

In Supreme Court, State of Illinois,

FIRST GRAND DIVISION,

NOVEMBER TERM, 1864.

B R I E F .

WM. AIRD,

vs

I. N. HAYNIE,

Defendant's Brief.

Points 1st. The meanings of the words "debt, contract, and cause of action" are different. Vide Rev. St. p 413. Phelps vs McGue 18 Ills, 155, 8.

2d. An action *accrues* when the time of payment *arrives*. Phelps vs McGue, 18 Ills 155, 8. Bouvier's Dic p 51, title "accrue."

3d. The circuit court is a court of general jurisdiction; *all* presumptions are in favor of its jurisdiction and the *onus probandi* is on the party denying it. Vide Rev St, Chap 29, Sec 29-30. Kinny vs Gear, 13 Ills, 445-46. Boubin vs Bunkchoff, 2 Seam, 272. Benstin vs Scorbrough Seam, 282.

4. When there are several counts the pleas to them must meet *all* the counts, and the proofs sustain the plea, or def'ts fail. Dibble vs Davidson, 25 Ills, 486.

5. This is a *plea in abstinent* to jurisdiction of the person, based on a privilege and may be waived. Kinny vs Gear, 13 Ills, 445, 9-50. Cleardod vs Walsh, 4 Mass, 591

6. Final judgment on an issue of fact found against def't is correct. 1st Chitty, 446. Mollin vs Quowin 14 Ills, 280. Min.Point R R vs Keep, 22 Ills, 18-19.

HAYNIE,
Pro So.

ABSTRACT.

WILLIAM AIRD, APPELLANT.
VS.
IS HAM N. HAYNIE, APPELLEE.

APPEAL FROM ALEXANDER COUNTY.

- 1 Precipe for writ filed 20th of May, 1861.
- 2 Summons issued 20th of May, 1861, and returnable to the June term of the Alexander Circuit Court for 1861, directed to the Sheriff of Marion county, for service and was served by said sheriff on the defendant in Marion county.
- 3 Declaration in assumpsit, \$600. 1st Count—Averments; That one Emery T. Wooters, made his note on 3d December 1857, to the plaintiff in error payable on or before the first day of February, 1859, and for the sum of three hundred and twenty dollars. Note executed at Sandoval, Marion county, Illinois.
- 4 Note assigned at same place by the Plaintiff in error on the 1st day of July, 1861. The prosecution of a suit at the maturity of the note against the maker would have been unavailing, he being at the time insolvent and residence of the plaintiff below, Alexander county, and averment that the cause of action accrued to the plaintiff below, in Alexander county.
- 5 2d Count—same as first, except the averments that suit was instituted at the maturity of the note and execution returned no property found &c.
- 7 3d Count—common count in the usual form.
- 8 4th Count—same as the second except that plaintiff below caused several executions to be issued from time to time and that they were severally returned no property found &c.
- 11 Breach in the usual form with the addition of the averments that occur in the special counts, that the Plaintiff resides in Alexander county, and that his cause of action accrued in the said Alexander county, &c.,
- 12 At the June term of the Alexander Circuit Court, for the year 1861 the Defendant filed his plea to the jurisdiction of said court—plea, that the court ought not to take cognisance of the action because the cause of action accrued to the plaintiff in Marion county, and not in the county of Alexander.
Further
- 13 Affidavit of the truth of the plea traversed and issue joined on the plea.
The parties agreed upon a state of facts and reduced them to writing.
- 14 Facts agreed on, that the note described in plaintiff's declaration was made by Emery T. Wooters and made payable to the Defendant below that the note was made at Sandoval, in Marion County Ills., that Wooters the maker then, ever since and now resides in said Marion county, that the note was indorsed at Sandoval, in Marion county, to the Plaintiff below by the said Defendant below—that at the date of said assignment the said assignee was ever since and now is a citizen of the said county of Marion and that process issued from the Circuit Court of Alexander county to the Sheriff of Marion county, and was by said Sheriff served on the Defendant in Marion county. That at the date of said assignment the said assignee resided ever since, and now resides in Alexander county Illinois.
- 14 The Court at the June term for 1861, found upon these facts the issue on the plea for the Plaintiff and deferred final Judgment, till the Oct. term of the Court.
- 15 At the October term of the Court, Judgment was rendered for the Plaintiff for \$353,60. Motion in arrest of Judgment and for a new trial. Motion overruled and the Defendant, at the time excepted, presented his Bill of exceptions, and pray an appeal to the Supreme Court.
18. Bill of Exceptions contains the agreed state of facts and the judgement of the court and the motion in arrest of judgment, and for a new trial, and the ruling of the court &c.

ASSIGNMENT OF ERRORS :

- 1st. The court erred in finding the issue on the plea to the jurisdiction of the court for plaintiff.
- 2d. The court erred in rendering a final judgment "Quod Recuperit," the judgment. Should have been "Quod Respondias ouster."
- 3d. The court erred in overruling Defendant's motion in arrest of judgment and for a new trial.

BRIEF.

- 1st point. The finding of the court upon the question of jurisdiction should have been for the Defendant upon the facts submitted outside of the plea.
Authority—17th Ills. Report, page 576 18th Ills. Report, page 118 and 24th Ills. Reports and 2nd Section of the Practice Act Revised Statutes, 1845.
- 2d point. The judgment of the court should have been Respondias Ouster and not Quod Recuperit.
Authority—Tidd's Practice, 1st Chitty's Pleading and 1st Sanders' Pleading—titles Pleas in abatement and jurisdiction, &c.

SILAS L. BRYAN, Attorney for Appellant.

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John A. ...
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J. M. ...
Abstract

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WILLIAM
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ABSTRACT.