

Case No. 18,224.
[Hempst 215.]¹

ANONYMOUS.

Superior Court, Territory of Arkansas.

Feb., 1833.

ABATEMENT—FORM OF PLEA—EVIDENCE.

1. Pleas in abatement, not being received with favor, require the greatest accuracy and precision in their form, and must be certain to every intent, and are not amendable; they must not be double.
2. If bad, the plaintiff need not demur, but may treat them as nullities and sign judgment.
3. If on the whole record the judgment of the inferior court is correct, it will not be reversed because improper evidence was admitted.

PER CURIAM. Pleas in abatement require the greatest accuracy and precision in their form; they must be certain to every intent; they are never received with favor (1 Chit. Pl. 491); they are dilatory, not reaching the merits of the action, and are not amendable; the plaintiff need not demur thereto when bad, but may treat them as nullities and sign judgment. 1 Tidd, Prac. 588. Tested by these rules, a plea in abatement which avers the suing out a former writ for the same cause, that it is still remaining in the clerk's office, that the defendant was arrested on such writ and surrendered to a person who represented himself to be deputy sheriff, that the suit is still pending, as defendant believes, and concluding with a verification, is destitute of requisite precision and formal accuracy, and does not tender a certain issue. What issue

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is tendered? Is it the suing out of the writ; its existence in the clerk's office; the arrest or surrender of the defendant, or the fact that T. was deputy sheriff, or that he represented himself to be such; that the suit is still pending, or that the defendant believes it to be pending? Such a plea is clearly insufficient, and may be treated as a nullity. Where it appears to the appellate court that improper evidence has been admitted on the trial of an issue in the inferior court, yet if upon the whole record the judgment is right, it will be affirmed.

¹ [Reported by Samuel H. Hempstead, Esq.]