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Parke vs. Meyer.

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PARKE VS. MEYER.

PRACTICE: *When joint obligation sued on.*

Where the obligation sued on is joint, the court, in its discretion, may render judgment against one defendant, leaving the action to proceed against the other.

APPEAL from *Sebastian* Circuit Court.

Hon. E. D. HAM, Circuit Judge.

*Walker & Rogers* and *A. H. Garland*, for appellant.

*Clark & Williams* and *Rose & Green*, for appellee.

BENNETT, J. Meyer sued Parke & Tibbetts on an accepted draft, in the circuit court of Sebastian county. Service was had on Parke, none on Tibbetts. When the cause was called, Parke defaulted, and a final judgment was rendered against him, and an *alias* writ issued against Tibbetts, and cause continued. Parke appealed.

This cause has been before us on a motion to dismiss the appeal, on the ground that the judgment rendered by the court was not such a final judgment as could be appealed from. The motion to dismiss was overruled. The cause is now submitted on the same record as to its merits.

The record shows that the draft sued on was accepted by the firm of Tibbetts & Parke, and is a joint acceptance in the firm name.

At common law, when a party brought his action against

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two or more defendants upon a contract, he must recover against all the defendants or none. By sec. 3, chap. 94, Gould's Digest, the common law rule was changed, and joint obligations have been construed to have the same effect as joint and several, and recoveries had thereon in like manner. By section 400 and 401 of the Code of Practice, it is provided, that in an action against several defendants, the court may, in its discretion, render a judgment against one, leaving the action to proceed against the others. In the case before us, such discretion has been used and a final judgment given against Parke. No error appearing on the record, the judgment is affirmed.

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