Higgin, Peter, admin for vs Ransdall, Benjamin Pettis 1850 196/2

Higgin, Abraham

34

THE STATE OF MISSOURI, ss.

The State of Missouri, To the Judge of the Circuit Court of Petty County in said State, GREETING:

WHEREAS, In the Record and Proceedings in a certain cause lately pending in the Circuit Court of Petty County

wherein Benjamin Ransdell was plaintiff and Peter Higgin Administrator of estate of Abaham Higgin, was defendant

in an action of manifest error hath intervened, to the great damage of the said defendant as by his complaint, we are informed.

NOW, we being willing that the error, if any there be, should be corrected, and full and speedy justice done to the parties aforesaid, in that behalf, COMMAND YOU, that you send to us, certified under your seal, the record and proceedings in the cause aforesaid, as fully as the same remain of record before you in said Court, so that we may have them before us at our Supreme Court, to be begun and held at the City of Jefferson, in the county of Cole, in said State, on the second Monday in January next, so that our Judges of our Supreme Court, on inspecting the record and proceedings aforesaid, may cause to be further done therein, for correcting the error, what of right and according to law ought to be done.

Witness, WILLIAM E. DUNSCOMB, Clerk of our said Supreme Court, at office, in the City of Jefferson, the fourth day of December in the year of our Lord one thousand eight hundred and forty nine

Wm E Dunscomb

The answer of the Judge of the Circuit Court of Pettis County in the State of Missouri.

The record and proceedings whereof mention is within made, with all things touching the same, is certified to the Supreme Court in a certain transcript to this writ annexed as within commanded.

Witness Albion Roberson Clerk of the Pettis Circuit Court. With his Official Seal Annexed this 13th day of December A D One Thousand Eight Hundred and forty Nine

A Roberson Clk

State of Missouri }
County of Pettis } ss.

Be it remembered that on the the Sixth day of April AD One Thousand Eight Hundred and forty nine. the following transcript of the Records of the County Court of the County of Pettis, in the State of Missouri was filed in the Circuit Court of the County of Pettis and State of Missouri; And which transcript, is in the Words and figures following to wit;

State of Missouri }
County of Pettis } ss. Be it remembered that at a Term of the County Court, begun and held at Georgetown, within and for the County of Pettis on the first Monday of November in the year of our Lord Eighteen hundred and forty Eight, and adjourned to the first Monday of December, Eighteen Hundred and forty Eight; it being the fifth day of said Month of December; the following Proceedings were had

Benjamin Ransdall on the said fifth day of December Eighteen hundred and forty eight filed in said Court a paper, in the Words and figures following to wit:

"Mr Peter Higgins Admr. of Abraham Higgins decd

Take Notice

I shall present

Notice to the next County Court of the County of Pettis, to be held at Georgetown the 1st Monday of December next, a Note, and an account against the estate of Abraham Higgins decd for allowance; of which the following are true copies viz;

Note One day After date I Promise to pay Benjamin

Ransdall forty dollars, bearing interest at the rate of ten per Cent per annum until paid, for value received of him, as Witness my hand & seal this 6th day of March 1837.

Test. Abraham Higgins Seal
James McCormick.

Account

Abraham Higgins
In acct. with Benjamin Ransdall

1847.
August. To Amt paid tax for 1840 $3.64
" " " " " 1841 " 80
" " due B. Ransdall his proportion of Partnership effects used in dealings $3.
" Higgins accounts due W. P. Ellis 12.22
" Your proportion of Lomax & McDonald's bill paid by me 1.00
$17.66

When & where you may attend if you think proper
Very respectfully
Benjamin Ransdall"

Return

Nov. 18th 1848,
On which is the following returno;
"The within duly served by reading the same to the same
Joseph N. McCormick D.S."

Proceedings in County Court

And thereupon the following proceedings were had to wit:

Benjamin Ransdall
vs
Peter Higgins admr. Note,
of Abraham Higgins decd

Now at this day come the parties aforesaid (the said Defendant having been duly served with Notice); and by agreement this cause is continued until the first Monday of February next.

Benjamin Ransdall
vs
Peter Higgins Admr.
of Abraham Higgins decd

Account

Now at this day Come the Parties aforesaid, the said defendant having been duly served with Notice; this Cause is thereupon Submitted to the Court, And the Court doth find that the said defendant as Administrator As aforesaid is indebted to the said plaintiff in the sum of Seventeen dollars & Sixty six Cents damages.

Judgmt in Co. Court on the a/c

Therefore it is Considered by the Court, that the said plaintiff recover against the said Defendant the said sum & Costs; And the same is placed in the fifth Class"

Afterwards to wit; At the February Term of the said Court begun And held at Georgetown, on the first Monday in February in the year of Our Lord Eighteen hundred and forty Nine, - it being the fifth day of February, and On the first day of said Term, the following proceedings were had therein to wit:

Benjamin Ransdall
vs
Peter Higgins Admr.
of Abraham Higgins decd

Judgmt on note

Note
Continued from Nov Term

Now at this day Come the Parties Aforesaid, and thereupon the said defendant aforesaid offered as his defence the plea of limitation which is over-ruled by the Court — And thereupon this Cause is submitted to the Court And the Court doth find that the said defendant As Administrator As aforesaid is indebted to the said plaintiff in the sum of Forty dollars debt; and

also the sum of Forty Seven dollars damages.

Therefore it is Considered by the Court that the said Plaintiff recover against the said defendant the said sum and Costs; And the same is placed in the fifth Class."

And afterwardes it was Ordered that Court adjourn until tomorrow Morning 9 Oclock

Tuesday Morning 9 Oclock February 6th Eighteen hundred and forty nine, Court met pursuant to adjournment, and Ordered that Court adjourn until the 1st Monday in March next.

On the first Monday of March in the year of our Lord Eighteen hundred and forty nine being the fifth day of said month, the Court met pursuant to adjournment, And Ordered that Court adjourn until the first Monday in April next.

On the first Monday of April in the year of our Lord Eighteen hundred and forty nine, Court met pursuant to adjournment,

Whereupon the said Peter Higgins Administrator of Abraham Higgins deceased, filed in said Court a paper in the Words and figures following to wit:

Affadavit for Appeal

Benjamin Ransdall
vs
Peter Higgins Adm of
Abraham Higgins dec

In the Pettis County Court

This Affiant Peter Higgins being duly sworn on his oath, says that the Appeal in this cause is not taken for the purpose of Vexation or delay but because this affiant believes that the Appellant is aggrieved by the decision of

the Court,

Peter Higgins

Sworn to and subscribed
before me in Open Court,
this second day of April
A D 1849

A Roberson Clk

which said Affadavit is endorsed as follows to wit
"Filed in Court April 2d 1849 A Roberson Clk."

Order allowing Appeal on the County Court

And thereupon the following proceedings therein were had to wit;

Benjamin Ransdall
vs
Peter Higgins administrator
Upon the estate of Abraham Higgins dec.d

Motion for An Appeal,

Now at this day comes the said defendant and files here in Court An Affadavit for an Appeal in this Cause (to the Circuit Court of Pettis County) and prays the Court to grant him an Appeal, which application being seen and heard and by the Court herefully understood, it is ordered by the Court that an Appeal be granted him to the Circuit Court of Pettis County

State of Missouri
County of Pettis } ss. I, Albion Roberson Clerk of the Pettis County Court, aforesaid do hereby certify that the foregoing is a true full and correct transcript of the record and proceedings relating to the cause wherein Benjamin Ransdall is plaintiff against Peter Higgins as administrator of Abraham Higgins dec.d defendant

In Testimony whereof I hereunto set my name and affix the

Seal of said Court at Office in Georgetown this Sixth day of April in the year of Our Lord Eighteen hundred and forty nine

A Roberson Clk

The following is an account of the costs in the foregoing cause to wit

Clerks fees	$1.27	
Do Copy of record & proceedings	87	
Certificate & Seal	25	$2.39
Witness fees		
James M Parrish	$3.00	
J H McCormick	3.30	
Jas Ransdall	1.40	
William Ransdall	1.30	
James Gibson	1.20	
Jos N McCormick Constables fees	1.30	
John W. May J.P.	15	
Jacob Yankee J.P.	15	12.00
		$14.39

And whereas afterwards to wit

At a Term of the Circuit Court held at Georgetown within and for the County of Pettis on the fourth Monday After the fourth Monday of March, being the twenty third day of April A.D. Eighteen Hundred and forty nine Present The Honorable Henderson Young Judge of said Court, It was afterwards Ordered that Court adjourn until tomorrow Morning 9 o'clock.

Tuesday morning 9 o'clock April 24th Eighteen hundred and forty nine Court met pur-

X

suant to adjournment and thereupon among others were the following proceedings to wit.

Benjamin Ransdall
vs
Peter Higgins Admr.
of Abraham Higgins decd

Appeal from
Pettis County Court

Now at this day Come the parties aforesaid by their respective Attorney And on Motion this cause is continued generally

And afterwards, It was Ordered that Court adjourn until the fourth monday of July next.

And afterwards To Wit,

At a Special adjourned Term of the Pettis Circuit Court held at Georgetown within and for the County of Pettis in the State of Missouri on the fourth monday of July in the year of our Lord One thousand Eight Hundred and forty nine, present, the Honorable Foster P. Wright Judge of the Seventh Judicial Circuit, who holds this Term of the Court at the request of the Honorable Henderson Young Judge of this Court. And afterwards Court adjourned from day to day until Wednesday the 25th July AD 1849 and then it was Ordered that Court adjourn until Court in course

And whereas afterwards To Wit,

At a Term of the Circuit Court begun and held at Georgetown within and for the County of Pettis in the State of Missouri for the Sixth Judicial Circuit, on

the fourth monday after the fourth Monday of September A.D. Eighteen Hundred and forty nine, it being the 22d day of October — present the Honorable Henderson Young Judge of said Court — And afterwards Court adjourned until tomorrow Morning 9 Oclock.

Tuesday Morning 9 Oclock. October the 23d A.D. One Thousand Eight Hundred and forty nine Court met pursuant to adjournment; and afterwards Court adjourned until tomorrow morning Nine Oclock.

Wednesday Morning 9 Oclock October 24th A.D. Eighteen hundred and forty Nine, Court met pursuant to adjournment, and thereupon the following proceedings were had towit:

Benjamin Ransdall
vs
Peter Higgins Admr.
of Abraham Higgins dec'd

Appeal from the Pettis County Court —

Now at this day comes the said plaintiff by his Attorney and files his motion to dismiss the Appeal in this cause

Benjamin Ransdall
vs
Peter Higgins Admr.
of Abraham Higgins dec'd

Appeal from the Pettis County Court

Now at this day Comes the said plaintiff by his Attorney and doles his motion to dismiss the Appeal in this cause.

And afterwards it was Ordered that Court

adjourn until tomorrow Morning 8 Oclock.

Thursday Morning 8 Oclock October 25th A.D. One Thousand eight hundred and forty nine Court met pursuant to adjournment, and among other were the following proceedings Towit:

Benjamin Ransdall
vs
Peter Higgins Admr of
Abraham Higgins dec'd

Appeal from Settes County Court
two Motions by plaintiff to dismiss Appeal

Now at this day come the parties aforesaid by their respective Attornies, and the said Motions being seen and heard and by the Court here fully understood and mature deliberation being thereupon had, the said motions are by the Court here sustained, and the said Appeal is dismissed. It is therefore Considered by the Court here that the said plaintiff recover against the said defendant his Costs and Charges by him about the Appeal in this behalf expended. And thereupon the said defendant excepts to the opinion of the Court in sustaining said Motions and dismissing said Appeal, and presents here to the Court his two bills of exceptions to the opinion of the Court in sustaining said motions, which are signed and sealed and made a part of the record in this cause-

1st Bill of Exceptions

The following is the first Bill of Exceptions filed

Benjamin Ransdall
vs
Peter Higgins Admr of
Abraham Higgins.

Be it remembered that

on this 24th day of October AD 1849 the said plaintiff filed here in Court the following Motion to wit:

Pettis Circuit Court
October Term 1849

Benjamin Ramsdall
vs
Peter Higgins Admr. } Action on Account
Appeal from County Court

The said plaintiff Appellee moves the Court to dismiss the above Appeal; 1st Because the Appeal was not taken or allowed at, or during the Term at which the said judgment was rendered 2d Because the Appeal was not taken or allowed within the time allowed by Law.
3d Because the Appeal was improperly Allowed and was taken and allowed after the end of the Term at which the judgment was rendered — And because the Appeal was not taken or allowed according to Law

Adams & Heard
for Pltff.

which Motion coming on for trial on this 25th day of October 1849 and being seen and heard by the Court is by the Court here Sustained, and the Appeal is dismissed.

To which opinion of the Court in sustaining said Motion and dismissing said Appeal the said defendant by his Counsel excepts and presents this his bill of exceptions and prays that the same may be signed sealed and made a part of the record in this cause which is done accordingly

W. Young (Seal)

2nd Bill of Exceptions

The following is the Second Bill of Exceptions filed

Benjamin Ramsdall
vs
Peter Higgins Admr of Abraham Higgins } Be it remembered

that on the 24th day of October A.D 1849 the said plaintiff filed here in Court the following Motion to wit;

In the Pettis Cir Court
October Term 1849

Benjamin Ransdall
vs
Peter Higgins admr. } Action on Note
Appeal from County Court.

The said plaintiff Appellee moves the Court here to dismiss the above Appeal. because the same was not Taken during the term of the County Court at which the Judgment was rendered, — 2°. Because, the Appeal was improperly allowed and was not Taken in time 3rd°. Because the Appeal was not taken or allowed at the Term of the County Court when the Judgt, was rendered.

And because the Appeal was not taken or allowed according to Law

Adams & Heard
for pltff.

which motion coming on for trial on this 25th day of October 1849, and being seen and heard by the Court is by the Court here sustained, and the Appeal is dismissed, To which Opinion of the Court in sustaining said motion and dismissing said Appeal the said defendant by his Counsel excepts, and presents this his bill of exceptions, and prays that the same may be signed, sealed and made a part of the record in this cause which is done accordingly

H. Young Seal

State of Missouri }
County of Pettis } ss.

I Albion Roberson Clerk of

the Circuit Court within and for the County of Pettis in the State of Missouri do hereby certify that the foregoing Eleven pages contain a full true and perfect transcript of the Record and proceedings in the case of Benjamin Ransdall against Peter Higgins Administrator of Abraham Higgins deceased, on Appeal from the Pettis County Court, as fully as the same remain on file and of Record in my Office

In Testimony whereof I hereunto subscribe my Name and Affix the Seal of said Court at Office in Georgetown this 13th day of December A.D. One thousand Eight Hundred and Forty Nine

A. Robertson Clk

Clerks fee for this Transcript $2.-
Certif & Seal .50
Do & Do on Writ of Error .50
$3.00

24

Peter Higgins Admr
of Abm Higgins
vs
Benjn Randall

Petition

filed 17th December 1849
Wm E Dunscomb
Clerk

Benjamin Ransdall

Transcript

vs

Peter Higgins Admr
of Abraham Higgins

From Pettis Circuit Court

Benjamin Ransdell
vs
Peter Higgins administrator
of Abraham Higgins deceased

on appeal from Pettis
County court

To Benjamin Ransdell

You are hereby notified that I have sued out of the Supreme Court of the State of Missouri, a writ of error upon the Judgment of the Pettis circuit court in the above entitled cause, and that said writ is returnable before the Supreme court of the State of Missouri at Jefferson City on the second Monday in January next. it being the 14th day of said Month. when and where you may attend if you see proper

Dec 31. 1849

Peter Higgins administrator
of Abraham Higgins deceased

I hereby certify that I served the within Notice on the within named Benjamin Ransdall by delivering to him a true Copy of the same in Pettis County on the 2d day of January 1860

Fees 50 cts

James Kemp Sheriff of Pettis County

43

Peter Higgins adm'r

vs

Benjn Ransdall

Notice of Unit of error

Peter Higgins admr of Abraham
Higgins deceased. plaintiff in error
vs
Benjamin Ransdell defendant in error

Supreme Court
January Term. 1850

Now at this day comes the said plaintiff in error by James L. English his attorney and says that in the record and proceedings aforesaid; and in giving the judgment aforesaid. there is manifest error in this; that the motion aforesaid to dismiss the appeal of the said plaintiff in error from the said judgment upon the note aforesaid. ought not by the law of the land, to have been sustained by the court, but the same should have been by the court overruled. and also there is error in this that the motion aforesaid to dismiss the appeal of the said plaintiff in error from the said judgment upon the account aforesaid. ought not by the law of the land, to have been sustained by the court, but the same should have been by the court overruled. and also there is error in this that the said appeal of the said plaintiff in error ought not according to the law of the land to have been dismissed by the court, but the court ought to have proceeded to try the cause anew. and the said plaintiff in error prays that the judgment aforesaid for the errors aforesaid, and for other errors in the said record and proceedings being, may be reversed. annulled. and altogether holden for naught, and that he may be restored to all things which he hath lost by the occasion of the said judgment &c

Jas. L. English
Atty for pl'ff in error.

Peter Higgins Admr of Abm. Higgins dec'd - pltff in error

vs

Benjamin Ransdell - dfdt in error.

assignment of errors.

-

filed Jany 21 1850

Wm E Dunscomb
Clk.

Higgins admr. of Higgins v. Ransdall

[The statement of Mr. English may be inserted as a correct one]

The only question in this case ~~is~~ arises upon the ~~proper~~ construction of a section in the last article of our law of Administration, which requires all appeals from the county court to be taken "during the term at which the decision complained of is made."

Ransdall obtained a judgment against the appellant upon a note at the February Term 1849 of the County Court of Potter county, & after the judgment ~~was~~ was rendered, the Court adjourned to the first Monday in March, & after meeting on the 5th of March (which was the first Monday of that month) adjourned again until the first Monday of April - at which last mentioned time an appeal was asked & granted from the judgment rendered in February.

The County Courts are by law required to hold four Terms each year, & these terms are fixed by law in the months of February, May, August & November. The County Courts have the power given them by the Statute to alter the times of holding these terms - but it would seem from the record, that no change in this respect has been made in Potter county.

These ~~&~~ Courts are also expressly authorized to hold adjourned terms at any time. This power would have been incident to the Court without any such special authority. A special term is also authorized

& the distinction between a special & an adjourned term is sufficiently obvious – the former being called for special purposes & upon the order of one or two of the justices in vacation.

When the county court of Pettis county adjourned sometime in February until the 5th of March, & again upon the last named day adjourned to sometime in april, these successive meetings were but continuations of the February Term of the court. When the court was in session in April, the justices were still holding the February Term. It was certainly not the April Term – as no such Term was known to the law, & no special Term at that time had been called. The court had the power to adjourn for a ~~week~~ day – a week or four weeks – or indeed any length of time, provided the period fixed for the adjourned session did not overrun the next regular term. A Term of a court does not imply a session of such court during each consecutive day or week. A hiatus of a week or a month does not divide the term, if it be produced by adjournments. It follows, that as the statute authorized an appeal during the term at which the decision is made, this appeal from a judgment rendered in February was well taken

at the adjourned session in the following April.

We do not concur with the views of the plaintiff in error upon the effect of this appeal as to the ~~note~~ account. A judgment upon the account had been rendered at the November Term 1848, & no appeal was taken from that judgment. The style or form of the notice does not affect the case. The County Court evidently treated the actions ~~as~~ or claims as distinct, & gave judgment accordingly. They might perhaps have acted otherwise - but they had the power to act as they did, & no objections were made to their course of proceeding. The judgment upon the account was acquiesced in, & has no connexion with the judgment from which an appeal was taken.

The judgment of the Circuit Court is reversed & the cause remanded.

W. B. Napton

Concurred in;
I. T. Ryland.
Jas H. Birch.

43.

34.

Higgins admr.

vs Higgins

v.

Ransdall

Opinion

of the Court

Read & rend

W. B. Napton

filed Aug 4 1850

Wm E Dunscomb

Clerk

Peter Higgins admr
of Abraham Higgins deceased. plaintiff in error
vs
Benjamin Ransdell. defendant in error.

The facts in this case as they appear from the record are that the defendant in error caused a notice to be served on the plaintiff in error that he Ransdell would present to the County Court of Pettis County on the 1st Monday in December 18[illegible]8 for allowance against the Estate of Abraham Higgins deceased. a note and an account setting out a copy of the note and account in the notice. On the 1st monday in December, upon the notice being filed in the County Court, the Court continued the cause as to the note until the 1st monday in February then next and proceeded to try and determine the cause as to the account and allowed the same against the Estate. At the regular term of the County Court on the 1st monday in February 1849. it being the 5th day of February the Court proceeded to try and determine the cause as to the note and allowed it against the Estate. and on that day adjourned until the next day the 6th day of February. and on the 6th of February the Court adjourned until the 1st Monday in March on the first Monday in March the Court adjourned until the first Monday in April. and on the first monday in April the plaintiff in error files an affidavit for an appeal. which was granted him and the cause was sent up to the Pettis Circuit Court. At the April Term of the Pettis Circuit Court the defendant in error appeared and the cause was continued generally until the October Term. and at the October Term the defendant in error files two motions. one to dismiss the appeal as to the account. the other to dismiss the appeal as to the note. Those motions were both sustained by the Court and the appeal was dismissed and to this opinion of the Court in sustaining these two motions the plaintiff in error excepted and files his bills of exceptions. and has brought the case to this Court by writ of error.

To reverse the decisions of the circuit court dismissing the appeal, the plaintiff in error relies upon the following points

1st That the written notice required (by Rev. code of 1845 p 93 Sect 12) to be served upon an administrator, that a claim will be presented for allowance at the next term of the County Court, stands in the place of a summons its object being to bring the administrator into court and its service is the commencement of a suit against the administrator in the County Court. *

* This notice must not be confounded with that provided for in Sect 5 on page 91 of Rev. Code '45.

There are at least four other instances in which a notice is required to be served by our Statute, and in which the notice stands unquestionably in the place of a summons and its service is the commencement of a suit these are

1st notice of application to County court for specific execution of a Contract for the Conveyance of real Estate. Rev. code of '45 page 88. Sect 38.

2nd notice of application for assignment of dower in slaves. Rev. code of '45 page 433. sect 18.

3rd notice of application for distribution of slaves Rev code of '45 page 100. sect 5.

4th notice of application for partition of land. Rev code '45 page 766. Sect 5.

This is expressly called a suit for partition, in the act of January 25. 1847. (session acts page 106) and by this last act a party is permitted to institute the suit by summons.

2nd That this notice, as it must also contain (see Rev. code of '45 page 93. sect 12) a copy of the instrument of writing or

account on which the claim is founded. and its object being to apprize the administrator of the nature of the claim to be presented. stands also in the place of a declaration.

In this respect it is analogous to a writ of scire facias which stands as a declaration.

Garner vs Hays 3 Mo R 436.

3rd "

as the written notice served on the administrator stands in the place of both a summons and a declaration. no matter how many different causes of action are set forth in the notice they all constitute but one suit.

The different causes of action may be considered so many several counts, as in the cases of a petition in debt.

Jones vs Cof et al 7 Mo R 173.

4th " The notice served in this case standing in the place of both a summons and a declaration, was then, the commencement of a suit, and the note and account set forth in the notice constituted but one suit. it being one suit for two different causes of action.

5th " as there was but one suit although the County court decided as to the account at the December session of the court, the defendant in that court could not take an appeal at that time, from the judgment of the court upon the account. as the whole suit was not disposed of. but the suit was still pending in that court.

George vs Craig. 6 Mo R 648

State vs Pepper et al 7 Mo R 348.

6th " That the county court having disposed of the account at the December Session and of the note at the ensuing February Term, the suit was not disposed of. so that the defendant could appeal, until the February Term of the Court.

7th That the County Court possesses the power of adjourning from time to time of adjourning to the following day, or to a subsequent day, to the next week, or to the ensuing month, in continuation of the regular term. Rev. Code 45 page 336. sect 47. and the only limit to their power of adjournment is that the adjourned session shall not interfere with a subsequent regular term of the court.

Rev Code 45. page 337. sect 54.

8th That the regular term of the County Court having commenced on the first monday in February and the court having on that day adjourned to the succeeding day, and on that day adjourned to the first monday in March, and on that day adjourned to the first monday in april. these successive adjournments were but continuations of the February Term of the court.

9th That these successive adjournments being but continuations of the February Term of the court. the appeal taken on the first monday in april, was well taken, and carried up the whole suit to the circuit court for a trial de novo.

Rev. Cod of 45 pag. 106 sect 2

10th That the trial of the suit as to the account at the December court, whilst they continued the suit as to the note to the February Term. was an error of the County Court.

11th That upon the filing of the transcript and papers in the circuit court, that court was possessed of the cause, and should have proceeded to hear try and determine the whole cause embraced in the notice anew. without regard to any error. defect or other imperfection in the proceedings of the county court.

Rev code of 1845 p. 107. sect 7.

12th That the rights of the plaintiff in error are not to be

prejudiced in the circuit court, by the error of the county court in deciding part of the suit at the December Court - and the other part at the ensuing February Term

Ser vs Bobst 8 Mo R 506 -

13th That even if the court should hold that there are two suits in the transcript. one upon the account, and the other upon the note, and that the appeal taken was not well taken as to the Judgment upon the account. yet as the Judgment upon the note was rendered at the February term, and the appeal was taken during the continuation of that term. the appeal was taken 'prima facie from the Judgment upon the note. and as to that Judgment was undoubtedly well taken -

14th But, even if the court should believe that the appeal was improperly taken. yet as the defendant in error appeared at the april term of the circuit court and the cause was continued generally to the October Term, the defendant in error thereby admitted that the circuit court had jurisdiction of the cause, and waived any irregularity in taking the appeal. and having so waived it could not subsequently avail himself of the irregularity, by motion to dismiss the appeal -

Cupples et al. vs Hood et al 1 M.R 497.
Bettis vs Logan 2 do. 2
Hembree vs Campbell 8 do. 572

Jas L English
Attn for pltff in error

Peter Higgins Admr of Abm Higgins dec'd. pltff in error

vs

Benjamin Ransdell. Dft in error.

brief of pltff in error.

State's adopted

Jas. L English
Atty for pltff in error.