

Adams, Ex'r and Berry v. Hepman.

[DECEMBER]

ADAMS, Ex'r, and BERRY v. HEPMAN.

PRACTICE—*When case stricken from docket.*—Where no exceptions are taken, nor any appeal prayed for or granted, either in the court below or by the clerk of this court, the case will be stricken from the docket.

APPEAL FROM FRANKLIN CIRCUIT COURT.

Hon. WILLIAM N. MAY, *Circuit Judge.*

Robert A. Howard, for Appellants.

Garland & Nash, for Appellee.

GREGG, J.—This suit was brought by Hepman against George C. Alden, James M. Oliver, Charles Berry and William C. Adams, in the Franklin Circuit Court, and afterwards revived in the name of William A. Adams, as the executor of William C. Adams.

The whole record is so imperfect and confused, as, in some particulars, to be unintelligible.

The defendants all appeared, and Alden and Oliver filed a joint plea of bankruptcy; afterwards, the record says Alden filed a plea, but no such plea appears. Then follows a long answer of Adams and Berry, setting up several matters, none of which amounted to a defense, and no distinction of paragraphs was made, if intended for more than one defense.

The record then recites, that the plaintiff demurred to the first, second and third paragraphs of "the defendants' answer." Whether this was intended as a demurrer to the answer of Alden and Oliver, or Adams and Berry, or to both, does not appear. All the defendants are named in the captions, and no distinction is anywhere made in responding to their pleadings. The record then recites, that the plaintiff filed his demurrer to "the last paragraph, or additional answer of the defendants," but up to this time no answer appears to have been filed by all the defendants, nor does there appear any separate answer or other paragraph after the answer of Adams and Berry.

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Then follows an entry, reciting that the "said several demurrers came on to be heard," and the court sustained said demurrers, and the defendants, by leave, filed another answer, and the plaintiff filed a demurrer thereto. What disposition was made of this answer and demurrer, does not affirmatively appear; but they are followed by a judgment *nil dicit*. No exceptions were taken; nor was any appeal prayed for or granted, either in that court or by the clerk of this court; and for this reason, the case is ordered stricken from the docket. See *Sykes vs. Laffery*, 26 Ark. *Henry & Co. vs. Gibson & Helmer, Ib.*
