

Case No. 4,241a.  
[Hempst. 48.]<sup>1</sup>

EARHART V. CAMPBELL.

Superior Court, Territory of Arkansas.

April, 1827.

NONSUIT—DEFECTIVE DECLARATION—AFFIRMANCE ON ERROR—SUIT BY ASSIGNEE.

1. If a declaration is fatally defective, the court will affirm a judgment nonsuiting a plaintiff, without considering whether nonsuit was proper.
2. A person who sues as assignee is bound to allege an assignment to show title in himself.

{This was a suit by Rodney Earhart, assignee of Mathew Patterson, against Sarah Campbell, administratrix of J. Campbell, deceased.}

Before JOHNSON, ESKRIDGE and TRIMBLE, Judges.

OPINION OF THE COURT. This is an action of debt, brought by Earhart, assignee of Mathew Patterson, against Sarah Campbell, administratrix of J. Campbell, deceased. Upon the trial in the circuit court, upon motion of defendant, a judgment of nonsuit was rendered against the plaintiff. We deem it unnecessary to consider the question or point that influenced the court below in rendering a judgment of nonsuit against the plaintiff, as we are clearly of opinion that the declaration is fatally defective. On this ground the judgment of the circuit court must be affirmed. The plaintiff, Earhart, brings his suit as assignee of Mathew Patterson, and so styles himself in the declaration, but fails in any part to set out the assignment or show any title in himself derived from Patterson. After declaring as assignee, he was bound to allege an assignment, that the defendant, if she thought proper, might deny, by plea, the assignment of the note. This, we think, is a fatal defect in the declaration. It is further defective in not alleging the time when the note became due and payable,

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which it was necessary to aver in the declaration. It is also defective, substantially, in failing to allege or aver a promise to pay at any time, which is an indispensable requisite in the declaration. As the declaration is defective and sets out no good grounds of action, there is no error in the circuit court in nonsuiting the plaintiff. Judgment affirmed.

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