

BLOCK EX PARTE.

The Constitution, as construed in *Dillard vs. Noel*, (2 Ark. 456,) gives to a party having a cause of action within the jurisdiction of the circuit court, the right to bring his action in the circuit court of any county he may choose, irrespective of the residence of the parties, but it does not follow that the plaintiff has the absolute right to a trial in such court.

After the jurisdiction is acquired, its exercise is subject to the rules of practice prescribed for the court.

The act of Nov. 30, 1840, (*Digest* 984,) providing for the removal of a case to the county of defendant's residence, is not repugnant to the constitution, being designed like other acts in regard to change of venue, to facilitate and secure a fair and impartial trial, with due regard to the convenience of the parties.

Application for Mandamus.

Augustus E. Block, as administrator of Martin Johnson, deceased, presented a petition to this court, at the present term, stating that on the 22d April, 1850, he filed a declaration, for breach of covenant, against William K. English, in the Pulaski circuit court; that a writ of summons was issued thereon to the sheriff of said county, and returned by him duly served upon the defendant, within said county, by which petitioner alleged the said circuit court obtained full possession of the case, and had exclusive authority to try the same. That on the 7th June, 1850, being the return term of the writ, said English filed a petition in said court, having given previous notice of the application, praying an order for the removal of said case to the circuit court of Saline county, the county of his residence, on the ground of such residence; and on the 23d July, 1850, when the case was called, the court, against the objection of petitioner, made the order of removal as prayed by English, to which petitioner excepted.

That petitioner requested the Pulaski circuit court to proceed to try the cause, but the court refused, and he excepted. All of which would appear by the transcript exhibited &c.

Petitioner admitted that said English resided in said county of Saline, and had brought himself within the provision of the act of November 30th 1840, (*Digest* 984,) but insisted that said act was repugnant to the constitution; and that inasmuch as the Pulaski circuit court had possession and jurisdiction of the case, it could not be rightfully transferred to any other court, on account of the residence of the defendant.

Petitioner prayed a mandamus to the Hon. WILLIAM H. FEILD, Judge of the Pulaski circuit court, requiring him to set aside

said order of removal, and to proceed to determine the cause &c.

S. H. HEMPSTEAD, for the application, argued that the circuit court of Pulaski county having jurisdiction of the subject matter and having acquired jurisdiction of the person of the defendant, could not divest itself of that jurisdiction on the application of the defendant to change the venue to the county of his residence; that the law authorizing such change of venue was unconstitutional, and cited, *Cons. art. 3, sec. 6. Dillard vs. Noel*, (2 Ark. 456.) *More vs. Woodruff*, (5 Ark. 215.) *Heilman vs. Martin*, (2 Ark. 158.) *Berry vs. Linton*, (1 Ark. 257.) *Fisher vs. Hall*, (1 Ark. 278.)

Mr. Justice WALKER delivered the opinion of the court.

The petitioner contends that, having elected to bring suit in the Pulaski circuit court, he has a right under the constitution to insist upon a trial there, and the legislative act providing for removing his suit to the circuit court of some other county is unconstitutional. The case of *Dillard vs. Noel*, is cited in support of this position.

The constitution secures to the citizen, whose cause of action comes within the constitutional jurisdiction of the circuit court, the right of trial in such court; and we understand the case of *Dillard vs. Noel* as deciding that the plaintiff may, in the exercise of this right, sue in the circuit court of any county he may choose, and that legislative restriction in this selection is unconstitutional. But in the same case it is also said that where the court once acquires jurisdiction it may exercise it, irrespective of the residence of the parties. The petitioner contends, however, that inasmuch as the plaintiff has a right to select the county in which he may sue, it follows as incident to that selection that he has a right to insist on a trial there. However plausible this may appear, we think that no such right necessarily results from the right to sue in any of the circuit courts of the State. The first right appertains to jurisdiction; the second is intimately connected with the practice of the court after jurisdiction has been acquired.

So soon as the plaintiff submitted his case to the court, it became subject to the rules of practice prescribed for such court, whether by legislative enactment or otherwise; and if one of these be that, under particular circumstances connected with the due administration of the law, the case should be heard in the circuit court of another county, we are not prepared to say that the constitutional rights of the citizen are thereby impaired.

The intention of the constitutional provision was to secure a trial in a circuit court in view of its enlarged capacities to decide upon matters of greater moment and interest to the citizen. These powers are the same in all the circuit courts and although they are held in different counties, the trial, so far as the constitutional right of trial is concerned, is the same in any circuit court. The case of *Dillard vs. Noel* affirms to the citizen the right of judicial cognizance in any circuit court. We will not disturb that decision thus limited, but deny that it should be extended to the action of the court, after it has acquired such jurisdiction.

To deny the legislative authority to regulate the practice of the court, even so far as to change the venue or place of trial when necessary, would be in effect extending the constitutional rights of the citizen beyond what, we apprehend, was contemplated by its framers. The act in this case is, in spirit and intent, like all the other acts in regard to the change of venue, designed to facilitate and secure a fair and impartial trial with due regard to the convenience of the parties, and does not conflict with the constitution. The action of the circuit court under it, was therefore correct.

The application must be denied.