

DICKSON vs. BURKS.

Where defendant pleads no consideration to an action of debt on a bond, the *onus probandi* is on him, the obligation being *prima facie* evidence of consideration.

Appeal from the Benton Circuit Court.

This was an action of debt by Burks against Dickson on a writing obligatory. It has been in this court before: See *Dickson vs. Burks*, 1 *Eng. R.* 412. After the case was remanded, (at the October term, 1847, FLOYD, J. presiding) it was submitted to the court sitting as a jury, on issue to defendant's plea of no consideration, and finding and judgment for plaintiff. Motion for new trial overruled, and bill of exceptions setting out the evidence. On the trial defendant admitted that he signed, sealed and delivered the obligation sued on, which was all the evidence introduced. Defendant appealed.

FOWLER, for the appellant.

ENGLISH, for the appellee, referred to the case of *Greer as ad. vs. George as adx.* 3 *Eng.* 131, to show that the *onus probandi* was upon the defendant under the pleading, and as he failed to sustain his plea the verdict is right.

Mr. Chief Justice JOHNSON delivered the opinion of the court.

The court below clearly decided right in refusing the motion for a new trial. The defendant below relied alone upon his plea of no consideration. Upon the trial he admitted the signing, sealing and delivery of the writing sued upon, but wholly failed to introduce any proof whatever going to establish the truth of the allegation contained in his plea. There can be no

doubt but that the instrument sued upon made a *prima facie* case for a recovery, and that in order to rebut it, it devolved upon the defendant to show that in fact no consideration ever passed between the parties. The cases of *Rankin vs. Badgett*, (5 Ark. 346,) *Greer as ad. et al. vs. George adx.* (3 Eng. 133,) *Cheney use &c. vs. Higginbotham*, (5 Eng. 273,) are directly in point and perfectly conclusive of the question. There being no error in the judgment of the court below, it is consequently in all things affirmed.

Mr. Justice WALKER did sit in this cause.
