A Detner } Errors
Wm McKonny }

And the Said Adam Detner by his attorney comes and Says that there is Error in the Record and proceedings aforesaid as also in the Execution of the Judgment aforesaid in the Record aforesaid mentioned there is manifest Error in this to wit that by the Record aforesaid it appears that the Judgment aforesaid Given for the Said McKonny against the Said Detner there by the law of the Land that Judgment ought to have been given for the Said Detner against the Said McKonny & that there was Error in Said Court Refusing to grant a new trial to Said Detner and therefore in that it is manifestly Erroneous & he prays that the Said Judgment for those Errors & others in the Record and proceedings aforesaid being may be Reversed annuled and held for nothing & that the Said A Detner may be in as Good

Restored

Mr Campbell atto
for the Plaintiff in Error

Petition
vs
Attorney
Error assigned

State of Tennessee
Blount County
Second Circuit

Be it remembered, that at a circuit court began and held for the county aforesaid, within the said second circuit, at the court house in Maryville, on the first Monday of February 1813, a Capias ad Respondendum was filed in the clerk's office of the court aforesaid whereby it appeared that William McCamy, late of said county had been attached to answer Adam Pitner in a plea of Trespass on the case to his damage two hundred and fifty dollars. And whereupon the said Adam by his attorney complains of William McCamy in custody of the Sheriff &c of a plea of trespass on the case for this: that whereas on the ____ day of ____ in the year of our Lord, one thousand eight hundred and ten; at to wit. At Maryville in the county aforesaid, the said Pitner bargained and agreed with the said William McCamy to exchange to the said William, a good and valuable horse, which he the said Adam then had in his possession, for a gelding which the said William then produced; he the said William knowing the said gelding to be blind; then and there, warranting the said gelding to the said Adam Pitner, to be sound in all respects, and good as the Lacy gray, a valuable and sound gelding, then owned by said Pitner, falsly, and fraudulently exchanged the said gelding to the said Adam, for his, the said Adam's, good and valuable horse; and induced the said Adam, by his improper representations, to promise to pay to him the said William, fifty gallons of whiskey * as boot or difference betwixt the value of the horses. Whereas in fact, the said gelding, at the said time of the exchange thereof, was totally blind, and of little or no value, at to wit at Maryville in the County aforesaid, whereby the said Adam saith he is prejudiced and hath sustained damage to the value of two hundred and fifty dollars and therefore he sues, and thus &c. And the aforesaid William McCamy the defendant by Enoch Parsons, his attorney, comes into court and defends &c and for plea says, said plaintiff ought not to have and maintain his said action against him, because he says he is not guilty in manner and form, as charged in the plaintiff's declaration of this he puts himself upon the county, and the plaintiff also. Which cause aforesaid, was continued from day, to day, and from term, to term, untill August term 1813, and on the first day of said term, came the parties by their attornies, and thereupon came a jury to wit. John McCarkey, Peter Doyle, William Peary, John Mellonay, Josiah Tally, David Reid, Thomas McCulloch, John Thornbury, David Dearmon, Joseph Sedford, Robert Wilson and Leonard Simons, who being elected tried and sworn well and truly to try the issue joined, upon their oath do say, the defendant is guilty of the cheat in manner and form, as the plaintiff hath complained against him, and they assess the plaintiffs damage by occasion thereof, to sixty dollars besides cost. And thereupon came the defendant by his attorney, and entered a rule to shew cause, if any he has, why a new trial should not be granted. Upon which rule aforesaid the court now here, not being fully advised the same was continued untill the thirty first day of August 1813 at which time came the parties by their attornies, and the aforesaid rule being argued and considered, and all, and singular, the premises being seen, and by the court, now here, fully understood, and mature deliberation thereon had; it is ordered by the court now here that a new trial be granted: and on motion of the plaintiff leave is granted him to amend his declaration. The defendant, thereupon, moved to tax the plaintiff with the costs of this suit up to the present time. Which motion being argued and considered and all and singular the premises being seen, and by the court now here fully understood, and mature deliberation thereon had it seems to the court, now here, that the law is for the plaintiff, wherefore the said motion was overuled, to which opinion of the court, the defendant, by his attorney excepted and tendered a bill of exceptions in the following words to wit. On this cause the plaintiffs declaration stated an exchange of horses and that the plaintiff in consideration of the exchange gave the defendant a horse and twenty five dollars for the defendants horse. On the trial, the plaintiff proved he gave the defendant a horse and fifty gallons of whisky for the defendants horse. The defendants counsel in argument to the court and jury, called on the court to charge the jury, as the plaintiff in part proved a consideration different from the one stated in his declaration, as he failed to prove the

* on the progress of this cause the plaintiff moved to amend his declaration by striking out the words "twenty fifty gallons of whisky" where it occurs aforesaid and inserting and expunged by the defendants attorney, but was overruled by the court.

the twenty five dollars stated in the declaration. The court charged the jury on the other points and reserved this one of variance, to control the verdict; and a verdict being found for the plaintiff, the defendant by his counsel moved for a new trial which was granted, as the court believed the objection for the variance was with defendant. Whereupon the plaintiff's counsel moved for leave to amend the declaration, by stating the true consideration, without costs. The defendants counsel objected and insisted the plaintiff ought to pay the costs, from the return of the writ to the trial. But the court allowed the amendment without costs to which opinion of the court the defendant by his counsel excepted and tendered this his bill of exceptions, and prayed the court to sign and seal the seal the same. which is done accordingly, this thirty first day of August 1815. . . . . Nath. W. Williams

Which cause aforesaid was continued from ~~day to day~~ from term to term, until February Term 1815:
at which time came the parties by their attornies, and thereupon came a jury to wit. James Weir Jun.
Banner Shields, William Houston, Conway Stone, James McGinley, Benjamin Rogers, Noah Rudd,
James Neury, William Taylor, James Pauley, Fabro Ransburger and Thomas Maxwell, who having
been elected tried and sworn the truth to speak upon the issue joined upon their oath do say that
the defendant is not guilty in manner and form, as the plaintiff against him hath complained, as in
pleading he hath alledged. Wherefore it is considered by the court, that the plaintiff take nothing by
his writ, but that he be in mercy and so forth, for his false clamour, and that the defendant go hence
without day and recover of the plaintiff his costs by him about his defence in this behalf expended, from
which judgment, the plaintiff prays an appeal in the nature of a writ of error, to the next supreme court
of errors and appeals, to be holden for the second circuit, at the court house in Knoxville, on the fourth mon-
day of May next.

At the trial of this cause, the plaintiff proved by Mrs. McCroskey, daughter of the plaintiff, that on
the night of the 17th Oct 1810, about 10 O'clock at night, the defendant and a certain Wm.
Neury, came to the house of the plaintiff, and called out Pitner, the plaintiff; the defendant told him he
had a gray horse, he wished to sell him.- that plaintiff, defendant and Neury, were together in the
road eight or ten steps from the gearden where witness stood.- that defendant kept himself on the horse
Pitner the plaintiff said he was going to the south with a drove and wanted a match for his Lacy grey
The deft. answered that his horse was a match for the Lacy grey, that he was the best horse, that ever
traveled that road, that he was worth two hundred dollars. The plaintiff cautioned the defendant, not
to put a disordered horse on him, and asked him to stay all night; which the other declined
that as he would probably sell in another country, he wished to have no difficulty.- That McCamy,
repeated that he was the best horse that ever traveled that road.- that Pitner the plaintiff got a
light and examined the horse, that when he came near the horse the defendant would jerk
the bridle, when Pitner came near with the light and made the horse throw his head about
Pitner and defendant then exchanged horses, the defendant, for the gray, got of plaintiff a
brown or bay horse, and fifty gallons of whiskey.- that the gray on examination was blind, s.d
witness Mrs. McCroskey positively stated that the defendant did not at the time of the exchange
tell her father the plaintiff, that the horse was blind but on the contrary said he was good and
sound. . . Mrs. Kirkpatrick, proved, that some short time after the exchange of horses she happened
at Pitner's- that McCamy came there, and after some conversation about the exchange- McCamy
said he had come for the purpose of putting the horse upon him, Pitner, or to cheat him, or
something to that effect, but she could not recollect the expressions, that he had done it, and he
Pitner might help himself the best way he could. ------ John Monk, proved that on or about the
17th of October, in the evening he was at Chandlers above where the plaintiff lives, that he saw
McCamy and Neury, hailed McCamy, that he did not know him, he road so fine a horse
that he was on a gray, that he advanced to look at the horse, and McCamy road briskly
off down the road towards Pitner's. That he the witness asked Neury why McCamy road off
as he did; that Neury said he was after a traveller, with whom he wished to exchange

horses; Neury then pursued M.Canny. The next morning witness was at Pitner's; that Pitner got him to write to M'Canny, to bring home the horse he had gotten, in as much as he M'Canny, had put a blind horse on him the plaintiff; that M'Canny, refused to comply; that the gray horse was blind; that ten or twelve days after, the horse was found below Pitner's barn floor, where he appeared to have fallen from the floor, eight or ten feet, with his back broken---------- M'Gauley proved, that on the morning of the 15th Octr. 1810 between midnight and day; M'Canny and Neury came to his house, and requested him the witness to accompany them, to Neury's house to settle an unhappy affair in the family- on the morning M'Canny, shewed witness the bay horse, he had gotten as he said from Pitner witness enquired what he gave for the horse; M'Canny answered that he gave his blind gray, witness said to M'Canny, that he had better been at home, than cheating his neighbour; advised M'Canny to return the horse he had gotten of Pitner,- M'Canny said he would not, for that he had gotten the horse to put on Pitner, and that he had told Pitner, the horse was blind, but, that the damned fool would would not believe him. Witness then asked M'Canny why he had not staid all night at Pitners, to which M'Canny answered, that would not have done, for Pitner would have discovered that the horse was blind: and Pitner would have been pestering him, M'Canny, for a new bargain; witness thought that the bay horse, that M'Canny got from Pitner worth 65, or 70 dollars---------- Pitner, a witness, stated that ten, or twelve days after the exchange, the horse, was discovered to have fallen from the barn floor, ten or twelve feet,- had disabled himself, and in a few days died that he thought the bay horse exchanged, worth 65, or 70 dollars---------- Kirkpatrick, a witness proved, that shortly after the exchange, M'Canny, in conversation told him he had done on purpose to cheat Pitner, with the horse, that he had done so, and was glad of it-- Pitner told witness, that M'Canny had told him at the time of the exchange, that the horse was blind as the devil, but that he did not believe him; that the exchange was in the night; that Pitner when talking with witness, as to what he knew of the conversation said he, witness might look over the part of their conversation, relative to Pitner's saying that M'Canny had told him the horse was blind as the devil that he told Pitner if he would have part of the conversation, between him, Pitner, and the witness Petrikoffer, he should have all; that he saw the horse when disabled by the fall from the barn.....

Beaver, a witness, proved that the evening before the exchange with Pitner, M'Canny, proposed a swap with him, and informed him the horse was blind; that he read the horse but did not discover his blindness, it being after night, he got a fire brand, then on examination discovered the horse was blind; the horses eyes looked well; was full in his head, and it was difficult, without close inspection, to discover any defect;----- Horax, a witness, proved, that M'Canny told him, that the bay horse he had gotten from Pitner, was worth 100, or 120 dollars in trade---------- The defendant proved by several witnesses, two of whom are John Thornbury, and Joseph Bedford, had been jurors on a former trial, that to the best of their recollection on the first trial Mrs. M'Crosky the witness, stated, that the defendant, at the time of the exchange, told her father, that the horse was as blind as the devil.- The plaintiff produced several witnesses, who swore they were present at the first trial and did not recollect, that Mrs: M'Crosky stated, that the defendant said the horse was as blind as the devil. One of these witnesses Joseph Vance, said, that on the second trial, Mrs. M'Crosky swore that the exchange took place not more than nine, or ten steps from the place where she stood, that she heard the whole conversation, and was satisfied, if M'Canny had stated the horse was blind, she should have heard it, and that she heard no such expression

Mitchell McFarland, a Witness for defendant sworn that Pitner told him, defendant had cheated him, witness enquired of deft. had not told him, at the time of the exchange, that the horse was blind, Pitner said yes but in such away, he did not believe him.
William Henry a witness for deft. sworn, that he was present at the swap, that McCamy told Pitner several times that his horse was blind, and that if he took him, he must take him as such; that Pitner after looking with a light, said he was as good a judge of eyes, as any man and would run all chances- He also sworn, that if McCamy's horse could have seen, he was worth much more than, Pitner gave for him.--- Beavers and Henry stated, that Pitner was ~~much~~ of a Jockey:-- The jury having found a verdict for the deft.-the plaintiff moved for a new trial, which the court refused, to which opinion of the court, the plaintiff excepts, and tenders this his bill of exceptions, which is signed and sealed by the court accordingly.------------ (B. Searcy Judge (seal)
entered into bond with approved security as the law directs, in the following words to wit. Know all men by these presents that we Adam Pitner and John McCampbell, are jointly severally held and firmly bound unto William McCamy in the sum of two hundred and fifty dollars, to the which payment well and truly to be made and done, we bind ourselves, our heirs, executors, administrators and assigns, jointly severally, firmly by these presents, sealed with our seals and dated this 11th day of February 1815. The condition of the above obligation is such that whereas, the aforesaid William McCamy in our circuit court holden for the county and circuit, aforesaid, recovered a judgment agains Adam Pitner, from which judgment the said Adam prayed an appeal in the nature of a writ of eror, to the next supreme court of errors and appeals to be holden for the second circuit, at Knoxville, on the fourth monday of may next. Now if the said Adam Pitner doth with effect prosecute his said appeal, or in case he fail therein, pay, satisfy, and abide by whatever judgment sentence or decree the said supreme court may award thereon; then the above obligation to be void, otherwise to remain in full force and virtue. Adam Pitner (S) Jn. McCampbell (S)
to him the said Adam, the said appeal is granted.

A Bill

Tax	$ 1:25	
Clerks fees	12:70	
Attorney Parsons	6:25	
Sheriff Cowan	3:11	
Ditto. Russell	":18	
D.Shff. Donohoo	":87½	
Sheriff Mitchell	":75	
D.Shff Blair	1:50	26:51½
William Henry Witness	15:00	
Stephen Hicks Do.	33:00	
Charles Kirkpatrick Do.	39:80	
Samuel McGauhey Do.	16:50	
John Houk Do.	36:64	
Wm. McGauhey Do.	16:00	207:42
William Glass Do.	8:00	
Mitchell McFarland Do.	9:24	
Lydia McCrosskey Do.	12:32	
Martin Rorax Do.	1:00	
Sarah Kirkpatrick Do.	9:72	
Adam Pitner Junr. Do.	10:20	233:93½ Aggregate

State of Tennessee }
Blount County } I Jesse Beene, Clerk pro tempore of the circuit court of the County aforesaid, do certify the foregoing transcript, to be a true Copy of the record and proceedings in the suit Adam Pitner against William McCamy, now remaining in my office. In testimony whereof I have hereunto set my name and affixed my private seal, having no seal of office, at office, the 7th day of April 1815 and 39 year of American Independence

(Seal)

Jesse Beene Clk pro tempore

67

Adam Pilner

Co 63

Wm McCamy

1815

Ellis Brought $1.60