

Jones  
vs.  
Sinclair.

606, *Doughbigny et al. vs. Duval*.—3 D. & E. 119.—1 East 4.—2 East 203.—Yelv. 67, note. The essentials necessary to its validity are here wanting; the lien never having been set up by *Hall*, or by his authority; and actions similar to this, under similar circumstances, have often been maintained against third persons. 15 *Mass. Rep.* 242, *supra*.—7 East 7, *M'Combie vs. Davis*.—5 D. & E. 605, *Doughbigny vs. Duval*.

In respect to the competency of *Hall* as a witness, the decision of *Whiting vs. Bradley*, before cited, is in point, if *Hall* was answerable to the plaintiff for these saddles; because then his interest would only be balanced. But we think he is not answerable for the tort of a third person; and consequently the case is much stronger in favor of his admissibility, his interest having been to testify against the party who called him.

*Judgment on the verdict.*



STRAFFORD, FEBRUARY TERM, 1821.

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BARNARD HOIT vs. JOHN MOLONY.

When the *ad damnum* in a writ is left blank, the defect is not cured by a verdict in favor of the plaintiff.

Where the court has general jurisdiction of a cause, and a verdict is found for more than the sum demanded, a *remittitur* may be entered as to the excess, and judgment taken for the residue, or the verdict may be set aside, and leave then given to amend.

But when no damages are demanded, and the court have no jurisdiction, unless the *ad damnum* exceed fifty dollars, no amendment can be allowed, and notwithstanding a verdict, the proceedings must be quashed.

The sum demanded and not the sum in dispute determines the jurisdiction of this court in personal actions.

This was trover for a quantity of household furniture. The action was commenced in this court, and, September term, A. D. 1820, a verdict found for the plaintiff for \$77. The defendant moved an arrest of judgment, on the ground that the *ad damnum* in the writ had never been filled up. On the other hand, the plaintiff contended that this defect

was cured by the verdict, or if not cured, that he was entitled to remedy the defect by an amendment.

*Atkinson and Ich. Bartlett*, counsel for the plaintiff.

*Perkins*, for the defendant.

WOODBURY, J. It being a well settled principle that a party can recover no more damage than he demands, the plaintiff in this case cannot have judgment, unless the neglect to demand some damage is cured by a verdict in his favor. But judgment for more damage than is demanded is bad on error,(1) which would not be the case where a verdict is returned, if a defect in the demand of damage were cured by a verdict.

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(1) Volv. 45,  
note, Porsival  
vs. Spencer.

In respect to the amendment prayed for, it would seem, on the first view, to come within the broad provision of our statute,(2) that amendments may be made, "where the person or case may be rightly understood or intended by the court." Under similar provisions in an adjoining state, it has been adjudged, that "all amendments of declarations consistent with the nature of those originally made, or for the same cause of action, are within the statutes." 3 *Mass. Rep.* 210, *Haynes & ux. vs. Morgan*.

(2) 1 N. H.  
Laws 99.

It is an invalid objection, that nothing appears here to amend by; because the amount of the verdict might be a safe guide. *Tidd.* 661.—1 *D. & E.* 783, *Green vs. Rennett*—7 *ditto* 133. Nor is it too late for an amendment, after verdict, or even a writ of error. 2 *Strange* 1151, 1162.—3 *D. & E.* 659, 749.—3 *John. Rep.* 95.—7 *ditto* 463.—1 *John. Ca.* 29.—10 *Mass. Rep.* 252, *Hutchinson vs. Crosser*.

Where the court has jurisdiction of the cause, relief is granted against difficulties of this kind in two ways. One is, to permit the plaintiff to enter a *remittitur* for all the damages found over the sum demanded, and to take judgment for only the residue. 4 *Maul. & Selw.* 93, *Usher et al. vs. Dansey et al.*—*Cro. Ja.* 297.—2 *Bl. Rep.* 1300, *Chewley vs. Morriss*.—17 *John. Rep.* 111, *Curtis vs. Lawrence*. Another is, to set aside the verdict, and then, before a new trial, grant an amendment, if the bail or other third persons interested would not thereby be injured. *Tidd.* 653.—7 *D. & E.* 132.

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—1 *Maul. & Selw.* 675, *Pearse vs. Cameron.*—2 *John. Cases* 219, *Bogart vs. M'Donald.*—17 *John. Rep.* 111.

(1) 2 N. H.  
Laws 162.

But by our statute of June 29th, 1818, this court has no jurisdiction over personal actions, originally brought here, unless "the sum demanded in damages shall exceed the sum of fifty dollars." (1) It is the "sum demanded," and not as in the United States courts, the "sum in dispute," which determines our jurisdiction. 2 *Dall. Rep.* 360.—3 *ditto* 401 to 408, *Wilson vs. Daniel.*

The objection to our jurisdiction, and consequently our right to grant an amendment or make any other order as to this cause than to dismiss it, is not a personal privilege or local restraint, which may be waived by those for whose benefit they are introduced; and which are in law waived by pleading to the merits. 1 *Chitt. Pl.* 426 to '8.—1 *Saund.* 98, note 1.—10 *Coke* 68.—*Bac. Ab.* "Courts," D.—1 *East* 352.—6 *ditto* 583.—1 *D. & E.* 151.—4 *ditto* 508.—1 *Mass. Rep.* 347.—3 *ditto* 24.

This objection is of a public nature, reaches the court itself, and any thing done by us in the present action would be *coram non iudice*. We are bound to notice such an objection *ex officio*; and as the allowance of even an amendment would be an assumption of jurisdiction, the plaintiff is without redress, except by the commencement of a new action. The present proceedings must be quashed.



NEW-HAMPSHIRE STRAFFORD BANK vs. EBENEZER  
CORNELL *et al.* plaintiffs in review.

When judgment is rendered by consent in one county as of a prior term in another county, a writ of review of such judgment must be brought within one year from the last day of such prior term, otherwise it is barred by the statute of 1818, cap. 78, sec. 3.

In this state the intendment of law is, that judgment is entered on the last day of the term, unless judgment appears by the record to have been entered on a different day.

THIS was a review of an action, in which judgment had been rendered in favor of the *New-Hampshire Strafford Bank.*