

BRADFORD, RAINWATER & Co. vs. TONEY.

PARTIES: *Joinder, etc.*

Where two or more parties are jointly bound by contract, a party may sue one or more, or all, at his election.

ERROR to *Ouachita* Circuit Court.

Hon. JAMES K. YOUNG, Circuit Judge

Rose, for plaintiff in error.

Payee may sue one or more makers of a note at his option. Gantt's Dig., secs. 4479, 4480, 572, 3587, 4702, 4704. Besides it has long been the law in this State. *Hamilton v. Burton*, 6

Ark., 24; *Burgen v. Dwinal*, 11 ib., 320; *Hicks v. Manees*, 9 ib., 701; *Hicks v. Branton*, 21 ib., 191; *Walker v. Walker*, 7 ib., 543.

WALKER, J.:

Bradford, Rainwater & Co. brought an action of debt against J. R. Toney upon a promissory note executed to plaintiffs by the defendant (and James M. Toney who was not sued) under the name of J. R. Toney & Co.

The defendant demurred to the declaration and assigned as cause for demurrer that James M. Toney, who was jointly liable with the defendant, was not joined as a party to the suit.

The demurrer was sustained and judgment rendered against the plaintiffs for the costs.

The case is brought before us upon writ of error.

When two or more parties are jointly bound by contract, the action thereon may be brought against all, or any of them at the plaintiff's option. Gantt's Dig., sec. 4480.

The question raised by this demurrer has been so often decided in affirmance of the right of the payee in a note to sue one or more of the payors at his election, that it is a matter of surprise that the court below should have sustained the demurrer. *Hambleton v. Burton*, 6 Ark., 24; *Walker v. Faulkner & Walker*, 7 Ark., 542; *Burgen v. Dwinal*, 11 Ark., 314.

Let the judgment of the Circuit Court be reversed and set aside and the cause remanded for further proceedings.
