Case No. 13,073.

SMITH v. McCLEOD et al.

{1 Cranch, C. C. 43.}[1]

Circuit Court, District of Columbia. Oct. Term, 1801.

PLEADING AT LAW—PLEA TO JURISDICTION—WHEN ALLOWED.

In a court, of a limited jurisdiction a plea, that the cause of action did not arise within the jurisdiction of the court, is a plea in bar, and good after office judgment.

Debt, in the court of hustings {by Smith against McCleod & Braden}. Plea to the jurisdiction that the cause of action did not arise within the town of Alexandria.

Plaintiff demurred generally, and contended that the plea was not a proper plea after an office judgment.

Mr. Faw, for defendant, cited Downman v. Downman, 1 Wash. {Va.} 28; Chumley v. Broom, Carth. 402; 1 Bac. Abr. 35. This is a plea in bar and not in abatement; it is not a dilatory plea—not necessary to be sworn. The plaintiff's remedy is not by demurrer. He ought to have objected to receiving the plea at the time the office judgment was set aside. The plea is good both in form and substance. Several terms have passed since it was filed. The court cannot now go back and say the plea ought not to have been received. They cannot correct their own errors after the term. But this plea was received in the court of hustings, before the existence of this court. Gordon v. Frasier, 2 Wash. {Va.} 135.

Mr. Swann, contra, contended it was a dilatory plea, and if put in at an improper time, the plaintiff might demur, and cited Imp Pl. 294; Barnes, Notes Cas. 264.

Judgment for defendant, on the demurrer quod breve cassetur.

[1] {Reported by Hon. William Cranch, Chief Judge.}

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