

## CHOAT &amp; DYE vs. BENNETT, MERRILL &amp; CO.

No declaration, or statement in writing, is necessary to the validity of a judgment by confession, as repeatedly held by this court.

Confession of judgment is a release of errors, under our statute.

*On certiorari to Independence Circuit Court.*

This case was brought into this court by *certiorari*. It was a judgment confessed in the Independence circuit court, in 1840, by Choat & Dye, in favor of Bennett, Merrill & Co. Choat & Dye sought to quash it here, on the grounds stated in the opinion of the court.

CONWAY B, for the plaintiffs, contended that a judgment without declaration was void, and referred to *sec. 2, p. 795, Dig.*, and *Hardy vs. Moore's ex.*, 3 *Har. & McHen.* 389. *Bowie vs. State*, *use, ib.* 408. *Ib.* 351. *Hardin* 490. 1 *Paine* 58. 5 *Gill. & John.* 66. 2 *Mass.* 441. 7 *John.* 75.

BYERS & PATTERSON, contra, referred to the cases of *Mathews vs. Thompson*, 3 *Ham. (Ohio) Rep.* 272. *Gayle vs. Foster, Minor's R.* 125. *Johnson vs. Glasgow & Harrison*, 5 *Ark.* 311. *Thompson & Boyer vs. Foster*, 1 *Eng.* 208, to show that a declaration was unnecessary under the statute, (*ch. 126, Dig.* 818); and cited 1 *Bibb.* 165, 1 *Ark.* 169, to show that a confession of judgment is a release of errors.

Mr. Justice WALKER delivered the opinion of the Court.

There is but one question presented in this case. The judgment was taken by confession. The note, the affidavit, the personal appearance of the defendants, and their voluntary waiver

of process and confession of judgment affirmatively appear of record. The objections urged against the validity of the judgment, seem to be based upon the supposition that a declaration or statement in writing in such case is necessary. We have heretofore repeatedly decided that it is not necessary in cases like the present to file either. The note or written contract is altogether sufficient, and answers all the purposes of a declaration. (*Johnson vs. Glasgow & Harrison*, 5 Ark. 311. *Thompson & Boyer vs. Foster*, 1 Eng. 210.) And these decisions will be found fully sustained by those of several of our sister States. 3 *Ham. R.* 272. *Minor's R.* 125.

Even admitting the judgment to be erroneous, (which we think is not the case,) a confession of judgment is by our statute a release of all errors, whether the judgment be rendered with or without process. *Dig.* 818, *sec.* 139. 1 *Eng.* 210.

Let the judgment be, in all things, affirmed with costs.

Mr. Justice SCOTT not sitting.

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