E. A. McAULEY, Appellant, *vs.* **GUST LACKMAN**, Agent for A. Woermann, Appellee.

[January Term, A. D. 1906.]

Appeal from the Court of Quarter Sessions and Common Pleas, Sinoe County.

Debt.

This appeal is from the proceedings and final judgment of the Court of Quarter Sessions and Common Pleas, Sinoe County, Judge William Wetherspoon presiding, and was rendered August, A. D. 1904. According to the record filed in this court, this case was originally entered and tried in the Court of Monthly Sessions, Sinoe County, over which His Honor B. J. Turner presides. The amount of debt demanded by the plaintiff in this action is one hundred and one dollars and fifty cents, which amount the defendant denies owing the plaintiff. The case was irregularly tried by that court, which rendered judgment that plaintiff recover from the defendant the one hundred and one dollars and fifty cents as sued for ; from which judgment the defendant took exceptions, and was granted an appeal to the Court of Quarter Sessions and Common Pleas at its ensuing session, the August term of said court of appeal, A. D. 1904. At the call of this case for hearing, both the plaintiff and defendant, having agreed thereto, submitted the case for trial without argument, and the court, after examining the facts in the case, rendered judgment to the effect that the testimony before it did not sustain the allegation of debt, and therefore the judgment sent up for review was erroneous; and it dismissed the action with costs. To this judgment the plaintiff took exceptions, and was granted an appeal to this court, in order that this court might review the case, and determine what is law and justice in the premises.

This case, being an appeal from the judgment of an appeal court, is an exception to the practice; but since the right of such second appeal by a bill of exceptions has not been questioned by the party whose interest may thereby be effected, this court is not fully warranted in making further comment on the point.

This court again reaffirms the doctrine well founded in the statute laws of this Republic, that "every person alleging the existence of a fact is bound to prove it"; that "where a party charges another with a culpable omission or breach of duty, he shall be bound to prove it"; and further, that the allegations of a party, however logically stated in the court of law, cannot be taken as evidence. Proof to a judge, in the trial of a case, is what a compass is to a mariner on the ocean.

In this case, Stephen A. Dunbar is the only witness introduced to prove the alleged debt, and he states as follows: "The defendant, Lackman, told me that he had requested the plaintiff (now appellant) to take with him to Monrovia one thousand dollars county checks and exchange same for general government bills, and that he and McAuley, the plaintiff, would not fall out; that he knows of no special promise of the defendant to pay the plaintiff ten per cent commission on the dollar for so doing; and that Lackman, the defendant, never admitted to him that he promised to pay the plaintiff ten per cent on the dollar, for exchanging said bills."

The above statement constitutes all of the testimony or evidence offered at the trial, except a bill of the plaintiff where he charged for his services $1o1.5o. It is therefore not required that one should go beyond the statute laws of the Republic, to conclude that the facts stated in the plaintiff's complaint have not been proved, and that the judgment of the Court of Quarter Sessions rendered in this case is erroneous.

This court adjudges that the appeal be dismissed, and that the appellant pay all legal costs; and the clerk of this court is hereby directed to notify in due form the judge of the court below, as to this ruling.