

---

Anglin v. Nott.

---

VALENTINE S. ANGLIN, appellant v. ROYAL A. NOTT,  
appellee.

*Appeal from Clark.*

Where a summons is issued not under the seal of the Court, the Court should, on motion, quash it. It is error to refuse such a motion.

THIS was an action instituted by the appellee against the appellant, in the Clark Circuit Court. The seal to the summons was omitted by mistake. The summons was returned by the sheriff, with the following endorsement: "Executed October 23d, 1837. J. Stockwell, Shff." The defendant in the Court below moved to quash the summons because it was not under seal. This motion was overruled by the Court, and judgment rendered for the appellee, for want of a plea, for \$175 and costs. The appellant excepted to the opinion of the Court overruling his motion, and tendered a bill of exceptions which was signed and sealed by the Court. The cause was heard at the November term, 1837, of the Clark Circuit Court, before the Hon. Justin Harlan.

O. B. FICKLIN, for the appellant, cited *Ditch v. Edwards*, *Ante* 127; *Breese* 3; 3 *Chit. Pract.* title *Process*; 1 *Bac. Abr.* title *Abatement*; 13 *Johns.* 127; 2 *Johns.* 190; 5 *Johns.* 166; 5 *Monroe* 121; 1 *Chit. Plead.*; *R. L.* 486-7.(1)

COOPER, for the appellee.

WILSON, Chief Justice, delivered the opinion of the Court :

The record in this case shows, that upon the first appearance of the defendant, by his counsel, in the Court below, he moved the Court to quash the summons, upon several grounds, one of which was, that the summons was not issued under the seal of the Court. This motion the Court overruled, and the defendant making no further defence, judgment by default was rendered against him.

The statute authorizing a summons to issue in a case like the present is explicit, as to the manner of its authentication. It declares in express terms, that it shall be under the seal of the Court; and as the defendant did not by his appearance or otherwise, dispense with this requisite of the statute, and the defect appearing upon the face of the process, the Court should have sustained the motion and quashed the summons.

The judgment of the Court below, is therefore reversed with costs.

*Judgment reversed.*

*Note.* See *Hannum v. Thompson*, *Ante* 238; *Easton et al. v. Altum*, *Ante* 250; *Pearce et al. v. Swan*, *Ante* 266.

(1) *Gale's Stat.* 529.