 1 Harr. 486, Meeker vs. Garland; Penn 94, 95, 332.

5th. The plaintiffs claim and charge interest on their account, on some items, before the pretended sale of the articles (see the demand); and the Justice, after striking out some of the items, retained all the interest, and the C. Pl. added interest on the whole amount, prout the items composing the amount of judgment.

This is as erroneous as where "some items are good and some bad, and judgment for the whole the Court will reverse. Penn 140 7 Hals. 25, 1 Han. 396, 1 H. D. 296 pl. 61.

Besides, the interest, if correctly calculated, forms no part of the debt, and is in the nature of damages, 2 Zab. 429. Bayley, J. 2 B. & A. 308, said "a general rule is now firmly established, that, in a court of law, interest is not allowed on a book debt, [Doug. 361, 76, 15 E. 227, 1 Camp. 51 519,] or shop debt, or for money owing for goods sold," 12 E. 419, Barnes 288, 2 Wm. Bl. 761, 3 Wils. 206, 15 E. 99, 15 E. 227, 7 Taunt. 595, 2 Camp. 473, 2 B. & P. 337, cited 2 Camp. 430 n. R. on debts 371, 8 Law Lib. 312 5

In this case justice, law and equity forbid its allowance. Debt. never contracted, knew or sanctioned Hann's dealings. Of a verity, he ought not to muled in damages by way of interest. "It is clearly established by later authorities, that, unless interest be payable by the consent of parties, express, or implied by the usage of trade, or other circumstances, it is not due at common law," 2 B. & Cres. 351, See Ram. on debts, 371, 8 Law Lib. 373, and the cases

there cited; and such is the rule in Pennsylvania, 1 Dall. 265, *Henry vs. Rush*, 315 *Williams vs. Craig*.

And so decided in N. J. *Coxe* 176 *Polhemus vs. Annise*; and such is the law in Mass., Min. Dig. 408, 22 Pick. 291, 9 Pick. 368, 325, 8 Pick. 261; also in N. Y. 1 Barb. 235, *Easterly vs. Cole*, K. L. C. 143 (1848), 6 J. Ch. 45, 2 Wend. 413, 510, 6 Cow. 193, 4 Cow. 496, 2 Clk. Dig. 233 pl. 15, 2 Caines R. 234, 3 *Cowen* 425, sic. 11 *Metcalf*, R. 210, *Van Hemest vs. Porter*, K. L. C. 205 (1850).

The Com. Pleas also erred in computing the interest on their affirmance of the judgment. "It was error to compute the interest then due on the judgment, and render judgment for the aggregate amount in the appellate court, and thereby compounding interest." 5 *Alab. R.* 195 *Richards vs. Griffin*, K. L. C. 160 (1846).

And in such case, where the action was for goods sold, interest will not be allowed on affirmance of judgment. 1 *Arch. Fr.* 240, citing 4 *Taunt.* 244.

In N. Y., and in the Court of K. B. in Eng., it has been held in some cases to be discretionary. 2 *Brr.* 1097, 13 *J. R.* 561, *Gelston vs. Hoyt*.

6th, It is further alledged that the Courts below had no jurisdiction, and that, under the circumstances, the charges being against the vessel and no parson named, the vessel herself under the maritime law of the U. S., was liable.

From the antecedents no calm, reflecting, unbiassed mind can possibly be at a loss to understand the language, object and purport of this reason.

The plfts by their own showing, sold to the Sloop, to her they gave the credit, and to her they looked for pay. That then they did not know who owned her, one or more, is manifest from their demand; had they known they would have charged accordingly, and it was not until they wanted payment that they searched the Custom House record, and seeing the name by which she had long before been registered, they sued him instead of libelling the vessel or trying the Skipper or Master.

It has been proved beyond question that J. S. W. was not at the time, when, &c., the owner, and if not, then, if even under the circumstances Hann may, (for the sake of argument) be deemed the Master, and as such as a right to bind the vessel, if he does not contract in his own name, "the ship and freight are by the marine law bound for the performance of the contract."—3 *K. Com.* 162. *Ed.*

"This Law the Com. Law Courts cannot carry out. The ship in specie is bound, and when the Master binds her and the owner for repairs and necessaries, the plfts must show the actual necessity of the same; and this strictness, requisite to the exercise of the Mas-

'ter's authority, arises from the facility of misapplication, and the 'temptation to abuse, to which the power is incident," 3 K. C. 163.

"The great case of *Cary vs. White*, which underwent much discussion, established the principle of the personal responsibility of the owners; *provided* the creditor could show the actual existence of the necessity of those things which gave rise to the demand; and this is equally well established in the jurisprudence of this country." 3 K. C. 164; *Dallas* 225; 2 *Caines* 77; 11 *Mass.* 34

So far as appears by the testimony, a part of the articles were used by the master, who was also the owner, on, in, and about his dwelling-house.

Such necessity does not appear, and was not proved—the record shows the proof made by both parties: The plffs. and Custom books were proved, and the deft. proved no ownership.

Kent, in his 3d Com. 133, says, "There is no doubt that the owner 'is personally liable for necessaries and repairs for a ship, by order of the master, and the great discussion is, who is to be regarded as the owner?'"

In this case plffs. relied upon the Register of the Custom House to prove the ownership of the sloop, and proved the book by Dr. Buck, the Custom House officer. But "the ownership, in relation to this subject, is not determined by the Register, 3 K. C." 133, and only proves who was the owner at the time of the registry, *Min. Dig.* 643, 8 *Pick.* 86, 5 *Mass.* 42 *Hutch vs. Smith*, *IP. Ev.* [327]. In *K. L. Com.* p. 589, it is said, "The ship's Register is not of itself evidence of the ownership of the person in whose name it stands, when introduced in a suit against him, to establish his ownership, 14 *J. R.* 201, 15 *J. R.* 201 *et al. cas.*, *IP. E.* [327] *et* [329], actual possession must be proved." 298

R. Hann swears he was the owner, was in possession, sailed her for himself; and that J. S. W. had parted with her in toto, had his obligation, and he had a written contract for her, and had paid some part by freight carried in this very vessel; that he was not in J. S. W.'s employ, not responsible for her earnings, or accountable to him for the same, and

This, if not sufficient to make him the owner, would make him the charterer, and whilst in charterer's possession the owner is not liable, *Min. Dig.* 446, *Pick.* 422 *Perry vs. Osborne*.

"And a person who has parted with his interest in a vessel is not liable for supplies furnished to her, *though his name still stands on the enrolment as owner.*" *Min. Dig.* 646, 4 *Pick.* 459 *Dame vs. Hadlock*.

"Nor is a regular bill of sale essential to exempt the former owner from responsibility for supplies furnished," 3 *K. C.* 133-4, "or to transfer the ship; a contract to sell, accompanied by delivery of

possession, is sufficient," Min. Dig. 643, 8 Pick. 86, *Bixley vs Fr. Ins. Co.*, 10 Mass. 336, *Taggart vs. Loring*, 16 Pick. 401 *Venal vs. Burrill*; and "where the contract of sale is made, and possession delivered, the circumstances that the naked legal title remains in the vender for security, does not render him liable, as owner, on the contracts, or for the conduct of the master," 3 K. C. 134, citing *Johns*, 308 *Wendver vs. Hogeboom*, 15 J. R. 298, *Leonard vs. Huntington*, 7 Cow. R. 697, *Thorn vs. Hicks*, 4 E. 130, 13 E. 239.

A Bill of sale is not necessary to transfer property in a Ship 8 Pick. 86. The Bill of sale and Custom House register or enrollment are not conclusive evidence of property "in a ship," *Ib.* "The register or enrollment only proves who were the owner when such document was made," 4 Pick. 298, *Wait vs. Gibbs*.

2 K. L. Comp. 589 says, "The owner is not responsible for stores furnished the ship by order of the master during such time, if he divested himself of all control and possession, for the time in favor of a charterer," 2 Kin. L. Comp. 615, citing, 4 *Greenleaf*, Rip. 407, 13 E. 239, *Frazer vs. Punch*.

Semble—"The master is personally liable upon all the contracts which he makes respecting the employment, repairs, supplies, seamen, navigation, &c., in the absence of any special contract to the contrary." 3 K. L. Comp. 17; *Abb. on Ship*, pt. 1 N. 1 pt. 2 s. 2, p. 90, pt. 4 c. 4, Se. 1 N. 2, 1 *Wheaton* 96; 10 Mass. 47, 10 J. R. 1, 1 *Dall*. 393, 6; 3 K. Com. 161, and numerous other cited cases.

I have endeavored to elucidate the grounds for reversal succinctly and clearly, and although it may remind us of what was said by a late learned member of this Bar,* that "their great object was invention and discovery," he, at the same time, added, "The great object of the Bench was, impartiality, and sound judgment."

* George Wood, Esq.

Chas. D. Sig.
1024 p. 137

The first part of the report is devoted to a general description of the country, its position, and its resources. It then proceeds to a detailed account of the various districts, and the manner in which they are governed. The author also discusses the state of agriculture, commerce, and industry, and the progress of civilization in the country.

The second part of the report contains a list of the names of the various districts, and the names of the persons who are appointed to govern them. It also contains a list of the names of the various towns and villages, and the names of the persons who are appointed to govern them.

The third part of the report contains a list of the names of the various tribes and clans, and the names of the persons who are appointed to govern them. It also contains a list of the names of the various towns and villages, and the names of the persons who are appointed to govern them.

The fourth part of the report contains a list of the names of the various towns and villages, and the names of the persons who are appointed to govern them. It also contains a list of the names of the various tribes and clans, and the names of the persons who are appointed to govern them.

The fifth part of the report contains a list of the names of the various towns and villages, and the names of the persons who are appointed to govern them. It also contains a list of the names of the various tribes and clans, and the names of the persons who are appointed to govern them.

The sixth part of the report contains a list of the names of the various towns and villages, and the names of the persons who are appointed to govern them. It also contains a list of the names of the various tribes and clans, and the names of the persons who are appointed to govern them.

The seventh part of the report contains a list of the names of the various towns and villages, and the names of the persons who are appointed to govern them. It also contains a list of the names of the various tribes and clans, and the names of the persons who are appointed to govern them.

The eighth part of the report contains a list of the names of the various towns and villages, and the names of the persons who are appointed to govern them. It also contains a list of the names of the various tribes and clans, and the names of the persons who are appointed to govern them.

The ninth part of the report contains a list of the names of the various towns and villages, and the names of the persons who are appointed to govern them. It also contains a list of the names of the various tribes and clans, and the names of the persons who are appointed to govern them.

The tenth part of the report contains a list of the names of the various towns and villages, and the names of the persons who are appointed to govern them. It also contains a list of the names of the various tribes and clans, and the names of the persons who are appointed to govern them.

NEW BRITAIN COURT OF COMMONS

IN SENATE

1850

The Report of the Committee on the subject of the proposed amendments to the Constitution of the State, in relation to the mode of electing the Governor, and the mode of electing the members of the Senate, and the mode of electing the members of the House of Representatives, is hereby laid before the Senate, and the same is read and approved.

NRW JERSEY COURT OF ERRORS, &c.

John S. Wood
vs.
Samuel L. Fithian
& Robert J. Fithian, } In Error, &c.

JNO. T. NIXON, for def'ts in Error.

The Counsel for def'ts in Error, as a preliminary step, asks this Court to strike out all that part of the printed state of the case on page 8, from 1st to 10th line, inclusive. In no sense does it belong to the case, and it was inserted by the Counsel for pl't'ff without the shadow of authority. The record, in the minutes of the Supreme Court, shows that a writ of Cer. was allowed, returnable to the Supreme Court, at the Term of February, 1852; that the case was argued before the Supreme Court at the Term of Nov., 1852, and that the opinion of the Supreme Court was delivered by Mr. Just. Elmer at the Feb. T., 1853. The Counsel for pl't'ff should not go behind the record, at least, without consent.

I. The first reason assigned for reversal is, "that the argument in Cer. was heard and the cause decided by *one* of the Justices of the Supreme C't, sitting alone, in a separate apartment from that in which, at that time, three or more of the Justices were then holding a stated term of said Court, &c."

The first reply to this reason is, that there is no evidence to support it, unless the unauthorized assertion of the Counsel for the pl't'ff in Cer. will be received by the Court as evidence. It appears, by the entry in the minutes of the Supreme Court, that the cause was argued in that Court, and decided there. The Court of Errors will hardly look behind the record and listen to the allegations of Counsel.

But, secondly, the 3d Sec. of the "act relative to the Supreme and Circuit Courts" (Rev. S. 196) does not in any sense establish another Sup. C't. It only designates the mode by which the same Court may expedite its business, and thus accommodate suitors and counsel. When a case of sufficient magnitude arises to authorize Counsel to be heard before "the Chief Justice and the four associate Justices," it will be time enough to decide the question, now mooted, whether a Sup. C't can be constitutionally held by any less than the whole number.

II. The second reason assigned for reversal is, "Because the Justice did not sign his name to the summons."

By reference to the summons, page 1, lines 7—10, it will be seen that it was signed "A. E. Hughes, Justice of the Peace." The objection, therefore, must be that his christian name was not written in full. The various cases cited by the Counsel for pl't'ff in Error, have no reference to this point, and it is submitted that he can find no

authority requiring a Judge, or Justice of the Peace, to write his christian name in full to a summons.

The statute, it is true, requires Justices of the Peace to sign their names to all precepts, summons, &c. Yet the statute, with like directness, requires that Judges, Clerks, and other judicial officers, as well as Lawyers, shall sign their names to judgments, writs, &c., and it has always been held that the duty was well performed, altho' the christian name were not written in full. If this objection were sustained, nineteen-twentieths of the judgments in New Jersey would be invalidated.

III. The third ground for reversal is, "That the action is brought in the name of two individuals, to maintain which they must have been co-partners in trade, or have had a community of interest in the premises."

The action was brought in the name of Samuel L. Fithian and Robert J. Fithian, for goods, wares, and merchandize furnished by them to the owner of the Sloop Gen'l Jackson, and the state of demand alleges that the said Wood was such owner. Whether the Plaintiffs had a community of interest in the goods thus sold, is a question of *fact*, not a question of *law*; and a question of *fact* is no ground for reversal. If they had such joint interest, the suit was not only rightly brought, but could be brought in no other way.—As several witnesses were examined, both before the Justice and the Common Pleas, this Court will now assume that the fact was proved to the satisfaction of those courts respectively.

IV. The next reason assigned for reversal is, "That the demand varies from the plaintiff's books of account."

The first reply is, that the facts do not sustain the reason. There is no variance between the state of demand and the books of account that is material, or that could possibly mislead the pl'tf in error.—The charge in the books is against "The Sloop Gen'l Jackson and owner," and the state of demand, after stating the names of the parties, and that pl'tf in Error is owner of the Sloop Gen'l Jackson, commences with "Sloop Gen'l Jackson and owner" Dr. to Def'ts, &c.

The next reply is, that def'ts in Error were not obliged to rely solely upon their books of account to prove their demand, or to prove that the specific articles were furnished, as alleged. The Capt. not only admitted the delivery of the articles, but the Counsel for pl'tf in Error has taken pains to perpetuate his testimony as to this point, —see p. 6, l. 34—5.

The Counsel for pl'tf in Error quotes many authorities to prove "that books of account are not evidence to charge one with goods, received by a third person, unless an authority to deliver them is shown."

That is a well-settled principle; but it is also settled that it does not apply to captains of vessels, who are the agents of the owners, and, as such, bind them by their acts even when it may not be known who the owners are. Upon this point see particularly the leading English case of *Rich Exr. vs. Coe et. al.* Cow. R. 636, in which L'd Mansfield states the law with great clearness and power; also, *Smith Mer. L.* p. 91, (note Z.); *ib.*, p. 119, 3 Kent Com. 161.

V. The next reason assigned is, "That the plaintiffs claim and charge interest on their account, on some items, before the pretended sale of the articles; and the Justice, after striking out some of the items, retained all the interest, and the Common Pleas added interest on the whole amount."

Nor is this reason sustained by the facts. By looking at the state of demand (page 3, l. 30) it will be seen that the whole claim of the plt'fs, below principal and interest, was \$22.19. The Justice gave judgment for \$21.94—not allowing the whole claim. But if we assume that the Justice did allow the whole amount of interest charged, to wit, \$1.30, it can be easily ascertained, by computation, that more than that sum accrued between the time of the delivery of the last bill of goods (Aug. 17, 1848) and the judgement (Dec. 7, 1849).

And so with regard to the judgment in the Common Pleas, which was for \$23.69 (p. 3, l. 33). The amount of principal claimed by plt'fs was \$20.89, and the interest thereon to the date of the judgment, in C. P. (Feb. 20, 1851), was \$3.50, whereas only \$2.80 was allowed; hence, there was no over charge.

It is not necessary here to decide the question raised and argued by the Counsel for plt'ff in Error, whether this Court, in the absence of all agreement between the parties, can or ought to allow interest upon book accounts. The articles may have been charged at the cash price, and if so, interest should have been paid from the time of the delivery; or there may have been an agreement with def'ts in Error that interest should be paid. This Court, in the absence of all knowledge, will assume that the Courts below had satisfactory evidence for making the allowance.

VI. The last reason insisted upon for reversal is, "That the Courts below had no jurisdiction, and that, under the circumstances, the charges being against the vessel and no person named, the vessel herself under the maritime law of the U. S., was liable."

If Counsel for plt'ff in Error mean by this that no ship owners can be held liable for supplies furnished to their vessels unless they are named at the time of the sale of the articles, it is submitted that no authority has been or can be produced to sustain any such ground.

The Books of Reports, in England and the U. S. every where show, that a common mode of charging for repairs and supplies, to

vessels, is against the vessel itself; and upon such a charge the owner, altho' not named or known, is liable.

The case of *Rich vs. Coe*, (Cow. 636) already cited, is in point. The charge was against the owners of the Ship *Henry & Thomas*, altho' their names were not known at the time. The suit was against the owners by name. Lord Mansfield would not hear the question of the owner's liability argued; but says "Whoever supplies a ship with necessaries has a *treble* security. 1, The person of the master. 2, The specific ship. 3, The personal security of the owners, whether they know of the supply or not." *S. P. Farmer v. Davies* 1 Term, R 109, *Garnham v. Bennett*, Str. R. 816.

Ch. Kent lays down and enforces the same rule 3 Com. 161.

In the case of *Schemerhorn vs. Loines*, (7 John, R. 311) the Counsel for both parties, admitted to the fullest extent, the principle now contended for: but the Counsel for def't sought to evade payment by showing that plt'ff had given the credit to *one* of the owners, and taken his note for the payment. The Court held, that the taking a note from *one* of the owners, unless it was afterwards paid, was no bar to the liability of the other owners, afterwards discovered.

Under this reason the Counsel for plt'ff in *Error* discusses the question of *ownership* of the Sloop *General Jackson*, at the time that the supplies were furnished by def'ts; and it is now submitted, that this is the *only real* question in the case.

The credit was given to the "owner of the Sloop *Gen'l Jackson*," as is manifest by the charges in the Books of account. It was not given to the master, (*Hann*) or the articles would have been charged to him.

The ownership is a question of *fact*, as well as of *law*. It was proved, that *J. S. Wood* stood upon the Custom House books, as the Registered owner: that a short time previous to the trial, he took the oath of ownership; and that the papers then recognized him as the only owner; and that the vessel was then in his possession.

It was not contended, that this proof was *absolute*, but was *prima facie*, and threw the burden on the defendant.

To rebut this, *Wood* offered *Capt. Hann*, who admitted that his only claim to the vessel was by virtue of a certain article of agreement, given to him by *Wood*, (see state of the case p. 4, l. 37 to 46,) and that it was a *private* agreement only known to himself and *Wood*, (p. 7, l. 5—8.)

The Court will see that this paper is only an agreement to sell, when *Hann* should pay \$5.50, which was never paid, as *Hann* admits, (p. 7, l. 4.)

The only witness of def't below, proves that the Messrs. *Fithian* had no knowledge of the agreement when the goods were furnished, or until the trial. They dealt with the vessel and its owner, as they

stood before the world, and could not have acted in reference to a private agreement between the master and owner, without notice. — Mr. Wood held himself out to the public as owner, and must bear all the legal responsibilities growing out of the relationship.

A similar attempt was made, and upon the same grounds, to shift responsibility from the owner to the master, in the case above cited of *Rich vs. Coe*. There was a private agreement, between the owners and master, that the master was to have sole conduct and management of the ship and keep her in repairs, &c. "But," asks L'd Mansfield, "how does that affect the creditors who were strangers to the transaction?" "To be sure, if it appeared that a tradesman had notice of such a contract, and, in consequence of it, gave credit to the captain, *individually*, as the *responsible person*, particular circumstances of that sort might afford a ground to say he meant to absolve the owners and to look singly to the personal security of the master. But here it is stated the pl't'ff had no notice of the contract, &c."

Many cases are cited by the Counsel for the pl't'ff in Error to show "that the registered owner is not responsible for stores furnished the ship by order of the master, if he has divested himself of all control and possession of the ship, for the time, in favor of the charterer."

But the cases all turn upon the point, that the person furnishing the supplies had a knowledge of the agreement or transfer, and that a credit was given to the parties in possession.

Thus in the case of *Wendover and al. vs. Hogeboom* (7 John. 308); the credit was given to *Vosburgh*, and upon that ground the registered owners were deemed not liable.

And so *Leonard vs. Huntington* (15 John, 298) is a leading case upon this point. There, the Brig *Recompense* was sold by former owners to one Bingham, but by the contract, a Bill of sale was not to be given until the stipulated price was paid. Possession was taken by Bingham, who sent her to the plaintiffs to be repaired, they being *previously informed that she was owned by Bingham*, and he occasionally attending while the repairs were going on, and giving directions relating to them. After the repairs were made, Bingham, having paid for the Brig in full, received his bill of sale according to the contract.

"As between the parties to the contract" says Ch. Just. Thompson, who delivered the opinion of the Court, "there can be no doubt this would relate back to the time when the Contract was entered into. Third persons are not, however, to be prejudiced by such relation; and had the defendants remained in possession of the Brig, or had the repairs upon her been made upon their credit, in any manner, the plaintiffs ought not to be affected by such relation."

NEW JERSEY COURT OF ERRORS AND APPEALS.

John S. Wood,
vs.
S. L. & R. J. Fithian,

} In Error, &c.

ALPHONSO L. EAKIN, for Plt'ff. in Error.

The preliminary step, "to strike out all that part of the state of the case on p. 8, from 1st to 10th line inclusive," is not in order or time. By Rule 13 p. 96-7, the pltf. in error shall furnish to each member of the Court a state of the case—or abridgement of the record, &c," but if not agreed upon, the party setting down the cause shall make the same, &c., "and in that case each party shall furnish, as last aforesaid, the points on which he means to rely." "Such Rules are in part the laws of the land, (3 Gr. 124,) and not to be disregarded."

In every sense those lines belong to the case, and are parcel thereof, and may be said to be, '*Res inter alios acta.*' A state of the case is a history of the case, and required to be furnished to each member. If not agreed upon the other party shall also furnish, and the Court decides thereon. This is not so, nor is the verity of that part of the case denied. The pltf.'s authority is deduced from, and not behind the record. It is evident thereby, that his Hon. Just. E., with Just. N., were appointed at Nov. T. 1852, to hear cases in another room, &c., pursuant to the stat.

By public Stat., "of which Courts are bound to take notice, judicially, *ex officio*," 1 Bl. Com. 86, 2 K. L. Comp. 67. Just. N. was appointed to office, Nov. 1838, and his term expired Nov. 1852, and the certiorari being submitted on Briefs, (see Just. E.'s opinion, part of the record.) He did not act in the case, being *functus officio*.—These facts therefore are not only well sustained, but within the cognizance of the Court.

Do not Defts. err in stating the record? Such entries are not in general, if ever, entered in the minutes unless application for the Certiorari is made at Bar. If so, however directly confirms that part of the case objected, but for which no valid reason is given, and if suffered to remain cannot affect the case.

But such a preliminary cannot now be. The pltf.'s argument may be said to have been given, and it would be incongruous after a cause had progressed so far, to interpose a preliminary motion. The very definition of the word forbids.

Sufficient has been shown to sustain this reason, and if, for sake of argument, we strike out the part objected to, there is enough left to test the constitutionality of the Branch Court. The Stat. (Rev. S. 196)

is a public one, 1 B. C. 86, empowers the Sup. Court "to designate and appoint one or more of their number to sit in a separate apartment for the purpose of hearing and deciding com. business, &c." and certioraris like this are one of the matters of com. business to be there heard and decided, Rules p. 22 s. 41, p. 37, s. 80. Hence such reason seems not to be the unauthorized assertion of Counsel, but is founded upon the charter of that Court and the very language thereof quoted.

There is no looking *behind*, but *at* the record emanating from the Court thus constituted, and although by the Minutes such Court may be called the Sup. Court, and the case said to be argued there; yet the Clerk cannot by keeping one Book of mints for both rooms and for each several Court legalize such proceeding, and thereby preclude such objection. Of a verity such minutes must possess ubiquity!

Minutes of a Court do not come within the principle of Records, against which nought may be averred, 3 Bl. com. 24, 4 Halst. 188, 1 Gr. 143. But have always been decided otherwise. See 2 Harr. 377, and cases cited and so ruled in this Court, Ib. 380, *Sic.* 3 Halst. 278. "The minutes are no record, nor are they ever signed by a Judge. They are *side* memorandums extraneous to the record."—3 Gr. 383, *Evans vs. Adams.*

Secondly, the Stat. R. S. 196, authorizing the appointment of one or more of their number to sit during term time, for the purpose of hearing and deciding, &c., further enacts, "whose decisions and judgments shall be as good and effectual as if they had been rendered at the bar of said Court."

To hear, decide and render judgments, are the acts, duties and powers of Judicial Tribunals, called Courts. By such appointment the Sup. Court deputises these duties and powers by proxies, and *make a Court*—separate and distinct—unauthorized by the Constitution, but lately unknown, and without even a power appellate or to review. "A Court is defined to be a place wherein justice is judicially administered." 3 Bl. Com. 23, co. Litt. 85, *Hence* a Court is formed to do the acts, business, &c., for which the Sup. Court was constituted and power delegated. "A delegated power cannot be delegated." 4 Halst. 335, 1 Salk. 96.

The Sup. Court shall consist of a Ch. Just., and four associates, which associates shall never be less than two. See Const. XXX, s. V. Can one or two therefore, hear, decide, and render judgments legally under that Constitution? The question is now mooted, and now is the time to decide it.

2d Reason. The Stat. 230, s. 4-5, imperatively directs that all summons, &c., shall be signed by the Justice, and the word *name* distinctly specified, and a summons without such name is void.—Letters or initials are held not to be names—Penn. 75, 3 Gr. 132,

Hence

Arch. R. 59, and in or to writs, (Summons) fatal, p. 3, plff's argt. The authorities are not only manifold, but our Statute 991, expressly directs all proceedings whatsoever to be in *words at length*, and not abbreviated; and as a Summons is a part of the proceeding it is included necessarily in this mandate.

The practice act, 931 s. 18, directs the name of the attorney—or party—and clerk, to be subscribed or indorsed, &c. s. 77—"the record shall be signed by one of the Judges, &c." How can it with propriety be "asserted by Counsel," that the duty was well performed although the names were not written in full; not an authority is quoted; but a reference to a 'bad custom,' if any, may be implied which, if so, should be abolished even "if immemorial"—1 B. Com. 70—*et vide*, 2 Gr. 276, where long established usage was abolished, [p. 4.] ante. As to invalidating nineteen-twentieths of the judgments held out *interrosum*—all beyond three years are safe from Writs of Error, R. Stats. 953—all since, may be cured by remedial Statute—all pending, by amendment.

3d Reason. It is not sufficient to establish a community of interest or a partnership, *per se*. by suing jointly—a joint right or partnership must be stated and proved; and if partners by adding to the names "trading under the name, style and firm of S. L. & R. J. Fithian." If not, upon a separate subsequent suit, either partner may swear to a non joint interest in this suit—Carl, on part. 97, sec. 2 Kin. Law Comp. 426, Cowp. 569, 3 Camp. 239, 5 T. R. 709. It is alleged to be a question of *fact*, and no ground of reversal. It is a *fact*, and such a fact, as if it does not appear to be established, is a ground for reversal. The plff's. evidence below is spread on the record, and was very limited, viz: the proof of the plff's. and the Custom House Books, and no other. The presumption by law is adverse, Penn. 63, 88, 100. So 488, ante [5.] So strong is this principle that, if an account is sent up with the papers, but is not mentioned in the Justices' transcript. No state of demand was filed p. 100. "No notice being taken thereof in the transcript, the necessary legal inferences, that none was filed." So. 488, no authority is shown to the contrary, if we except the reiteration of the Justices' views in certiorari. [See argument p. 5 for plff.]

IV Inspection will show that there is a manifest difference between the demand and book of account offered in evidence, and so it seems to be admitted with the salvo, however, that they are "not material, and cannot possibly mislead," &c. That is begging the question. If the demand and books vary, it is fatal. So South. 73, 150, 370, H. Dig. 449 pl. 3. Rev. Sts. 234, s. 16, El. Dig. 278, s. 14.

The commissioner certifies to at least 18 variances, and not amongst the least is that ten or more of these articles charged from April 29, to May 3, 1848, are charged to Sloop Gen. Jackson and owners, under

two distinct heads. No evidence of books, parcol, or otherwise, could sustain such demands against J. S. Wood alone. South. 73, El. Dig. 296, 5 Halst. 140, 7 Halst. 68. It must contain everything necessary of itself, independent of proof, to show that the plff. has a legal cause of action, Penn. 73, 248, 351, 817, 4 Halst. 347, El. Dig. 296, 1 Harr. 486.

The demand commences as stated, with "Sloop Gen. Jackson and *owner Dr.*," and so continues *ad finem*, and it is made manifest that on the 29th April and May 1, there are charges made against "Sloop Gen. Jackson and *owners.*" Such cannot legitimately be allowed against one owner, and *per se* is a fatal variance.

Grant that other evidence than books may be relied upon to prove delivery of goods, yet although not given or had here, the admission of those books, objected to, although they may have worked no wrong, was illegal, erroneous, and cause of reversal. Such decision admitting the books by the Court of Common Pleas was "wrong, and we have a right to complain of it." To this principle the attention of the Court is called. See 3 Gr. 464 *Nicholson vs. Wood* at Nov. Term, 1836, and argued by the present Chief Just. in the Court of Errors, and there confirmed. It is immaterial, therefore, whether such variances were not material, would not mislead, or were mere irregularities.—They were errors by the Court of Common Pleas, and as such not within the saving clause of the 3d sec. Rev. Laws, 558 Rev. Sts. 248, s. 74, 3 Gr. 464.

The whole of the captain's testimony must be taken together, and fortunate it is that it is perpetuated, and now before the Court, as it proves conclusively that the goods were not sold and delivered by them to J. S. Wood, but to himself personally, and for his own individual uses. J. S. Wood's name was not mentioned, as also is evident from their books. See 3 Gr. 28.

The principle that books are not evidence to charge a third person, without evidence to deliver things, is admitted to be well settled.—But it is insisted that it does not apply to Captains of vessels who are the agents of the owners. Yet it most certainly applies to cases where the Captain is also owner, as he then is the principal and his *own agent*. The case in Cowp. 636 decided in 1777 in England is not in point. There the Captain was the lessee—had rented the ship, bought cables for her, and suit brought for the same against the Captain and owners. She had not been sold—belonged to others, not the Captain, and in addition to its inapplicability, although entitled to respect, is not law here since July 4, 1776, Patt. Laws 436, and not binding, 2 Harr. 195, 4 Harr. 97.

✓ *Prima Facie* this 5th Reason is sustained. Interest is claimed from May 8, 1848, before the expiration of the account. It is as much to be presumed that the Justice disallowed some item of the

articles charged as a part of the interest, and such was probably the case, as between the items in demand and those charged in the books, p. 7, there is a difference. The interest is claimed per demand to Nov. 23, 1849—it is error to claim to Dec. 7, 1849. The main question, however, is not to be evaded in the way attempted, and is virtually a tacit admission of the principle urged by plfff. That interest is not allowable on book account, goods sold, &c.* Not a case is cited to meet the authorities of plfff. Brief. p. 7-8, showing the contrary in other States, England and N. J. It is necessary that this question be decided, and therefore made a point in the cause. The remark, that "the articles may have been charged at the cash price," will not avail. Such charges are not made—no such evidence was had below, or they would have made it so appear when affidavits were taken before the Commissioner, which they had the right to do under the Rule. [Rule, p. 29, s. 61.] Failing to do so the presumption is adverse, as it would seem to be impliedly admitted that such interest is illegal without an agreement for the same.

The judgment of the Com. Pleas was for \$26.24, in which was included \$1.75 interest [p. 5, and 6,] The judgment was affirmed for \$23.69, and rendered for more, adding interest [or otherwise,] which by law would accrue from the date of the first judgment, and such is the form South. 569, approved 1 Harr. 304, (4 Halst. 350, see N. J. Just. 109 El. Forms 26, Gr. Tr. 140.) The affirmance of a judgment for one sum, and giving judgment for another, cannot stand, nor execution issue, 3 Harr. 269, 70 *Ivins vs. Schooley*.

The affirmance and judgment are each severally more than the demand, and the interest compounded thereon, which may not be, 1
 5.5 H. Dig. 318, pl. 53, 4 Halst. 319, 5 Halst. 288, *et al* 5 Alab. Rep. 195, 1 Arch. Pr. 240, 4 Taunt 244.

VI. The Defts. submit p. 4, that the question of *ownership* of the Sloop at the time the supplies were furnished is the *only real* question in the case, and is a mixed question of Law and of fact, and they had no notice. It is not necessary to give notice to the world that an owner has sold his vessel—this would indeed be anomalous.

The case in Cowp. 636 however it may be entitled to our consideration, is neither law nor binding. It is alleged that "it was proved a short time previous to the trial, J. S. Wood took the oath of ownership, that the papers then recognised him as the only owner, and that the vessel was then in his possession"—without recrimination this is "assertion of Counsel," and not in the record. The sale was Jany. 12, 1848, p. 4, of course, the registry was before that—the goods sold to Hann April 17, and August 17, and the trial Dec. 7,

* Peter D. Vroom.

1849. If it then threw the burden of proof on J. S. W., he bore it well. See Evid. p. 6, &c., says p. 7, L. 7, "the bargain was between myself and Mr. W. alone," evidently meaning there was no other owner or partner with himself. The agreement to sell in this case is equivalent to a bill of sale, which is not necessary either to exempt the owner, or transfer a vessel 3 K. Com. 133, 4. A contract to sell with delivery is sufficient 8 Pick. 86, 16 Pick. 401, 10 M. 336.

In what part of his testimony does he prove "that the Messrs. F.'s "had no knowledge of the agreement when the goods were furnished, "or until the trial?" He did not sail the vessel for J. S. W. before he bought her, p. 7, l. 8. He says, "I went to Mr. F.'s Store to buy paint," and he said I could have them," p. 6, l. 18, 19, 20, "I bought the articles on my own Cr., and did not mention J. S. W.'s name, (ls. 36, &c.*)" If they dealt with the vessel and owner, why not sue the real owner or libel the vessel. It is evident they knew nought about the ownership, whether one or more. See Demand p. 7, ls. 26, 30, but appear to have charged with latitude to have Master, Ship and owner bound.

It is not admitted that the cases cited for plfff. p. 9, 10, turn upon the point that the vendors "had a knowledge of the agreement or "transfer, and that credit was given to the parties in possession," nor was it necessary; "the circumstance that the naked legal title remains "in the vendor for security does not render him liable, *as owner*, on the contracts or for the conduct of the Master," 3 K. Com. 134, 7 J. R. 308, 15, J. R. 298, 7 Cow. 697, 4 E. 130, 13 E. 239. It would seem from Hann's language, that they must have presumed him (Hann) to be the owner. J. S. W. deft. not remaining in possession—4 Grenl. 407, 13 E. 239, and it seems mysterious that he should have been sued, and pursued to this Court for such an amount when they had other remedies. As it is neither noticed or denied—that to recover against an owner for repairs, &c., the creditor must show and prove the actual necessity of such repairs. Nor is it even asserted to have been proved. The presumption is, that it was not done, and is fatal to their claim. See K. Com. 163, 164, Dallas 225, 2 Caine's 77, 11 Mass. 34.

The papers were submitted to erudite Counsel after the decision in Certri. After careful and mature deliberation, he decided contrary, and being then submitted to other learned Counsel, he agreed with the first, without knowing such had been given.

J. D. Brown.

The first thing I noticed when I stepped out of the car was the
 smell of fresh air. It was a relief after being stuck in traffic
 for so long. I looked around and saw a few people walking
 towards the building. The architecture was modern and sleek,
 with large windows and a clean design. I felt a sense of
 anticipation as I approached the entrance. The security guard
 at the door gave me a friendly smile and let me pass. I
 walked through a long hallway with a polished floor that
 reflected the overhead lights. The walls were a neutral color,
 and the air smelled like a clean, sterile environment. I
 reached a set of stairs and went up to the second floor. The
 office was bright and open, with people working at their
 desks. I found my desk and sat down, feeling a mix of
 nervousness and excitement. The day ahead was going to be
 interesting.