

Case No. 7,278.

{4 McLean, 258.}¹

JENKS ET AL. V. GARRETSON.

Circuit Court, D. Ohio.

July Term, 1847.

PRACTICE—PLEADING—DEFAULT—PROOF OF PARTNERSHIP.

A default will not be opened, on motion, unless accompanied by a plea, sworn to under the rule of the court, denying the signature of the plaintiff [defendant], if the action be on a note. And the partnership shall also be admitted without proof.

At law.

Mr. King, for plaintiff.

Mr. Raymond, for defendant.

OPINION OF THE COURT. In this case the action was brought upon a note signed by G. W. Garretson, on which there was a judgment by default. The note, it seems, was signed by G. W. Garretson & Co.

A motion was made to open the default, without the usual affidavit, on the ground of the above misdescription of the note. The rule is as follows: "Ordered, that hereafter when a default is opened up on motion of defendant, it shall be held without special entry, as a condition of the permission to plead, that the defendant shall not question the citizenship of the plaintiff or defendant, and shall not require proof of the co-partnership of the plaintiff or defendant in the case, unless he shall forthwith file a special plea, verified by affidavit, and denying the partnership of either said plaintiff or defendant respectively, as set forth in the declaration." And the 36th rule declares "that the general issue, unless sworn to, shall admit the execution of the instrument on which the action was founded."

The court held that both of these rules applied to the case. Motion overruled.

¹ [Reported by Hon. John McLean, Circuit Justice.]