

in consequence of such return, the said defendant Thomas J. Payne, had not sufficient time given to him by the said Plaintiff, wherein to render the said defendant William R. Heney.

JOHN MENDER,

Attorney of Thos. J. Payne, one of the above named defendants.

To the Plaintiff or his Attorney.

"D."

JUDGE'S MINUTES AT TRIAL.

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WATSON v. HENEY.

Longley tendered bond dated 26th April, 1880, from Heney and others, to Sheriff Bell, received marked "A," J. W. J. Judgment Book 7. 219, *Watson vs. Heney, et al.*, \$176 96.

Mortimer—At Clerk Prothonotary's Office; Book No. 7; original judgments; signature of Judge to judgment; *Watson vs. Heney*. Record in cause tendered and received marked "B," J. W. J.

Execution tendered and received—Sheriff Bell.

Endorsement on back of bond my hand-writing, endorsed it to plaintiff under statute, and returned it to court.

Execution "B," placed in my hands 26th June, 1880. I returned it. Endorsement on back. Heney did not render himself, nor was he rendered by his bondsman. I made enquiries but could not find Heney. 160

Cross-Examined.—Execution issued 26th of June, date of return, 5th July, 60 days had not expired.

Plaintiff rests.

Frith for nonsuit.

1. Summons could not have issued until after the expiring of 60 days from issue of execution.

2. Fact of issue of execution should have been alleged in the summons. Execution must have issued before summons. 2 Tidd, sec. 1098, p. 1097-1098, *Sandoff vs. Proctor*, 7 B. & C., 800, 2 C. B. 367, execution must be returned, certain, and lay in office four last days. 2 Field, p. 1098. 2 Sul, 599. 13 East, 588. *Witter vs. Mountalm*, 10 Wood, 267. *Roscoe*, 504. Practice Act, 264. 170

MacCoy.—Chit., Arch., 885. *Capias*, 2 Russell.

JUDGE'S JUDGMENT.

WATSON v. HENEY.

This was an action on a Bail Bond, given to the Sheriff and Assigned, and the sole question at issue is one of practice, had the execution been issued a sufficient time prior to the bringing of the action.