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against a non-resident; but I do not see, if actual notice can be given within the State, why a foreign domicile should excuse the claimant from prosecuting his claim. This court, in *Grant v. King*, 31 Mo. 312, only held that actual notice must be given, which may be served as a summons in an ordinary suit, if the defendant be temporarily within the jurisdiction of the court.

As the defendant claims an interest, and has selected another tribunal in which to prosecute his claim, a difficulty arises in relation to the costs. The judgment must be reversed and the cause remanded, and all the costs made after the filing of defendant's answer should be taxed against the plaintiff; but the costs made before should, I think, be recovered of defendant. The other judges concur.

CHARLES BURDEN, Respondent, v. LEONIDAS HORNSBY,
Appellant.

1. *Justice of peace — Jurisdiction — Amendment.* — A justice of the peace may permit a plaintiff to amend his statement so as to bring the amount within his jurisdiction.
2. *Practice, civil — New trial — Error.* — Error will not lie for granting a new trial.

Appeal from Johnson Court of Common Pleas.

Crittenden & Cockrell, for appellant.

Phillips & Vest and Elliott & Blodgett, for respondent.

BLISS, Judge, delivered the opinion of the court.

Suit was brought originally before a justice of the peace for killing plaintiff's dog, and the damages were laid at \$100. On motion to dismiss for excess of claim, the plaintiff amended his statement so as to make his claim but \$50, and went to trial. This leave to amend is the first error complained of, but it was perfectly proper to make the correction. The defendant appealed, and upon trial the verdict was in his favor. The court, however, on the plaintiff's motion, granted a new trial, and this is also claimed to be erroneous. It has long since been settled in Mis-

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souri that error will not lie for granting a new trial. The reasons are set forth in *Helm v. Bassett*, 9 Mo. 52, and the doctrine is affirmed in *Keating v. Bradford*, 25 Mo. 86. Upon the second trial the evidence was all submitted to the jury upon fair instructions, and the case should have stopped there. I find no error whatever in the record.

Judgment affirmed. The other judges concur.

SHADRACH CHANDLER, Appellant, v. HEZEKIAH FLEEMAN *et al.*,
Respondents.

1. *Fraud, proof touching.*—Fraudulent acts need not be proved by positive testimony, but there should be a chain of circumstances such as would reasonably satisfy the mind of their commission.
2. *Evidence — Opposite party — Impeachment.*—When one has made the opposite party his witness he cannot afterwards impeach his credibility.

Appeal from Cedar Circuit Court.

J. P. Tracy, for respondents.

The testimony does not disclose a fraudulent intent. (12 Mo. 169.) Debtors may give preference to creditors. (45 Mo. 431.) A *bona fide* purchaser for a valuable consideration is protected, although he purchase from a fraudulent grantor. (16 Mo. 594.)

When the facts are submitted to the court, the judgment will not be reversed and new trial ordered upon exceptions taken to the weight of testimony (1 Mo. 444); or unless it is clearly against the weight of evidence (4 Mo. 518; 6 Mo. 250); or unless the record shows that the court below was called upon to decide some questions of law, and that its decision was wrong (9 Mo. 48, 375; 10 Mo. 570); or unless exceptions are taken before verdict (9 Mo. 288); or unless declarations of law are asked or given (27 Mo. 161). There is no error in the finding of the Circuit Court, and the judgment should be affirmed.

E. F. Buller, for appellant.