

FOWLER vs. JOHNSON.

This court adopt the following rule of practice, to be applicable to future cases: "Where a remittitur will cure the only error complained of, it shall be allowed to be entered upon the terms of paying costs as usual, and also of an abandonment of record of all right to proceed on the recognizance, whereupon the judgment will be immediately affirmed."

Writ of Error to Pulaski Circuit Court.

William Johnson brought an action of debt against Absalom Fowler, in the Pulaski circuit court, on a bond for \$558, due September 18th, 1843. Defendant cravedoyer, and plaintiff filed the instrument sued on. On the 27th April, 1847, plaintiff took judgment, *nil dicit*, for \$558 debt, and \$135.52 damages. Defendant brought error, and applied to the Chief Justice, in vacation, and obtained a supersedeas, by entering into recognizance, to stay execution.

Plaintiff in error at January term, 1850, assigned for error an excess of damages.

Defendant in error filed a remittitur of \$15, and prayed that it be entered of record.

Plaintiff in error, at July term, 1850, filed the following motion:

"And said plaintiff comes, and prays the court here, that inasmuch as entering a remittitur of a part of the damages, the said William has acknowledged the judgment below to have been erroneous, and by taking such erroneous judgment has driven the said plaintiff in error into this court to seek redress,

in addition to the condition already imposed by this court, that if said plaintiff in error under such condition elects to dismiss his suit in this court, the recognizance entered into by himself and surety for a supersedeas in this case be also discharged &c.”

FOWLER, for himself.

HEMPSTEAD, contra.

Mr. Justice SCOTT delivered the opinion of the court (on motion.)

The remittitur having been entered in this case at the last term upon the usual terms, we are unwilling now to recall that leave to impose other and unusual terms upon the defendant. Being satisfied however that justice will be promoted thereby, we will make this case the occasion for the adoption of a rule of practice to be applicable to future like cases, requiring that when the remittitur will cure the only error complained of, it shall be allowed to be entered upon the terms of paying costs as usual, and also of an abandonment of record of all right to proceed on the recognizance; whereupon the judgment will be immediately affirmed.

Let the motion in this case be refused and the rule of practice indicated be entered of record.
