that a married woman, previous to an injury, had been earning a certain sum per annum by taking in sewing, the proceeds of which she applied to the support of her family and husband. The court very properly held that she was entitled to recover for the diminution of her capacity to do this work, resulting from the injuries sustained, because her capacity to earn money in that way was her own; but that, it will be readily understood from what we have already said, presents a case entirely different from the one at bar, in so far as it relates to the inability of plaintiff to perform her usual household duties. Losses sustained by plaintiff resulting from her inability to perform manual labor in the prosecution of any business in which she might have been engaged on her own account would constitute a proper element of damages, but the testimony wholly fails to make a case which justifies the jury in allowing any damages of that character. It does not appear from the record that any of the labor which plaintiff performed in addition to the discharge of what might be termed her household duties proper was in the prosecution of any business in which she was individually engaged; but, conceding that in doing this outside work she was engaged in business on her own account, there is not a scintilla of evidence, so far as we are advised from the record, from which it can be determined what such earnings were, although the jury, under the instruction given, was authorized to compensate her on this account. A verdict cannot be based upon mere conjecture. There must be some testimony to support an item of damage which is susceptible of proof. For the errors in this instruction, the judgment must be reversed, and the cause remanded for a new trial.

We have not noticed other elements of damages specified in the instruction, because counsel will understand from what has been said that plaintiff's damages would be limited to those resulting to her individually, as contradistinguished from those which would result to her husband only.

Many other errors are assigned and argued by counsel for defendant, none of which, however, if sustained, would result in more than a reversal and new trial. Some of these, if passed upon, would necessitate an expression of opinion on the facts found by the jury. Such an expression might be prejudicial to one or the other of the parties at the retrial. The others relate to alleged errors in instructions and rulings on testimony, which, if well taken at this time, will not necessarily recur at a new trial, or may become immaterial. For these reasons, we shall not pass upon the further errors assigned on behalf of the defendant.

We shall notice briefly two points made by counsel for plaintiff:

It is claimed that no exceptions were reserved to the instructions. Defendant objected and excepted to the giving of the particular instruction we have considered. This character of exception, under repeated decisions, is sufficient, because the attention of the court is directed to the particular instruction which is claimed to be erroneous. It is entirely different from those passed upon in the cases cited by counsel for plaintiff, where it was held that a general exception to an entire charge, part of which was correct, was insufficient, because it failed to point out to the court the particular part of the charge which was claimed to be erroneous. The practice is established in this jurisdiction that it is not necessary, in an exception itself, to point out specifically the real ground of the objection to an instruction to which the exception is directed. That is the office of an argument to the trial judge in support of any objection which may be interposed. The instruction passed upon, considered as a whole, dealt solely with the question of the measure and elements of damages; and any error in this respect, in view of its phraseology, necessarily rendered the entire instruction erroneous.

It is also urged that the assignment of error based upon the instructions is not sufficiently specific. It recites, in substance, that the court erred in giving certain instructions designated by number, including the one considered, because each of such instructions was either erroneous in law, or not supported by the issues and the evidence. This is a compliance with our rules. The particular instructions challenged, and the grounds upon which they are claimed to be erroneous, are stated. It would neither be practicable nor desirable to specify in an assignment of error, in detail, the particular defects relied upon in support of the assignment.

The judgment of the district court is reversed, and the cause remanded for a new trial. Reversed and remanded.

PARSONS v. PEOPLE.

(Supreme Court of Colorado. Nov. 3, 1902.)

ELECTIONS—ELECTORS—QUALIFICATIONS—RESIDENCE—STUDENTS.

1. Const. art. 7, § 4, provides that, for the purpose of voting, no person shall be deemed to have gained a residence by reason of his presence, nor while a student, in any institution of learning. Section 2 declares that a voter shall have resided in the state six months immediately preceding the election, etc., in order to be entitled to vote. *Held*, that where a student came within the state to attend an institution of learning, and at the time of voting he had no fixed intention to reside either in the state or in the county where he voted, he was not a resident, and was therefore not eligible to vote, though he had actually resided within the county for a period longer than that required.

Error to district court, Jefferson county.

H. F. Parsons was convicted of illegal voting, and he brings error. Affirmed.

¶ 1. See Elections, vol. 18, Cent. Dig. § 72.

The plaintiff in error, H. F. Parsons, was convicted of illegal voting. The information charges that on the 6th day of November, A. D. 1900, at the county of Jefferson, there was a general election duly and in form of law had and held; that there was then and there a place for voting, called "Election Precinct No. 9"; that said H. F. Parsons did then and there unlawfully and knowingly vote and offer to vote in said election precinct, in which precinct he did not then and there reside. The defendant was found guilty, and fined the sum of $10. Upon the trial the following stipulation was entered into in behalf of the people and the defendant, and constitutes the evidence upon which he was convicted: "Now, on this 27th day of November, 1900, the people appearing by Erwin L. Regennitter, the district attorney, and the defendant appearing and being present in court in his own proper person, and also by Ward & Ward, his attorneys, it is stipulated and agreed between the people and the said defendant, for the purposes of this case, that on the 6th day of November, 1900, at the said county of Jefferson, there was a general election duly and in due form of law had and held; that there was then and there a place for voting, called 'Election Precinct Numbered Nine'; that said defendant did then and there vote and offer to vote in said election precinct; that he was then and there of the age of twenty-one years; that he came to said Jefferson county in the month of September, 1899, for the sole purpose of obtaining an education; that he entered a certain institution of learning there situate, to wit, the School of Mines, as a student, in the month of September, 1899; that at the time of so entering said institution his attention was, by the officers of said institution, called to a rule of the board of trustees thereof which reads as follows: 'Resolved, beginning with the next fiscal year, December 1, 1898, a charge for tuition equal to $50 per annum shall be collected from all students entering this school from locations outside of Colorado;' that he thereupon, and also upon returning to said institution after the summer vacation of 1900, paid for one year's tuition, as required by said rule; that his home prior to coming to said Jefferson county, as aforesaid, was at Wamego, Kansas; that at that time his parents resided at Wamego, Kansas; that he went to Wamego, Kansas, where his parents resided, in the summer vacation of 1900, and spent the said vacation in Kansas, Missouri, and Colorado; that during said vacation he kept his room and furniture at Golden, in said Jefferson county; that he has been supported and maintained during his stay in said Jefferson county, Colorado, by money borrowed and secured by himself from an uncle, together with some money earned by his individual efforts; that on said 6th day of November, 1900, his parents were residing in Wamego, Kansas; that he never at any time during his stay in said Jefferson county formed or had the intention to make or not to make said county his fixed and permanent place of habitation; that during said period he has not paid any poll tax in the city of Golden, in said Jefferson county, or any tax in said county in which said precinct is situate; that he has never been, and is not now, married; that he has never since leaving Wamego, Kansas, in September, 1899, as aforesaid, determined where he would make his permanent home; that he "has on said 6th day of November, 1900, without any intention, so far as the adoption of any place as a fixed and permanent habitation is concerned, and had not then any intention as to where he would locate or settle or cast his lot after graduating from said School of Mines, but did then and there intend not to stay or remain in said county of Jefferson after so graduating, but did intend and remain in said county of Jefferson until such time; that the course which he was then and there taking was a four-years course; that on the said 6th day of November, 1900, this defendant personally knew all of the facts herein stated which bear on the question of his residence; that at the time defendant voted he said he had a residence in said Jefferson county; and that at said time the defendant, in case of a very serious illness or affliction, such as blindness, would have returned to Wamego, Kansas, where his parents then resided."

Ward & Ward, for plaintiff in error. Chas. C. Post, Atty. Gen., for the State.

STEELE, J. (after stating the facts). The sole question for our determination (all irregularities having been waived by the defendant) is whether or not the defendant, being a native-born citizen of the United States, over the age of 21 years, was on the 6th of November, 1900, a resident of election precinct No. 9, in Jefferson county, Colo., within the meaning of the constitution. Clause 2 of section 1 of article 7 of the constitution is as follows: "He shall have resided in the state six months immediately preceding the election at which he offers to vote, and in the county, city, town, ward or precinct such time as may be prescribed by law." Clause 2, § 1571, Mill's Ann. St., is as follows: "He shall have resided in this state six months immediately preceding the election at which he offers to vote; in the county, ninety days, and in the ward or precinct, ten days." The defendant had lived for more than 6 months in the state, more than 90 days in the county of Jefferson, and more than 10 days in said election precinct No. 9. The people contend that the defendant was not a resident of the state, within the meaning of the constitution, and cite Jain v. Bossen, 27 Colo. 423, 62 Pac. 194, Kellogg v. Hickman, 12 Colo. 256, 21 Pac. 325, and Sharp v. McIntire, 23 Colo. 99, 46 Pac. 115,

in support of this contention. These cases hold that one is not entitled to vote in this state unless he has made an actual settlement within the state, and adopted it as a fixed and permanent habitation; that one cannot acquire the right to vote in the state by a sojourn here on business or pleasure, however long, without abandoning his former domicile; that there must not only be a personal presence here for the requisite time, but a concurrence therewith of an intention to make the place of inhabitancy the true home. The defendant insists that he was on the day mentioned a resident of Colorado, as defined by these decisions, and was in all respects a qualified elector of election precinct No. 9 of Jefferson county. In this contention he is wrong. Section 4, art. 7, of the constitution, is as follows: "For the purpose of voting and eligibility to office, no person shall be deemed to have gained a residence by reason of his presence, or lost it by reason of his absence, while in the civil or military service of the state or of the United States, nor while a student at any institution of learning." The defendant came to Colorado for the sole purpose of attending the State School of Mines at Golden. He was without intention, so far as the adoption of any place as a fixed and permanent habitation is concerned, but it was his intention to not stay or reside in the county of Jefferson after his graduation at the School of Mines. His intention, as declared in the agreed statement of facts, is decisive of the case. Under the constitution, he did not gain a residence in the state for the purpose of voting by reason of his presence within the state while a student at the State School of Mines; and, not having acquired a residence independently of that gained while a student, it follows that he was not a legal voter when he offered his vote in November, 1900.

The judgment is affirmed. Affirmed.

NATURITA CANAL & RESERVOIR CO. et al. v. PEOPLE ex rel. MEENAN.

(Supreme Court of Colorado. Nov. 3, 1902.)

APPELLATE JURISDICTION—CIVIL CONTEMPT.

1. The supreme court has no jurisdiction to review a judgment of a district court imposing a penalty for a contempt of court purely civil in character, unless it involves one of the elements which the court of appeals act of 1891 makes requisite to give it jurisdiction to review any final judgment; appellate jurisdiction in civil cases being governed by that act, except as to writs of error to the county court.

Error to district court, San Miguel county.

Suit by the people, on the relation of Con Meenan, against the Naturita Canal & Reservoir Company and others. There was a judgment of contempt against defendants, and they bring error. Dismissed.

H. M. Hogg, for plaintiffs in error. M. B. Gerry and W. H. Tripp, for defendant in error.

CAMPBELL, C. J. This is a writ of error to a judgment of a district court imposing a penalty for a contempt of court purely civil in character. The settled doctrine in this state is that a writ of error is the proper method of procedure for investigating contempts. Wyatt v. People, 17 Colo. 252, 28 Pac. 961. Appellate jurisdiction in civil actions is now governed by the court of appeals act passed in 1891, except as to writs of error from the supreme to the county court. According to its provisions, no writ of error from or appeal to the supreme court will lie unless the final judgment sought to be reviewed exceeds $2,500. or in replevin the value found exceeds that sum, or where the matter in dispute involves a franchise or a freehold, or where a provision of the federal or state constitution is fairly debatable and is necessary to a determination of the case. Of the contempt cases reviewed on writ of error by this court, all occurred and were under statutes regulating reviews in force prior to the passage of that act, except Bloom v. People, 23 Colo. 416, 48 Pac. 519, and Shore v. People, 26 Colo. 484, 58 Pac. 590; Id., 26 Colo. 516, 59 Pac. 49. In the former a criminal contempt was involved, which properly invoked the jurisdiction of the court. In the latter its power to hear the cause was not questioned by counsel of either party, and they apparently conceded it; hence the court proceeded to its determination as though such jurisdiction existed. It seems from the record in the Shore Case that one contention was that plaintiff in error had been deprived of his liberty and property without due process of law, which was ruled against him, and probably this court thought such question required it to act. However that may be, we are of opinion that, under the statute now and then governing, jurisdiction was therein improperly assumed, unless it be that the constitutional question invoked it. Certainly the opinion does not sufficiently disclose the necessary jurisdictional question.

In the case in hand the errors assigned and argued merely go to the insufficiency of the evidence to sustain the finding that a contempt was committed. No claim is made that any of the statutory requirements above referred to has been met. The contempt is civil. Doubtless plaintiffs in error sued out their writ on the strength of the Shore Case, which, if judged solely by what appears in the opinion, would warrant such reliance. The action of this court therein was wrong, unless, as already stated, the constitutional question was present. We avail ourselves of this, the first opportunity we have had after the opinion in that case was published, to announce for this court in reviewing civil contempts the same rule that applies to its review by writ of error of other final judgments in civil actions. Although, when the necessary jurisdictional fact appears, the supreme court may, by a writ of error, review final judgments in civil contempt proceedings, still it may not do so unless there is involved some one or more of those essential elements which the court of appeals act says must be