Bridge, Hudson, Beach, John & Holland Leonard v Tiernau, Charles 1 Sep

543/1

642/5

Krum & Decker P

Bridge P Dine, R

Davis & Evans d

v

Tiernau A Pin E A

SL
Feb 67
ad 45

P allegis that def PN 699

- not pns

Affirm
Wagner

The State of Missouri, ss.

The State of Missouri, to the Honorable the Circuit Court of St Louis County **in said State—Greeting:**

WHEREAS, In the record and proceedings in a certain cause lately pending in the Said Circuit Court wherein Hudson E. Bridge & others were plaintiffs and Charles Tiernan was defendant in a Civil action manifest error hath intervened, to the great damage of said plaintiffs as by their complaint we are informed.

NOW, 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 in the City of St. Louis, in the County of St. Louis, in said State, on the third Monday in March 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.

Andrew W Mead

WITNESS, WILLIAM S. GLANVILLE, Clerk of our said Supreme Court, at office in the City of Saint Louis, the 8th day of January in the year of our Lord one thousand eight hundred and fifty-sixty two

A W Mead CLERK.

State of Missouri } ss
County of St Louis }

In obedience to the within writ of error I hereby send you certified under our seal a complete transcript of the record and proceedings in the case of Hudson E Bridgett al vs Charles Tiernan as fully as the same remains of record in my office.

In testimony whereof I hereto set my hand and office seal of said Court at office in City St Louis this 28th day of Feby AD 1862

L Rice Clk

1

State of Missouri } ss Be it remembered that on
County of St Louis } this 28th day of August A. D.
Eighteen hundred and Sixty two
there was filed in the office of the Clerk of the St Louis
Circuit Court a petition which is in the words and
figures following = to wit

"Petition"

Hudson & Bridge John H Beach } In the Saint Louis
& Leonard B Holland - Plaintiffs } Circuit Court
vs } September Term 1862
Charles Tieman = Defendant } County of St Louis = ss

The plaintiffs state that the defendant
on or about the sixteenth day of August 1861 executed
and delivered to them, the promissory note herewith filed,
which note is in words and figures following viz $ =
$699 " Saint Louis August 16th 1861.
" Twelve months after date, I the undersigned of St Louis,
" County of Saint Louis, State of Mo, promise to pay to
" the order of Bridge Beach & Co, which firm is composed
" of Hudson & Bridge, John H Beach, and Leonard B
" Holland, Six hundred and Ninety nine Dollars, for value
" received negotiable and payable without defalcation or
" discount, with interest at the rate of ten per cent per annum
" from maturity.
Charles Tieman"

Plaintiffs state that said note is past due and remains
unpaid and they ask judgment for the amount thereof
with interest and for costs

J Krum & E Decker
for Plaintiff

E. W. Decker agent for plaintiffs in this behalf on his
oath says that the petition and the matters therein al
stated he believes to be true

E. W. Decker

2 Subscribed and sworn to before me this 28th day of August 1862 Witness my hand and seal of the Circuit Court date last aforesaid

(Seal) S. Rice Clk

On the filing of which petition the following Summons was issued

1st Summons The State of Missouri

To the Sheriff of Saint Louis county, Greeting:

We command you to summon, Charles Tiernan, to appear before the judge of our Circuit Court on the first day of the next term thereof to be held in the City of St Louis, within and for the County of Saint Louis on the last Monday of September next then and there to answer the complaint of Hudson E Bridge, John H Beach and Leonard B Holland, as set forth in the annexed petition, and have you then and there this writ

Witness Stephen Rice, Clerk of our said Court, with the seal thereof hereto affixed, at office in the City of Saint Louis, this 28th day of August in the year of our Lord Eighteen hundred & Sixty two

(Seal) Stephen Rice Clk.

There is endorsed on said Summons the following return of Sheriff:

Sheriffs Return- Executed this writ in the County of St Louis on the 8th day of September 1862 by leaving a copy of the writ and petition as furnished by the Clerk at the usual place of abode of Charles Tiernan with a white person of his family over the age of fifteen years

John K Andrews Sheff per John H Curtis Depty

3rd And on the 3d day of September A D Eighteen hundred and Sixty two the following answer of defendant was filed

Ans of Deft The defendant for answer to plaintiffs petition says: They ought not to have or prosecute their present action against him: that at the time of the making and delivery of the promissary note mentioned and described in plaintiffs petition as therein alleged, they agreed with defendant that if he would make and deliver to the plaintiffs a deed of Trust of certain real estate the property of the defendant situate on the east side of Twenty fifth Street between Carr and Biddle streets in the City and County of St Louis in the State of Missouri to wit, a certain lot of ground in the extension made to William B Carrs Third addition, by his Grandson containing fifty feet in front on Twenty fifth street by Seventy five feet in depth in Block No 21 of said extension and in the City and County of Saint Louis and State of Missouri and bounded on the west by Twenty fifth street on the North by property of John Bulger on the East by property formerly belonging to William B Carr and on the South by property of Dexter Tiffany, they would forbear the collection the collection of said sum in the said promissary note specified, (and would not sue the defendant to enforce the collection thereof) during the continuance of the present civil war between the United States and the Confederate States so called which real estate is of the Value of Four thousand Dollars and the defendant in fact says that he made and delivered to plaintiffs in fulfillment of said agreement a deed of trust whereby he conveyed the above described real estate to A R Wellum in trust to secure the payment of said sum of money in said promissory note specified with interest thereon to the plaintiffs

4th

which Deed of trust the said plaintiffs accepted as such security - that the civil war aforesaid pending the continuance of which, the plaintiffs agreed with the defendant for the consideration aforesaid to forbear to sue the defendant to enforce the collection of the sums of money in said promissory note specified still continues to be waged and prosecuted by the belligerents.

Wherefore defendants prays that the petition of the plaintiffs in their present suit may be dismissed

Davis and Evans

Attys for Defendant

State of Missouri } ss. Charles Tiernan the above
County of Saint Louis } named defendant makes oath
and says that he believes the above and foregoing answer
and the matters as therein stated are true

Charles Tiernan

Sworn to and subscribed before me this 30th day of
September 1862

S. Rice. Clk.

And at the September Term 1862 and on the 30th
day of October A D 1862 the following proceedings
were had herein

In Vacation

Now come the parties by their respective
attorneys and the defendant moves the Court for
a continuance of this cause and files an affidavit
in support thereof and the Court being fully advised
in the premises doth overrule said motion, and
this cause is submitted to the Court upon the pleadings
and proofs and the Court having duly heard and
considered the same doth find therefrom that the defen-
dant is indebted to the plaintiff in the sum of Seven

& hundred and twelve dollars and ninety eight cents,
It is therefore considered by the Court that the plaintiffs recover of the defendant the debt aforesaid as found and also their costs herein expended and have execution therefor. Judgment to bear interest at ten per cent per annum from this date until paid.

And on the 1st day of November A D 1862 the following motion to set aside judgment was filed.

"Motion to setaside judgment"

And now, comes the said defendant and moves the Court to set aside the judgment rendered in the above entitled cause for the following reasons, to wit,
First. Because, the trial of this cause had been continued to the next term upon application of the defendant now on file in the records of said cause, in this Honorable Court duly considered, and continued.
Second Because the Court erred in setting aside the continuance after the same had been granted, and giving judgt for plffs.
Third Because the Court erred in striking out the answer of defendant and giving a judgment for the plaintiffs notwithstanding that defendants answer contained a good and meritorious defense to said plaintiffs cause of action
And 4th Because the judgment is not in accordance with the facts of the case there was no submission of the cause to the Court.

And at the same term and ~~and~~ on the 6th day of November A D 1862 the following further entry was made herein

The defendants motion to set aside the judgment filed herein being fully heard and considered by the Court is overruled.

6 And on the 7th day of November A D 1862 the following Bill of Exceptions was filed.

"Bill of Exceptions" Be it remembered that on the morning of the day on which the above styled cause was set for trial, on the trial docket of this Court and before any of the causes on the docket had been called for trial, and in the absence of both Plaintiffs and their Counsel, the defendants attorney presented and filed the following affidavit for continuance, and asked the Court to continue this cause to the next term of this Court

Affidavit for Continuance This affiant Charles Treman defendant in the above entitled cause being first duly sworn upon his oath says he cannot safely go into the trial of this cause at the present term of this Court for want of the testimony of Henry Lewis Holett who is a tinner by trade, a resident of the City of St Louis in the State of Missouri and is a material witness for affiant on the trial of this cause, said witness has been absent from the City and County of Saint Louis for above three months next before the date of this affidavit; that said witness is still absent from the said City and County of St Louis and affiant has been informed and believes, and is well assured that said witness is now some where in the United States Army near the City of Cincinnati in the State of Ohio or in Kentucky, but precisely where he has not been informed, and cannot state; though he has made delegent inquiry for said witness from the time he left the said City of Saint Louis, did not until within the last two weeks learn where said witness was that the said witness was near the said City of Cincinnati that affiant caused a subpoena to be issued for said witness and placed the same in the hands of the Sheriff of St Louis County on Tuesday

28th inst which has been returned "not found, that said witness is not absent by the procurement or with the connivance or consent of this affiant: that there is no other person by whom affiant can prove the facts, he can prove by said Odell: that he expects to have the attendance or procure the deposition of said witness before the next term of this Court to be used in the trial of the above entitled cause, that this affidavit is not made for delay but that justice may be done —

Charles Truman

Subscribed and Sworn to before me this 30th day of Oct 1862 Tipton Rice Clk

defendants counsel at the time stating as the reason for presenting said affidavit and asking action thereon just to the call of the case in its order and in the absence of plaintiffs counsel that he was called to the Land Court to attend to other business, and would probably be detained there during the day — the Court without further investigation decided that the cause should be continued which entry of its continuance was made on the minutes of the Court on the record, afterward and before the cause was reached in the roll of the docket on the same day plaintiffs counsel appeared and objected to the continuance of the cause upon the ground of the insufficiency of the affidavit, and the insufficiency of the answer whereupon the Court notified plaintiffs and defendants counsel that the case would be called in its order on the docket when the objection would be heard, other questions raised by plaintiffs counsel would be disposed of to which defendants counsel made not exception — When the case was reached upon the docket and called, the plaintiffs counsel stated his objections to the affidavit and the insufficiency of the answer

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Defendants Counsel insisted the answer was sufficient and the affidavit of continuance in compliance with the Rule but made no objection on the ground that the case had been already continued

Upon a full hearing the Court thereupon decided that the answer was insufficient and contained no defense to the action whereupon the plaintiff offered the note described in the petition in evidence= (see it set out in petition) and moved the Court for judgment notwithstanding the answer, which motion was sustained and verdict was rendered for plaintiff and judgment was thereupon rendered in proper time, defendant moved the Court to set aside the judgment, (see page 5)

which motion the Court overruled, to which ruling defendant then and there excepted and prays that this bill of Exceptions may be allowed signed and made part of the record which is accordingly by done

S M Breckenridge Esq

State of Missouri } I Slethem Rice Clerk of the Saint Louis
County of St Louis } Circuit Court certify the foregoing to be a true ~~copy~~ and complete transcript of the records and proceedings ~~xx~~ in the above entitled cause as fully as the same remains of record in my office

Witness my hand and Seal of said Court at office in City St Louis this 6th day of December A D 1862

Slethen Rice Clk

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(5) O. A. T. 1865
No 75

Hudson E Bridge John
H Beach & Leonard B Holland
Defts in Error

vs

Charles Tiernan
Pltff in Error

Transcript from Circuit
Court =

Stunn and Decker
for plaintiffs

Davis and Evans
for defendant

Filed February 28. 1863
A W Mead Clk
Fee $2.50 paid by

100/100 paid by Apt Clk
January 10. Motion for supersedeas overruled
Asst of Errors filed
Dp 127
1863 Nov. 22. Submitted on briefs

Hudson E. Bridge
John H. Beach and
Leonard B Holland
vs.
Charles Sieman

In the Supreme Court
of the State of Missouri

October Term 1863.

And now comes the said Charles Sieman by his Counsel T. G. C. Davis and John B. Evans and says that in the record and proceedings in this cause there is manifest error: and for especial assignment of errors says,

First The Circuit Court erred in giving judgment in favor of the plaintiffs and against the defendant the said Charles Sieman notwithstanding his answer.

Second The Circuit Court erred in giving judgment in favor of plaintiffs and against the defendant the said Charles Sieman after having ordered the said cause to be continued to the next term of said Circuit Court

And in other respects it is erred in the said record and proceedings of the said Circuit Court in the said cause Wherefore the said Charles Sieman prays that the judgment of the said Circuit Court may be reversed &c.

Davis & Evans
Attys for dfft.

Now come dfts in error & for joinder in error say that there is no error in the record proceedings of said Circuit Court in said cause as assigned by plffs.

Krum & Decker
for dfts in error

Hudson E. Bridge et al

vs.

Charles Sieman

Assignment of Errors

Filed February 28. 1863

A. W. Mead

Clerk

Davis & Evans

for deft.

296.

Hudson E. Bridge et al.
Defts in error
vs.
Charles Lieman
Plff in error

IN SUPREME COURT,
March TERM, 1863.

AND now comes the said Plaintiff in error and says that in the record and proceedings of the Court below, in the above entitled cause, there is manifest error, and for error said Plaintiff in error assigns the following, to wit:

1. That said Court admitted improper and illegal testimony offered by Defendants in error
2. That said Court rejected proper and legal testimony offered by Plaintiff in error
3. That the Court gave to the Jury improper and illegal instructions.
4. That the Court refused to give to the Jury proper and legal instructions offered by Plaintiff in error
5. That the verdict was against the evidence.
6. That the verdict was against law.
7. That the verdict was against both law and evidence, and against the law under the evidence.
8. That the verdict was against the weight of evidence.
9. That the judgment was rendered in favor of the Defendants in error when it should have been rendered for the Plaintiff in error
10. That said Court overruled the motion for a new trial, made by Plaintiff in error

Davis & Evans
Attys for Plff in error

And now come the ..... and for joinder in error say, that there is no error in the record and proceedings of said ..... in said cause, as assigned by said .....

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Hudson E Bridge et al
Defts in error
vs.
Charles Tieman
Pltff in error

Assign^t in error

No 296 March Term 1863.

Filed March 17. 1863
A W Mead
Clk

Davis & Evans
Attys for Pltff in error

Hudson E Bridge - John H. Beach & Leonard B. Holland Defts in error

vs.

Charles Tiernan plaintiff in error

IN SUPREME COURT,
October TERM, 1864.

AND now comes the said plaintiff in error and says that in the record and proceedings of the Court below, in the above entitled cause, there is manifest error, and for error said plaintiff in error assigns the following, to wit:

1. That said Court admitted improper and illegal testimony offered by Defendant in error
2. That said Court rejected proper and legal testimony offered by plaintiff in error
3. That the Court gave to the Jury improper and illegal instructions.
4. That the Court refused to give to the Jury proper and legal instructions offered by plaintiff in error
5. That the verdict was against the evidence.
6. That the verdict was against law.
7. That the verdict was against both law and evidence, and against the law under the evidence.
8. That the verdict was against the weight of evidence.
9. That the judgment was rendered in favor of the Defendants in error when it should have been rendered for the plaintiff in error
10. That said Court overruled the motion for a new trial, made by the plaintiff in error

Davis & Evans
Attys for plaintiff in error

And now come the ..... and for joinder in error say, that there is no error in the record and proceedings of said ..... in said cause, as assigned by said .....

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Supreme Court
Oct. Term 1864

Hudson E. Bridges et ab
Defts in error
vs.
Chas. Lieman Plff in error

Assignment of errors

Filed Nov. 5th 1864

A W Mead
Clk

Davis & Evans
Attys for Plff in error

Hudson E Bridge
Et al Respdt
vs
Chas Tieman
Appelt

In Sup Court

Brief by Respondt.

1 The Court did not err in overruling the application for a continuance made by defendant - the affidavit as set forth in the bill of exceptions did not comply with the rules of the Court.

Our Courts have the right to prescribe rules ~~for~~ governing the sufficiency of affidavits - the appellant has omitted to state what the rules of the lower Court were and this Court will not undertake to interfere with the discretion of a trial Court in the granting or refusing of continuances unless it appears that the discretion has been palpably abused.

2. There are no merits in

the answer - this Court (by Code of Practice 2 Rev. Stat. 1855 pp. 1300-1301) will not reverse a judgment unless it believe a- that error was committed by the lower Court.

b- that such error materially affects the merits of the action.

The only defence contained in the answer is the promise made by plaintiff that he would not sue until the termination "of the present civil war between the U. S. & the Confederate States."

If this be a valid promise & the defendant has been injured by its breach, he may still have his action against the plaintiff - but it constitutes no defence to the note.

The agreement to forbear is for an indefinite time - and evidently a sham defence.

6. No. 392. 7 No. 462.

3. The Appellant failed to except to the ruling of the Court in overruling his motion for a continuance - this Court will

not reverse unless the appellant has complied with all the forms of the law.

Krum & Dockery
Respondents

No. C

Bridge

v.

Treiman

Brief - for
Respondt

Krum & Decker
for Respondt

Filed Nov 15. 1883
J. A. Wilkin
Clerk

Hudson E. Bridge
Et. als.
Respondent
vs.
Charles Tiernan
appellant
} Supreme Court.

The Respondent cannot consent to the statement of appellant filed in this cause, and submits the following statement.

This was an action upon a negotiable promissory note executed and delivered by defendant to plaintiffs dated Aug. 16. 1861 payable twelve months after date.

The answer admits the execution and delivery of the note as alleged in the petition and his only defence is that at the time of the execution and delivery of the note the plaintiffs agreed with the defendant, ~~that if~~ ~~the defendant~~ that if he would execute to them a certain deed of trust they would forbear the collection of said note and would not sue defendant to enforce the collection thereof "during the continuance of the present civil war" between the United States and the Confederate, & that upon the faith of said promise the defendant did execute the deed of trust.

On the day of trial but before the regular time of calling the docket defendants counsel requested the Court to continue the case but the Court refused to continue it and so notified plaintiffs counsel and the record does not show that the case was continued but on the contrary it appears that both parties were present at the trial + no objection was made that a direction of continuance had been made.

The only proof of a continuance would be by the record - + there is no such record - See contra -

The Court overruled the application for a continuance and heard the plaintiffs proofs + rendered a judgment.

No exception is taken by the Appellant to any action of the Court except to the overruling of appellants motion for a new trial.

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Sup. Court

Hudson & Bridge
Respt

v.

Chas Tinman
appellant

Statement by Respts

Krum & Decker
for Respts

Filed Nov 15. 1865
J. C. Wells
Clerk

Hudson & Bridgeford
vs
Charles Pierson

In Sup Ct Mo
Oct T 1865

Opinion of the Court.

In Atwood vs Lewis (6 Mo 392) and Bircher vs Payne (7 Mo 462) this Court decided that when a person gives his promissory note payable at a certain time, and the payee executes an instrument of writing that at the maturity of the note on the happening of certain contingencies he will extend the time of payment and forbear the collection of the money; that the happening of the events or contingencies mentioned in the writing will be no defence to the prosecution of ~~the~~ suit founded on the note, but that if the defendant is injured

by the breach of covenant he must resort to his action for damages.

The only thing that distinguishes those cases from the present one, is that the agreements that were there sought to be set up in defence were in writing, whereas it appears here that the agreement or understanding between the parties was merely verbal.

The Court committed no error in giving judgment nothwithstanding the answer, as for aught that appears in the record, the defence would have been wholly inadmissable in evidence

No exceptions were taken or saved to the action of the Court in overruling the motion for a continuance, and there is no error apparent on the record for us to notice

The judgment will be affirmed Judge Holmes concurs; Judge Lovelace absent

David Wagner

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Copied

Hudson E Bridge & ott

vs

Charles Pierman

Opinion of the Court by Wagner

Filed Nov. 30. 1865
J. A. Willis
Clerk

Affirmed

Hudson E. Bridge,
John W. Beach and
Leonard F. Holland
Defendants in error,
vs.
Charles Tiernan,
Plaintiff in error.

In the Supreme Court of the State of Missouri

Statement of the case.

The defendants in error sued the plaintiff in Error, on a promissory note for 699$ dated the 16th of August 1861; the defendant answered and stated the making and delivery of a Deed of Trust, by him in favor of the plaintiff, to secure the sum specified in the note, and plaintiffs acceptance of the Deed of Trust for that purpose, and their agreement with the defendant in consideration of the land conveyed to them by the Deed of Trust, so made by him, to forbear the collection of the sum specified in the note, during the continuance of the present civil war; and that the land was worth Four thousand dollars and that the Deed of Trust and the note were made and delivered at the same time. Upon the calling of the cause for trial in the Circuit Court,

the defendant filed his affidavit, ~~and~~ and moved the Court to continue the cause, for the want of the testimony of a witness, named in the affidavit.
The Court directed the cause to be continued, but, afterwards in the afternoon of the same day, called it for trial, and, at the instance of the plaintiffs Counsel, struck out the answer and gave judgment for the plaintiffs. The defendant below moved the Court to set aside the judgment, because the cause had been continued by the Court to the next Term; because the Court erred in setting aside the continuance; because the Court erred in striking out the defendants answer, and giving judgment for the plaintiffs; and because the judgment was not in accordance with the facts of the case — there was no submission of the cause to the Court.
The Court overruled the motion and the defendant excepted; and the Court signed a bill of Exceptions, stating that it had directed the cause to be continued, upon the application of defendants Counsel, but afterwards, on the same day called it up, struck out the answer and gave

judgment for the plaintiffs. The errors assigned are the same as those named in the motion to set aside the judgment.

Davis & Evans for plaintiff in error say:

1. The Court erred, manifestly, in giving judgment for the plaintiffs below; it had continued the cause, and no motion was made to set aside the continuance; but the Court, arbitrarily, gave judgment for the plaintiffs, upon a suggestion of their counsel, that the defendants answer was insufficient, with which suggestion the Court, marvelously, concurred.

It is hardly necessary to cite authorities to prove, that a Court cannot continue a cause, and then try it at the same term, before a motion is made to set aside the continuance, or before the continuance is set aside.

The judgment entry in this case is doubtless, unintentionally, false, as appears from the statement made by the Court in the bill of exceptions, that it "directed the cause to be continued".

2 The answer of the defendant below stated a good defence to the prosecution of the action: for although it is true, that a covenant not to sue for a limited time has been held not to constitute a Bar yet there is no reason to say, that such a covenant can not be pleaded in abatement, to an action brought within the time named in the Covenant.
In Blaphi's administrator vs. The Union Bank, the Supreme Court of Maryland decide, that a covenant not to sue for a limited time is a good defence to a suit, prematurely brought, 7 Cr. Harris & Johnson 103.

In Watkins vs. Hodges cited 6 Cr. Harris & Johnson 46 the same doctrine is laid down as in the above case.

Lord Ellenborough, in the case of Cuff et al. vs. Penn, 1st. Maule & Selwyn, page 21, says a parol agreement is good to enlarge the time of payment, or performance of a contract, though the original contract must, by the statute of frauds, be in writing. Raymon vs. Fisher & Hanson, 6th. Ms. Rep. 29 to same effect.

In the case of Pearl vs. Wells, 6 Wendell 29, where the holder of a note, overdue, for a valid consideration, agrees not to sue a debtor for a limited time, and, in violation of such agreement, before the expiration of the time agreed on, commences a suit upon the note, the remedy of the debtor is, to set up such agreement, by way of defence to the action; he can not sustain an action on his part for a violation of the agreement.

It is said in Guard et al vs. Whiteside 13th Ills. Rep. Cp 7 by Treat Chief Justice "There would seem to be a propriety in allowing a defendant to set up the covenant as a defence to the further maintenance of an action, brought in violation thereof - such a defence as would defeat the particular action, without concluding the plaintiff from bringing

another after the time limited had expired
See 3d. Term Reports 590.
It is plain, that Courts have drawn a difference between an absolute bar and a defence, which defeats the present action, without barring the right; such at least seems to be the view taken by a learned Court, in Maryland, and a no less learned Court in Illinois.

If the answer was good, the affidavit for the continuance was equally good, for that purpose.

It will be said, that the case of Atwood vs. Denis 7th Mo. Rep 395 may be regarded, as authority, against the plaintiff in error; but it must be observed, that in that case the agreement between the plaintiff and the defendant was pleaded in bar, and not to the further prosecution of the action; consequently it is no authority upon the point here made — can a party plead a covenant not to sue for a limited time to a further prosecution of a suit brought within the time limited ?

Hudson E. Bridge
John H. Beach and
Leonard B. Holland
Defts. in error

vs.

Charles Tiernan
Plff in error

Statement, Points & Authorities

Davis & Evans
for Plff in error

Authorities in the case of

Hudson & Briggs et al.
vs.
Charles Seaman

In Clopper's Administrator vs The Union Bank the Supreme Court of Maryland decide that a covenant not to sue for a limited time, is a good defence to a suit prematurely brought — 7th Harris & Johnson 103.

In 6th Harris & Johnson 46. the same doctrine is laid down as in the above case. [redacted] Watkins vs Hodges et al.

Lord Ellenborough in the case of Cuff et al vs. Penn 1 Maule & Selwyn 21 page 21 — says a parol agreement is good to enlarge the time of payment or performance of a contract, though the original contract must by the Statute of Frauds be in writing —

In the case of Pearl vs. Mills 6 Wendell 291. Where the holder of a note over due, for a valid consideration agrees not to sue a debtor for a limited time, and in violation of such agreement, before the expiration of the time agreed on commences a suit upon the note, the remedy of the debtor is to set up such agreement by way of defence to the action; he cannot sustain an action on his part for a violation of the agreement.

See 3rd Term Report - 590.

Guard et al vs. Whiteside 3rd Ills J.