

3FED.CAS.—61

Case No. 1,683a.

BOSWELL v. NEWTON.

{Hempst. 264.}<sup>1</sup>

Superior Court of Arkansas.

Jan., 1835.

COURTS—STATUTORY CHANGE OF TIMES OF HOLDING—EFFECT.

1. If the legislature changes the time of holding the courts, it does not affect the business therein, although no provision is made as to the decision of causes.
2. It does not produce a discontinuance of any cause or matter.
3. If a new jurisdiction had been created, a provision continuing the business might be necessary; but otherwise not.

Appeal from Independence circuit court.

{This appeal was presented by James Boswell, administrator of Hartwell Boswell, against Myric D. Newton, appellee.}

Before LACY and CROSS, Judges.

OPINION OF THE COURT. The only question made in this cause is, whether the court below erred in dismissing it on the defendant's motion. The suit was commenced in the circuit court of Independence county in December, 1833, and the process made returnable to the ensuing May term, at which time the defendant appeared by his attorney and plead to the action, and whereupon the cause was continued until November term, 1834, when the judgment of dismissal was given. At the time the suit was commenced, the circuit court of Independence county was required to be held on the second Mondays of May and November. Acts 1829, p. 22. By an act of the legislature approved November 5, 1833, the time was changed to the third Mondays of May and November, but this act did not take effect until the first of November, 1834. In changing the time of holding the circuit courts, it seems that the legislature omitted to insert a provision, that all causes then pending should be returnable, have day, and be decided, as though the change had not been made. The omission, upon principles of either law or reason, could not, as we think, amount to a discontinuance of any matter pending in the court, the time of holding which was changed. If the court had ceased to exist by the act of the legislature; and a new jurisdiction had been created, then such a provision would doubtless have been necessary. But this is not the case, and it will be found upon examination that no such clause has ever been inserted in any act of the legislature, where the time only of holding the court has been changed. Judgment reversed.

<sup>1</sup> [Reported by Samuel H. Hempstead, Esq.]