

12/652 1471

---

In the Supreme Court of Ohio.

---

JAMES W. BROCKWAY, PLAINTIFF IN ERROR,

VS.

CORNELIUS JEWELL, AS GUARDIAN OF GROVE E. CLARK,  
AN INEBRIATE, DEFENDANT IN ERROR.

---

Error to the Circuit Court of Trumbull County.

---

**PETITION IN ERROR.**

RECORD.

---

Perry & Downs, Printers, Warren, O.

# SUMMONS IN ERROR.

THE STATE OF OHIO,  
CITY OF COLUMBUS.

To the Sheriff of the County of Trembull

You are hereby commanded to notify <sup>Prs</sup> Cornelius Jewell  
as Guardian of Grove E. Clark ~~an~~  
habitual drunkard

Defendant in Error that  
James W. Brockway

Plaintiff in Error has filed a petition in the  
Clerk's Office of the Supreme Court of the State of Ohio, asking  
a reversal of a Judgment which Defendant in Error obtained against  
Plaintiff in Error at the April Term A. D. 1887, of the  
Circuit Court of Trembull County,  
and that unless the said Defendant in Error attend forthwith before  
said Supreme Court, said Judgment may be reversed.

You will make due return of this summons forthwith.

WITNESS my hand and the Seal of said Supreme  
Court, this twenty second day  
of March A. D. 1888.

Urban H. Hester  
Clerk of Supreme Court of Ohio.

By Horace McRow Deputy.



12/652

Supreme Court of the State of Ohio.

No. 1471

James W. Brockway

vs.

Cornelius Jewell  
Guardian &c

SUMMONS IN ERROR

RETURNABLE FORTHWITH.

Returned and filed

Clerk.

C. S. Darrow & E. B. Leonard  
Attorneys

The State of Ohio  
Sherrill Returns  
Sherrill Returns  
Received this 13<sup>th</sup> day of March 1888, A.D. 1888, and

forwards to its command on the same day  
I summoned the within named Cornelius Jewell as Guardian of  
Estate of Clark and habitual drunkard, by delivering to  
him personally a true and certified copy hereof with the  
subscribed return.

Sherrill's fees  
Per diem 30  
Copy 40  
Mileage 3.52

C. W. Kinley Sheriff  
By J. E. Caldwell Deputy

Books & Printing 10

Sherrill's Office Thomas O. March 14, 1888,

Returns & Postage 10  
\$4.32

19/652

1471

No.

---

---

**Supreme Court of Ohio.**

---

James W. Brockway

---

vs.

---

Cornelius Jewell as  
Ydn.

---

**GENERAL DOCKET.**

January Term, 1888, No. 1471

January Term, 1888, No.

---

Commenced Mar 20 1888

Minute Book 12 Page 652

Disposed of January Term, 1888

Journal 11 Page 455

Complete Record, - - Page

---

---

Supreme Court of Ohio, January Term, 1888. # 1471

TITLE OF CASE.	ATTORNEYS.	ACTION.	FEES AND COSTS.	PAID BY
James W. Brockway vs Cornelius Jewell as Adm. Moran & Tuttle	W. S. Darrow E. B. Leonard P. O.  P. O.	Error to the Circuit Court of Trumbull County.	Filing Motion, Filing Petition, 5 <sup>00</sup> Printing Record, ✓ Sheriff's, - 4.32  TOTAL,	E. B. Leonard

DATE.	MEMORANDA OF PLEADINGS, &c., FILED; WRITS ISSUED, &c.	JUDGMENTS, ORDERS AND DECREES.
1888	<p>Mar 22 Petition and praecipe filed.</p> <p>" " Summons issued to Shff of Trumbull Co.</p> <p>" " 26 Summons returned endorsed; The State of Ohio } Sheriff's Return. Trumbull County } Received this writ March 23<sup>d</sup> AD 1888, and pursuant to its com- mand on the same day I summoned the within named Cornelius Jewell as Guardian of Grove E. Clark an habit- ual drunkard, by delivering to him personally a true and certified copy hereof with the endorsements hereon. A. P. McKinley Sheriff Fees 4.32 By J. C. Caldwell Deputy</p>	<p>June 10<sup>th</sup> 1890, Dismissed for want of preparation C.B. 11. p. 4.55</p>
"	Apr 19 Transcript + original papers filed	
"	May 19 Printed record filed	
1889	Jan 28 Proof of service of Plffs record, filed	
1890	June 30 Copy of entry sent Clerk	
"	" 23 Original papers sent to Clerk Trumbull Co.	
"	Oct. 31 Motion to reinstate filed	

The State of Ohio  
Franklin County ss

In the Supreme Court

James W. Brockway, Plaintiff in Error.  
vs  
Cornelius Jewell Gdu.  
Defendant in Error.  
Motion;

The plaintiff in error now comes and moves the Court to reinstate the above entitled Cause, on the Docket of said Court, and for cause says, that the attorney of record in said Cause upon whom this plaintiff in error relies to file the necessary briefs, and prepare the same for hearing in said Court, being the attorney who tried said Cause in Com. Pleas, and Circuit Courts below, lives in Chicago Illinois, but had agreed to and did prepare all necessary papers and printed briefs to file in said Cause, on or about July 10th, 1890, long prior to the dismissal of said Cause, and transmitted the same to said Court by mail, and the same were lost in transit, without any fault on part of this plaintiff or his attorney.

all which the plaintiff is ready to make  
appear.

By C. S. Morrow, and  
E. B. Leonard, his atty.

1471 Mo.

12-652

Geo W. Bruckner,

vs  
C. Jewell Gdn

Motion to Reinstat

no notice

FILED.

OCT 31 1890

IN SUPREME COURT OF OHIO

D. H. HESTER, Clerk.

1890

C. S. Darrow, and  
E. B. Leonard,  
Attys for Pettr



The State of Ohio

Trounbull County.

Circuit Court of the  
State of Ohio, of the sev-  
enth Judicial District of said State, sitting  
within and for the County of Trounbull afore-  
said, at the April Term thereof A.D. 1887.

Began and holden at the City of Warren  
in said County, on Thursday the 5th day of  
April A.D. 1887, at 10 o'clock A.M.

Present, Hon. Wm H. Frazier, Hon. Peter A. Lau-  
bie, and Hon. H. B. Woodbury Judges holding  
said Court, His Honor Wm H. Frazier presiding,  
A. B. Camp Clerk, & A. P. McKinley Sheriff.

Cornelius Jewell Jeward<sup>sr</sup>

Plaintiff in Error

vs.

Jas. W. Brockway Deft. in Error.

Be it remem-  
bered, that said  
cause came before  
said Court, at  
the term thereof aforesaid, on the petition of  
the plaintiff in error, filed herein against <sup>said</sup>  
defendant in error on the 5th day of March  
A.D. 1887, which petition, together with the  
pleadings and papers thereafter filed in  
said case, are hereto attached, and here-  
with transmitted to the Supreme Court.

And at the April Term A.D. 1887 of said  
Court, to wit: April 20, 1887, the following  
"Journal Entry" was made herein, to wit:

The said parties appeared by their attor-  
neys, and this cause came on to be heard  
upon the petition in error, of the said Com-  
missioner.

lius Jewell Guardian, plaintiff in error herein together with the original papers and pleadings, and a duly certified transcript of the orders and judgment of the Court of Common Pleas of Trumbull County Ohio, filed <sup>there</sup> with in the said action, wherein Cornelius Jewell Guardian was plaintiff, and James W. Brockway was defendant, mentioned and referred to in said petition in error, and was argued by counsel:-

Upon consideration whereof, the Court find that in the record and proceedings aforesaid, there is error manifest upon the face of the record, to the prejudice of the plaintiff in error, in this, to wit: In refusing to charge the jury as requested, and in the charge as given.

It is therefore considered, ordered, and adjudged by this Court, that the judgment and proceedings of the Court of Common Pleas in said action, in favor of said defendant in error, and against the said plaintiff in error, be, and the same are set aside, reversed, and held for naught, and that the said plaintiff in error be restored to all things which he has lost by occasion of the said judgment. That the said action be, and it hereby is remanded to said Court of Common Pleas of Trumbull County Ohio, to be proceeded in according to law and the rights of the said parties. That the said defendant in error, pay the costs

of this proceeding in error to be taxed, and in default thereof, that an execution issue therefor, - and, - That a special mandate <sup>and</sup> writ of procedendo be sent to the said court of Common Pleas, to carry this judgment and order for costs, into execution, - to all of which the said defendant in error excepts.

The State of Ohio }  
 Trumbull County ss: }

J. A. B. Camp clerk of  
 the Circuit Court in

and for said County and State, do hereby certify the above and foregoing to be a full and correct transcript of the journal entry in the above named case, made by the order and consideration of said Circuit Court and that the pleadings hereto attached, <sup>and</sup> herewith transmitted to the Supreme Court are the original pleadings filed in said case.

In testimony whereof, I hereunto set my hand and the seal of said Court, this 28th day of July A.D. 1887.



A. B. Camp clerk  
 by E. W. Hoyt Deputy.

J. W. Mackay

vs.

J. M. Yule &c.

Recd for Records.

#1471

12-65-2

FILED

JAN 28 1835

IN SUPREME COURT OF

OHIO

U. H. HESTER, Clerk.

Recd. January, 25<sup>th</sup>. 1889. of E. B. Seaman,  
of Counsel for Plaintiff in Error, in case  
of James W. Brockway, Deft in Error, vs. Cor-  
nelius Quill. Jan. of Hon E. Clark, an In-  
-conate, Deft in Error, now pending in  
the Supreme Court of Ohio five  
Printed Copies of the Petition in Error  
and Record, as provided by law, and  
the rules of practice in said Supreme Court.  
Tuttle & Hillis attys for Deft in Error.

To the Clerk of said  
Court: Issue sum-  
mons in error, for  
defendant in error,  
returnable according  
to law. Petf in error  
for reversal of judg-  
ment and finding of the  
Circuit Court of Tinnibull  
Co. Ohio. Defendant in  
error resides in said  
Tinnibull Co. Ohio.  
C. S. Darrow  
Atty Petf in error.

James W Brockway  
Petf in Error  
vs  
Cornelius Jewell Guar.  
Defendant in Error

12/052 — 1471

In Supreme Court  
of Ohio

FILED  
MAR 22 1888  
IN SUPREME COURT C.  
OHIO.  
U. H. HESTER, Clerk.

C. S. Darrow and  
E. R. Leonard  
Atty for Petf in Error.

The return and service of process  
in error in above entitled case is  
herby waived and the appearance of  
defendant in error's herby returned in  
said return and Court

The State of Ohio.  
Franklin County S. In Supreme Court,  
James W Brockway Petf in Error  
vs  
Cornelius Jewell Guarantian  
of Am. E. Clark, a Testator's  
deendant Apt in Error  
Prayer  
Wm. H. Hester

The State of Ohio } In the Supreme  
Franklin County, ss. } Court of Ohio

James W. Brockway Plaintiff in Error. }  
vs } Plaintiff  
Cornelius Jewell as } in Error  
Guardian of Grov & Clark }  
an habitual drunkard Deft. in Error }

Plaintiff in Error says that in the record of the proceedings of the Circuit Court of Franklin County Ohio at the April term thereof A.D. 1887 in the action therein prosecuted, wherein said defendant in error was plaintiff in error and said plaintiff in error was defendant in error, an authenticated transcript of all docket and journal <sup>the original party proceedings.</sup> entries, the final judgment with the bill of exceptions including all necessary <sup>that no complete record of said case has been made.</sup> testimony and the original papers and readings in said case being filed herewith, there is error in this.

1 The said Circuit Court erred to the prejudice of plaintiff in error in rendering the judgment it did, reversing the judgment of the Court of Common Pleas in said proceedings mentioned.

2 That said Circuit Court erred in finding error in the charge of the Court of Common Pleas, in the particulars alleged in the Journal entry of the decision and finding of said Circuit Court, as fully shown by said Circuit Court entry.

Wherefore Plaintiff in error prays that said judgment of said Circuit Court may be reversed and the judgment of said Court of Common Pleas affirmed, and the Plaintiff in error herein be restored to all he has lost by reason of said judgment <sup>and finding</sup> of said Circuit Court and for any other proper relief.

C. S. Darrow &

E. B. Leonard

Attorneys for Plaintiff in Error



# PETITION IN ERROR.

---

THE STATE OF OHIO, }  
FRANKLIN COUNTY, SS. } IN THE SUPREME COURT OF OHIO.

JAMES W. BROCKWAY, }  
Plaintiff in Error, }  
vs. }  
CORNELIUS JEWELL, as Guardian of Grove } PETITION IN ERROR.  
E. Clark, an habitual drunkard, }  
Defendant in Error. }

Plaintiff in error says that in the record of the proceedings of the Circuit Court of Trumbull County, Ohio, at the April term thereof, A. D., 1887, in the action therein prosecuted, wherein said defendant in error was plaintiff in error and said plaintiff in error was defendant in error. An authenticated transcript of all docket and journal entries, the final judgment with the bill of exceptions, including all necessary testimony and the original papers and pleadings in said case being filed, herewith there is error in this :

1.—The said Circuit Court erred to the prejudice of plaintiff in error in rendering the judgment it did, reversing the judgment of the Court of Common Pleas in said proceedings mentioned.

2.—The said Circuit Court erred in finding error in the charge of the Court of Common Pleas in the particulars alleged in the journal entry of the decision and finding of the Court.

Wherefore Plaintiff in Error prays that the said judgment of said Circuit Court may be reversed and the judgment of said Court of Common Pleas affirmed and the Plaintiff in Error herein be restored to all he has lost by reason of said judgment of said Circuit Court and for any other proper relief.

C. S. DARROW,  
and E. B. LEONARD,  
Attorneys for Plaintiff in Error.

In the Court of Common Pleas of Trumbull County, State of Ohio.

CORNELIUS JEWELL, as Guardian of Grove  
E. Clark, an Inebriate, }  
Plaintiff, }  
vs. } PETITION.  
JAMES WILBUR BROCKWAY, }  
Defendant. }

This cause comes into this court on appeal from the docket of James H. Biggin, Esq., a Justice of the Peace for Trumbull County.

The defendant James Wilbur Brockway at the commencement of this action wrongfully detained from Plaintiff Cornelius Jewell as guardian of the property of Grove E. Clark a habitual drunkard, the following goods and chattels of the Plaintiff as guardian aforesaid to-wit—One single harness with gilt trimmings.

The defendant detained said property from plaintiff for a term of more than ten days to plaintiff's damage in the sum of thirty dollars.

Wherefore plaintiff asks judgment against defendant for the recovery of said property and for the sum of thirty dollars his damages aforesaid.

CORNELIUS JEWELL,  
Guardian of Grove E. Clark.

THE STATE OF OHIO, }  
TRUMBULL COUNTY, SS. }

I Cornelius Jewell, being duly sworn upon my oath, declare and say that the allegations in the foregoing petition by me signed as guardian of Grove E. Clark are true as I verily believe.

CORNELIUS JEWELL.

Subscribed in my presence and sworn to by Cornelius Jewell before me this 10th day of July, A. D. 1885.

E. A. REED,  
Notary Public.

STATE OF OHIO, }  
TRUMBULL COUNTY, SS. } IN COURT OF COMMON PLEAS.

CORNELIUS JEWELL, as Guardian of Grove  
E. Clark, an Imbecile, }  
Plaintiff, } ANSWER.  
vs. }  
JAMES WILBUR BROCKWAY, }  
Defendant. }

Now comes the defendant and admits that this action comes into the court upon appeal from the docket of James H. Biggin, who occupied the office of Justice of the Peace, of Vernon township. Defendant denies each and every other allegation in the Plaintiff's petition contained.

Defendant further answering says that at the time of the commencement of this action he was lawfully in possession of the property in plaintiff's petition described, and that he was the

owner of the same, and that said property was delivered and given to him in good faith as a consideration for necessaries furnished to Grove E. Clark, who was then owner of the same, and that said necessaries so furnished consisted of care and nursing of said Clark when in a fit of sickness, Defendant therefore asks judgment for thirty dollars and costs.

C. S. DARROW,  
Attorney for Defendant.

STATE OF OHIO, }  
TRUMBULL COUNTY, ss. }

James Wilbur Brockway, being duly sworn, says that the allegations contained in the foregoing answer are true as he verily believes.

JAMES WILBUR BROKWAY.

Sworn to before me and subscribed in my presence this 17th day of October, A. D., 1885.

MUNGO BROWNELL,  
Justice of the Peace.

THE STATE OF OHIO, } COURT OF COMMON PLEAS  
TRUMBULL Co., ss. } FEBRUARY TERM COURT, APRIL 3, 1886.  
CORNELIUS JEWELL, GUARDIAN OF GROVE E. CLARK, }  
Plaintiff, } Civil Action  
vs. }  
JAMES W. BROCKWAY, }  
Defendant. } Verdict.

We, the jury in this case, being duly empaneled and sworn after hearing the evidence, argument of council and charge of the court, do upon our oaths aforesaid, find the issues joined for the defendant and assess his damages at twenty-five dollars (\$25)

J. R. HERRICK,  
Foreman

THE STATE OF OHIO, }  
TRUMBULL COUNTY ss. } IN COMMON PLEAS COURT,

CORNELIUS JEWELL, GUARDIAN OF GROVE E. CLARK, } MOTION  
vs. }  
JAMES W. BROCKWAY } FOR NEW TRIAL.

Now comes the said Cornelius Jewell, Guardian of Grove E. Clark, by his attorneys W. B. Moran and George M. Tuttle and moves the court here for a new trial in this action for the following reasons, to-wit.

First—That the damages given by the jury in this case are excessive.

Second—That the verdict given in this case is against and contrary to the weight of evidence and the law of the case.

Third—That the court erred on the trial of this case in charging the jury.

Fourth—That the said plaintiff has since the trial of this case discovered new and important or material evidence of which he was entirely ignorant until after the case was given to the jury.

Fifth—That the said plaintiff had summoned one Eben Hall as a material witness for him and that said witness was present when the jury in this case was sworn, but that he left without the leave or knowledge of said plaintiff and when called was not to be found, whereby the said plaintiff lost said material testimony on the trial of said cause.

Sixth—Accident or surprise which ordinary prudence could not have guarded against.

Wherefore plaintiff prays that said judgement and verdict be set aside and a new trial granted.

CORNELIUS JEWELL, Guardian.

By his Attorneys, MORAN & TUTTLE.

THE STATE OF OHIO, }  
TRUMBULL Co., ss. }

IN THE COURT OF COMMON PLEAS

CORNELIUS JEWELL, Guardian,

vs.

JAMES WILBUR BROCKWAY.

BILL OF  
EXCEPTIONS.

Be it remembered that at the February term of this court in the year 1886, the aforesaid cause having come on for trial and a jury having been duly impanelled in said cause, plaintiff to sustain the issues on his part, proved from the record of the Probate Court that on the second day of March, 1885, Theron T. Merry filed his petition in the Probate Court of said Trumbull County, the object and prayer of which was for the appointment of said Theron T. Merry as guardian of the property of said Grove E. Clark, a resident of said county, as an habitual drunkard who by reason of intemperance was incapable of taking care of and preserving his property. The property of said inebriate being of large amount, that on said day summons was duly issued from said court notifying said Clark of the filing of said petition and that the same would be for hearing on the ninth day of March, 1885, that said summons was duly served by the Sheriff on the fourth day of March, 1885, and returned on the sixth day thereof; that under said summons and application such proceedings were duly had by continuance for good cause shown, and upon due hearing of said cause, that on the twenty-third day of March,

1885, the said Cornelius Jewell was under said application duly appointed and qualified as guardian under the petition aforesaid.

And the plaintiff further gave evidence tending to show that before the said ninth day of March, and on and after the fourth day of March, and the service of said summons, the said Brockway, defendant, was fully aware of the application aforesaid; that at and before the sale next hereinafter mentioned, the harness in question was the property of the said Grove E. Clark; that on the tenth day of March, aforesaid, the said defendant, Brockway, bought the same from said Clark, and as said defendant, claimed as payment for taking care of and nursing said Grove E. Clark from the fourth day of March, 1885, and that the same was a fair payment for the nursing of said Clark, from said fourth day of March, until the 14th day of March, 1885, and proof tending to show that said Brockway had no title to said harness, except as a payment for his services in nursing as aforesaid, from said fourth day of March, to said tenth day of March, and from thence to said fourteenth day of March, 1885. Plaintiff also gave other evidence in said case in support of the issues on his part, and rested.

And thereupon the defendant gave evidence tending to show that he had purchased said harness on the tenth or eleventh day of March, 1885, from said Clark, upon an agreement with said Clark, before then made, that he should receive said harness in payment for services so rendered to said Clark, in nursing him as aforesaid, and having given the aforesaid and other evidence, rested. And thereupon the plaintiff, by counsel, asked the Court to charge the jury, "that if the defendant's title to said harness was acquired by purchase from said Grove E. Clark after the service of said summons, and having notice of the application and summons aforesaid, and during the pendency of said pro-

ceedings, and if at the time of said purchase said harness was the property of said Grove E. Clark, and the defendant was not otherwise the owner thereof, said purchase was void"—which request the court refused to give, except as hereinafter shown, but charged the jury as follows:

GENTLEMEN OF THE JURY:

Cornelius Jewell, as the Guardian of Grove E. Clark, has brought this action against James Wilbur Brockway, to recover the possession of certain personal property, to-wit: a harness. The petition avers that the plaintiff is the Guardian of Grove E. Clark, an inebriate, and that he is as such guardian, entitled to the possession of the property described in the petition as being a single set of harness, and that the defendant wrongfully kept him out of the possession of the property.

To this petition the defendant has filed an answer, in which he denies, first, that the plaintiff is entitled to the possession of this property, and that he sets up his title to it as having been obtained from Grove E. Clark, the owner of the property. The issues thus made by the pleadings are to be tried by you, under instructions from the Court, as to the law of the case.

There are two or three questions of fact arising in the case, to which the Court will call your attention in the order in which they arise—First, as to the ownership of this property. The Court understands the defendant to admit that at a certain time, Grove E. Clark owned this harness, and that he parted with the title of it to him, and therefore he says that he is now the owner of the property.

On the other hand, it is claimed by the plaintiff that Grove E. Clark did own the property at a certain time, and that at a certain time, to-wit: about the first of March, or the second, possibly that a proceeding was commenced in the Probate Court of this county, for the appointment of a guardian of Grove E. Clark

that the transfer of the property from Grove E. Clark to the defendant, took place after that proceeding was commenced in the Probate Court and that the defendant had knowledge of the pendency of that proceeding in the Probate Court, at the time he took possession of the property, or received possession of it from Clark. The claim on the other side is, that he received possession of the property, and that he bought it from Clark before that proceeding was commenced in any event, he obtained the possession of it before he had any knowledge of the pendency of the proceedings. These are not all the claims that the parties make with reference to the questions arising in the case, and the court does not undertake to state all of them, nor any of the evidence by which the parties insist that their respective claims are sustained, but calls your attention only in this general way, to the claims made by the parties. Upon this subject the court says to you, first, if this property was bought by the defendant from Grove E. Clark, either before this proceeding was commenced in the Probate Court to appoint a guardian for Mr. Clark, or if the proceeding had then been commenced, but the defendant had no knowledge of the pendency of that proceeding, and the contract of purchase was made by the defendant with Grove E. Clark, and under that contract of purchase, the property was delivered by Clark to the defendant, that the defendant would be entitled to your verdict in this case. On the other hand, if the property was purchased by the defendant from Grove E. Clark after that proceeding was commenced in the Probate Court to appoint a guardian for Mr. Clark, and the defendant at the time of the purchase had knowledge of the pendency of that proceeding, then the court says to you that the plaintiff would be entitled to your verdict, that is, assuming that was an ordinary contract of purchase and sale, between the defendant and Grove E. Clark.

You will, therefore, look to the evidence, and see whether or not this contract for the purchase of this property by the defendant from Grove E. Clark, was made before that proceeding was commenced in the Probate Court, or if it was commenced at a time when the defendant had no knowledge of the pendency of that proceeding. As you find the fact to be with reference to that branch of the case, you will find either for the plaintiff or defendant. If you find for the plaintiff upon this question, that is as to its having been made after the proceeding was commenced in the Probate Court, and with knowledge upon the part of the defendant as to the pendency of that proceeding, then you will proceed to consider another question which is in the case, and that is this: as to whether the owner of this property, Clark, was at the time in need of the services of the defendant.

Upon this branch of the case the claim of the defendant is that Mr. Clark was at that time sick, and that there was no one to take care of him, and that he needed care and attention and nursing, and that under an arrangement that he made with Clark, he undertook to do that service for him, and that he did it, that is, he did take care of him, and nursed him at a time when he needed that kind of care and attention, and that in payment for those services, this harness was delivered over by Clark to the defendant, and that he thus became possessed of it, acting in good faith, believing at the time that it was only a fair, reasonable compensation for those services, and in fact that it was a fair and reasonable compensation for those services under the arrangement with Clark.

On the other hand, it is claimed by the plaintiff that there was no necessity for Clark receiving the services of this defendant at that time, and besides, that the defendant owed him a large amount at that time, and from all these facts and circumstances which the plaintiff claims are in evidence before you, that the

was no such arrangement made, and if it was ever made, it was not made in good faith, defendant knowing at the time that there was no real necessity for his services, and that he was indebted to Clark at that time, in a very large amount.

Upon this branch of the case the court says to you as a matter of law, that if Mr. Clark at that time was in need of the services of some one to take care of him, to nurse him, and with that understanding this arrangement made, that his harness was to be delivered by him to the defendant under that contract, and he went forward and performed those services, acting in good faith, and the harness was but a fair and reasonable compensation for the services rendered by the defendant to him under those circumstances, then the court says to you that the defendant would be entitled to your verdict.

On the other hand, if the harness was more than a fair compensation for the defendant's services, and the defendant did not act in good faith in this transaction, it would be no defense to this action of the plaintiffs. As you find the facts to be upon this branch of the case, you will find either for the plaintiff or for the defendant.

If under these instructions, if the plaintiff is entitled to recover, then your verdict should be generally for the plaintiff; if you should find the right of possession in him at the time the suit was commenced, assessing his damages at some nominal sum; six or ten cents. If you should find for the defendant, you should find the value of the property, and render a verdict for the defendant for what you assess the property to be fairly and reasonably worth at the time it was taken possession of by the constable under this writ of replevin. After you retire you will appoint one of your number foreman; after you have agreed upon your verdict, you will reduce this to writing, signed by your foreman; if court is then in session, you will come in and

deliver it in open court, through your foreman; if court is not in session, you will seal it up and come in at the next coming in of Court. You may now retire."

The plaintiff, excepted to the refusal of the court to charge as aforesaid, and also excepted to the charge of the court as to the effect and validity of the sale from said Clark to the defendant, as stated in said charge, and the jury having returned a verdict for the defendant, the plaintiff thereupon moved for a new trial, which on hearing was overruled, and the plaintiff excepted, and prayed that his bill of exceptions aforesaid may be allowed, and signed and sealed and made part of the record of said court, and the plaintiff, on motion, was allowed thirty days from the rising of the court for the preparing, signing and sealing said bill, and this was ordered, upon the same being done the said bill of exceptions should be made part of the record in said court.

[SEAL.]

GEORGE F. ARREL.

Filed May 8th, 1886.

A. B. CAMP, Clerk.

THE STATE OF OHIO, }  
TRUMBULL COUNTY, SS. }

The Court of Common Pleas of the State of Ohio of the ninth judicial district of said State, sitting within and for the county of Trumbull, and State aforesaid, at the February term thereof, A. D., 1886, begun and held at the court house, in the city of Warren, on Monday, the eighth day of February, 1886, at 10 o'clock A. M. Present, Hon. Geo. F. Arrel, judge holding said court, A. B. Camp, Clerk, and Andrew P. McKinley, Sheriff.

CORNELIUS JEWELL, GUARDIAN OF GROVE E. CLARK, }

vs. }

JAMES W. BROCKWAY }

Be it remembered that said case came before said court at the term thereof aforesaid upon a transcript from the docket of James H. Biggin, a Justice of the Peace of Vernon township, filed herein on the sixth day of June, A. D., 1885, which transcript together with the pleadings and papers hereafter filed in said case, are hereto attached and herewith transmitted to the Circuit Court.

And at the June term of said court, A. D. 1885, this case is continued.

And at the October term of said court A. D. 1886, leave is granted plaintiff to file their reply herein ten days after term.

And at the February term of said court A. D., 1887, this cause being at issue thereupon came a jury to-wit: Wm. Angstadt, A. A. Harshman, J. R. Herriek, T. N. Thompson, A. S. Benton, Dwight Logan, Evan Davis, J. W. Brooks, John B. McNaughton, Alexander Campbell, Thomas Webb, William Elliott, good and lawful men of said county, who being duly empaneled and sworn after hearing the evidence, arguments of counsel, and charge of the court, do upon their oaths aforesaid find the issues joined for the defendant and assess his damages by reason of the premises at the sum of twenty-five dollars

Thereupon the said plaintiff moves the court for a new trial, which motion being heard and understood by the court, the same is overruled, to which ruling of the court the said plaintiff excepts.

It is therefore considered and adjudged by the court, that the said defendant recover of the said plaintiff said sum of twenty-five dollars and his costs herein to be taxed, and that said

plaintiff pay his own costs herein, and in default that execution issue to collect the same.

On motion of the plaintiff he has thirty days in which to prepare and file his bill of exceptions herein, and when so allowed, signed and sealed by the court, the same shall be made a part of the record in this case, and the journal is ordered to be kept open for that purpose.

And at the February term A. D., 1886, of said court; now on the eighth day of May, 1886, came the plaintiff herein and presented his bill of exceptions which is allowed, signed and sealed and ordered to be made a part of the record of this cause as of the February term of this court, 1886.

THE STATE OF OHIO, }  
TRUMBULL COUNTY, SS. }

I, A. B. Camp, Clerk of the Court of Common Pleas, within and for said County and State, having in my official care and custody, the records and files of said court, do hereby certify that the foregoing is a full and correct transcript of all the docket and journal entries in this case, and that the bill of exceptions hereto attached, marked filed May 8th, 1886, is the original one allowed and signed by the court, and filed herein, and ordered by the court to be made a part of the record in this case, and that the pleadings hereto attached are the original pleadings filed in this case.

Witness my signature as such clerk, and the seal of said court, this 2d day of March, 1887.

[SEAL.]

A. B. CAMP, Clerk.

STATE OF OHIO, }  
TRUMBULL COUNTY, SS. }

Circuit Court of the State of Ohio, of the Seventh Judicial District of said State, sitting within and for the County of Trumbull, aforesaid, at the April term thereof, A. D. 1887.

Begun and holden at the City of Warren, in said county, on Thursday, the 5th day of April, A. D. 1887, at 10 o'clock A. M. Present Hon. Wm. H. Frazier, Hon. Peter A. Laubié and Hon. H. B. Woodbury, Judges holding said court, His Honor Wm. H. Frazier, presiding; A. B. Camp, Clerk, and A. P. McKinley, Sheriff.

CORNELIUS JEWELL, GUARDIAN,  
Plaintiff in Error,  
vs.  
AMES W. BROCKWAY,  
Defendant in Error.

Be it remembered that said cause came before said court at the term thereof aforesaid, on the petition of the plaintiff in error, filed herein against said defendant in error, on the 5th day of March, A. D. 1887, which petition together with the pleadings and papers thereafter filed in said case, are hereto attached and herewith transmitted to the Supreme Court.

And at the April term, A. D. 1887, of said Court, to-wit: April 20, 1887, the following "Journal Entry" was made herein, to-wit:

"The said parties appeared, by their attorneys, and this cause came on to be heard upon the petition in error of the said Cornelius Jewell, Guardian, plaintiff in error herein, together with the original papers and pleadings, and a duly certified tran-



script of the orders and judgment of the Court of Common Pleas of Trumbull County, Ohio, filed therewith in the said action, wherein Cornelius Jewell, Guardian, was plaintiff, and James W. Brockway was defendant, mentioned and referred to in said petition in error, and was argued by counsel.

Upon consideration whereof, the court find that in the record and proceedings aforesaid, there is error manifest upon the face of the record, to the prejudice of the plaintiff in error in this, to-wit: In refusing to charge the jury as requested, and in the charge as given.

It is therefore considered, ordered and adjudged by the court, that the judgment and proceedings of the Court of Common Pleas in said action, in favor of said defendant in error, and against the said plaintiff in error be, and the same are set aside, reversed and held for naught, and that the said plaintiff in error be restored to all things which he has lost by occasion of the said judgment. That the said judgment be, and it hereby is remanded to said Court of Common Pleas, of Trumbull County, Ohio, to be proceeded in according to law, and the rights of the said parties. That the said defendant in error pay the costs of this proceeding in error to be taxed, and in default thereof, that an execution issue therefore—and—That a special mandamus and writ of procedure be sent to the said Court of Common Pleas, to carry this judgment and order for costs into execution, to all of which the said defendant in error excepts.

STATE OF OHIO,        )  
                                  )  
TRUMBULL COUNTY, ss.  )

I, A. B. Camp, Clerk of the Circuit Court in and for said county and state, do hereby certify the above and foregoing to be a full and correct transcript of the journal entry in the above

named case, made by the order and consideration of said Circuit Court, and that the pleadings hereto attached and herewith transmitted to the Supreme Court, are the original pleadings filed in said case.

In testimony whereof, I hereunto set my hand and the seal of said court, this 28th day of July, A. D. 1887.

[SEAL.]

A. B. CAMP, CLERK.  
by E. W. HOYT, Deputy.