

In the Supreme Court of  
Missouri July Term 1872

Charles M. Burden vs

Leonidas Hornsby App

Appel from Johnson

County Pleas

### Opinion of the Court.

Suit was brought <sup>originally</sup> before a justice of the peace for billing plaintiffs debt & the damages <sup>was</sup> laid at \$100. On motion to dismiss for excess of claim, the plaintiff amended his statement so as to make the claim but \$50. & went to trial. This leave to amend is the first error complained of, but it was properly granted to make the correction. The defendant appealed & upon trial the verdict was in his favor. The Court however on the plaintiffs motion granted a new trial & this is also claimed to be erroneous. It has long since been settled in Missouri that error will not lie for granting a new trial. The reasons are set forth in Helms vs Bapitt 9 Mo 52 & the doctrine is affirmed in Kistner vs Bradford 25 Mo 86. Upon the second trial the evidence was all submitted to the jury, & upon fair instructions & the case should have stopped there. I find no error whatever in the record.

Respectfully affirmed the other judges concur

P. H. Shipps