

REPORTS OF CASES

ARGUED AND DETERMINED

IN THE

SUPREME COURT OF ALABAMA

MAY TERM, 1820

The first term of the Supreme Court of the State of Alabama, began on the second Monday in May, 1820, at Cahawba.

PRESENT:

Judges { CLAY,
WEBB,
SAFFOLD AND ELLIS.

The Court appointed Judge CLAY, CHIEF JUSTICE.

Minor, *1.

BARLOW v. GARROW.

in assumpsit. Venue improperly laid in the body of the declaration. Defect cured after verdict by reference to margin.

[See 39 Cent. Dig. Pleading, § 1453.]

Garrow brought an action of Assumpsit against Barlow in the Superior Court of Mobile County. Declaration entitled "Mississippi Territory of the United States, Mobile County, ss," sets out an Indebitatus Assumpsit, by defendant to plaintiff, at the City of New Orleans, omitting "viz. at the County of Mobile." Issues on the pleas of Non-Assumpsit, and Statute of limitations. Verdict and Judgment for plaintiff. Barlow here assigns for error, "that the venue laid in the declaration was not within the jurisdiction of the Superior Court of Mobile County."

Crawford and Hitchcock, for plaintiff in error, cited 1st Sel. Prac. 245. 1st Chit. Pl. 285. Co. Litt. 125a. Tidd's Prac. 270, 272, 273. Cowper. 20. 6 Cra. 225. 2d T. R. 644. 2 Ld. Ray. 1212.

Elliot, for defendant in error, cited 1st Chit. Pl. 400, 219.

The CHIEF JUSTICE delivered the opinion of the Court. In local actions, the venue

is matter of substance, and must be properly laid to give jurisdiction. In transitory actions, it is but matter of form; and the jurisdiction of the Court does not depend upon

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the place where the cause of action *arose, or the contract was made. In this case, it would have been but a formal fiction to say "at New Orleans, to wit in the County of Mobile;" and, in my opinion, the defect is clearly cured by the verdict. My brethren concur in affirming the Judgment, but on the ground that the defect is cured by reference to the Margin of the declaration.

By all the Court—Let the Judgment of the Court below be affirmed.

Minor, 2.

JUDSON v. ESLAVA.

1. After plea to the merits, no advantage can be taken of omitting to state in the declaration, the term when filed. The omission of entitling it of the proper Court, is cured by reference to the Writ.

[Cited in Chandler v. Holloway, 4 Port. 25.]
[See 39 Cent. Dig. Pleading, § 1360.]

2. Under the plea of non assumpsit, evidence of a set-off (without notice) is not admissible.

[See 5 Cent. Dig. Assumpsit, Action of, § 145.]

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ACTS

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PASSED AT THE ANNUAL SESSION

OF THE

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GENERAL ASSEMBLY

OF THE

STATE OF ALABAMA,

BEGUN AND HELD IN THE TOWN OF TUSCALOOSA, ON THE FIRST MONDAY IN
DECEMBER, ONE THOUSAND EIGHT HUNDRED AND THIRTY-NINE.

ARTHUR P. BAGBY, GOVERNOR.

GREEN P. RICE, PRESIDENT OF THE SENATE.

JOHN D. PHELAN, SPEAKER OF THE HOUSE OF REPRESENTATIVES.

Copy 2

TUSCALOOSA:
HALE & EATON, STATE PRINTERS.
1940.

PUBLIC AND GENERAL
LAWS OF ALABAMA.

[No. 1.]

AN ACT

1839.

To alter and amend the Charter of the Town of Irwinton, in Barbour County.

Section 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama in General Assembly convened,* That the limits of the incorporation of said town shall be as follows, Limits of the Town. to wit: Beginning at the mouth of the Chewalla creek, where it empties into the Chattahoochie river, thence down said river to the mouth of John L. Hunter's spring branch, thence to Beattie's mill branch, at Shorter's brick yard, excluding said yard, thence direct to the house occupied by A. Treadwell, including said house, thence due west for a half mile, thence direct to Towlson's dwelling house, in Log Town, including said house, thence direct to Moore's mill on the Chewalla creek, excluding said mill, thence down said creek to the beginning of these limits.

Sec. 2. *And be it further enacted,* That the Intendant and Council of said town shall be elected as heretofore pointed out by law, and shall be known and called by the name of the Intendant and Council of the Town of Irwinton, and in that name may sue and be sued, and do all other acts which are consistent with the constitution and laws of the State. Election.
Name and style.

Sec. 3. *And be it further enacted,* That in addition to the powers heretofore granted to said corporation, it shall have jurisdiction over all cases of allrays, assaults and batteries, all nuisances and gambling of every description, and power to preserve the peace and general good order of said town: and for the purpose of suppressing or punishing any of the offences herein mentioned, the said Intendant and Council, or a majority of them, shall have power to pass all by-laws, not incompatible with the laws of the State, and shall publish the same at three public places in said town; but no punishment shall be inflicted by said corporation, in any of the above cases, for the first offence, except by a fine which shall not exceed the sum of fifty dollars; and in all cases, the party charged with a violation of any by-law of the corporation, shall be cited by the Marshal or his deputy, to appear before the Intendant and Council, at a day named in the summons, to show cause why he should not be fined for his offence, which shall be set forth in the summons: and the said Intendant and Council shall, and they are hereby declared to be Justices of the Peace, *ex officio*, for all the purposes of hearing and determining. Additional powers granted.
By laws.