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Hanner et al. vs. Bailey.

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HANNER et al. vs. BAILEY.

REPLEVIN: *Pleading in, before J. P.*

An affidavit in an action of replevin before a justice of the peace, which contains a statement of the particular facts constituting the cause of action, is a sufficient compliance with the statute requiring a written statement of the facts upon which the action is founded, and no complaint need be filed.

APPEAL from *Lafayette* Circuit Court.

Hon. MYRON D. KENT, Circuit Judge.

*Rose*, for appellant.

It was error to strike out the amended complaint. *Sillivant v. Reardon*, 5 Ark., 140.

The complaint was filed before the issuing of the summons.

Pleadings up to ordinary standard before justice's courts. The case should be remanded.

HARRISON, J.:

This was an action of replevin, commenced before a justice of the peace, for 3115 pounds of seed cotton and twenty-three bushels of corn.

On applying for the order of delivery, the plaintiffs filed an affidavit, in accordance with section 5035, Gantt's Digest, in which the value of the property was stated to be \$166.62. The affidavit contained a particular statement of their cause of action, and they filed no other.

The defendant, after the property had been replevied, gave bond, and the same was restored to him. A jury trial was had, and there was a verdict and judgment for the plaintiffs for a

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portion of the cotton and corn. The defendant appealed to the Circuit Court.

After the plaintiffs had filed an amended complaint, and a demurrer had been sustained to it, the Circuit Court, upon motion of the defendant, dismissed the suit, upon the ground that it had no jurisdiction of the case, because no written statement of the facts on which the action was founded, or other than that contained in the affidavit, was filed with the justice. The plaintiffs appealed to this court.

As the affidavit filed contained a particular statement of the facts constituting the plaintiff's cause of action, it served the office of both complaint and affidavit, and the statute requiring a written statement of the facts upon which the action is founded to be filed with the justice before the summons is issued, was substantially, if not literally, complied with. *Jetton & Farris v. Smead*; *Perkins v. Smith*, 4 Blackf., 299; *Minchrod v. Windoes*, 29 Ind., 288.

The circuit Court erred in dismissing the suit; its judgment, is therefore overruled, and the cause remanded to it, with instructions to proceed to a determination of the cause according to law.

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