

DEBT, on a judgment recovered in 1868. One of the defendants moves that the original action in which the judgment was rendered be brought forward, and the judgment vacated.

*Rolfe*, for the plaintiffs.

*Mugridge*, for the defendants.

STANLEY, J. There is no doubt of the power of the court in any case, for sufficient cause, to bring forward an action and vacate the judgment rendered therein. *Bellows v. Stone*, 14 N. H. 175; *Frink v. Frink*, 43 N. H. 508; *Hillsborough v. Nichols*, 46 N. H. 379; *Judge of Probate v. Webster*, 46 N. H. 518; *Stickney v. Davis*, 17 Pick. 170; *McClew v. Burt*, 5 Met. 200.

What is sufficient cause is a question of fact, depending upon the particular circumstances of each case. These should be established by evidence at the trial term.

*Case discharged.*

FOSTER, J., did not sit: the others concurred.

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CONNELL v. PUTNAM.

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In case, for loss of service and expenses incurred in caring for and nursing the plaintiff's child, he may recover for his own time spent in taking care of the child.

Time spent by the plaintiff stands on the same ground as money paid by him for medical attendance or nursing.

CASE, against the defendant, for injuries to the plaintiff's son from the kick of the defendant's horse, by reason whereof the plaintiff lost the service of his son, and incurred great expense in nursing and care.

The defendant excepted to the instructions to the jury, that, if they found for the plaintiff, he might recover, in addition to the surgeon's bill, the fair value of his own time while engaged in nursing and taking care of his son. Verdict for the plaintiff, and motion for a new trial.

*Pike & Blodgett, Gould, and Rolfe*, for the defendant.

*S. B. Page, W. T. Norris, and Donovan*, for the plaintiff.

STANLEY, J. The expense in effecting a cure includes, in addition to what was paid the surgeon, the necessary attendance and nursing—

Sedgw. Dam. 642, note 1; Field Dam. 557—and this expense of nursing and care is not confined merely to the money expended. If the plaintiff left his work and devoted his time and attention to the care of his injured son, no reason is apparent why the jury may not consider that as one item of the expense, as if the services had been performed by some one else and paid for by the plaintiff. His time and labor have been diverted from his ordinary avocations. That time may have been as valuable as money. The instructions were correct.

*Judgment on the verdict.*

FOSTER, J., did not sit: the others concurred.

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STATE v. SHERBURNE.

Evidence, that on the defendant's motion judgment was arrested on the first indictment because it was insufficient, will not maintain a plea of former conviction.

INDICTMENT, for an assault upon an officer. *Plea autrefois convict.* Facts agreed. The defendant was indicted, at the April term, 1876, in this county, for the offence charged in this indictment. He pleaded *nolo contendere*, and moved that judgment be arrested because the indictment was insufficient. The court arrested the judgment and discharged the defendant.

*Greene*, Solicitor, for the State.

*Mugridge*, for the defendant.

BINGHAM, J. If the defendant had submitted to the judgment of the court on his plea to the first indictment, his plea to the second might have been good. *Commonwealth v. Loud*, 3 Met. 328; *Commonwealth v. Keith*, 8 Met. 531.

He did not submit, but moved in arrest of judgment for insufficiencies in the indictment, and judgment was arrested. This brings the case within the rule, that when the first indictment is so far erroneous that no good judgment can be ordered against the defendant, and none is ordered, the proceeding is no bar, because in apprehension of law the defendant was never in danger. 4 Hawk. P. C. 317, 330; *Marston v. Jenness*, 11 N. H. 156, 161; Com. Digest, "Indictment" L.; 1 Chit. Cr. Law 453, 462; *People v. Barrett*, 1 Johns. 66; Arch. Cr. Pl. 82, 86; 1 Bouv. Dic. 174.

*Case discharged.*

FOSTER, J., did not sit: the others concurred.