McMEECHEN ET AL., EX PARTE.

The rule was, at common law, that no prohibition lay to an inferior court, in a cause arising out of its jurisdiction, until that matter had been pleaded in the original court, and the plea refused; and it should appear, in the suggestion, that the plea was verified, and tendered in person during the sitting of the inferior court. *Williams Ex parte*, 4 *Ark.* 540, and *Blackburn Ex parte*, 5 *Ark.* 22.

A. obtained a judgment against B., in the Pulaski Circuit Court, and issued an execution to the sheriff of Independence; B. applied to the judge of the Circuit Court of Independence, in vacation, and obtained an injunction. A. moved this court for a writ of Prohibition to the Judge of the Independence Court—writ refused because it is not shown in the suggestion that A. first applied to the Judge of Independence Circuit Court to dissolve the injunction, and that the application was refused.

On Application for Prohibition.

"Be it remembered, that, on this day, came before the Supreme Court of the State of Arkansas, in proper person, John McMeechen. D. J. Slaughter and Thomas W. Hynes, and give to the Court here to understand and be informed that, on the 30th day of November, 1842, they, by the consideration and judgment of the Pulaski Circuit Court, recovered against a certain *William Conway B.* the sum of $324.54, for their debt, as well as interest thereon at the rate of 6 per cent. from the 25th November, 1842, until paid, and the costs of suit, which were afterwards taxed to the sum of $21-.33—which said judgment still remaining in full force, and in no wise satisfied or vacated, to obtain satisfaction thereof, they, on the 20th of July, 1849, caused to be issued thereon a pluries writ of *fieri facias,* directed to the sheriff of Independence county, commanding him of the goods and chattels, lands and tenements of the said Conway B. to levy the said debt, interest and costs, and have them before said Judge of the Pulaski Circuit Court, on the 2d day of the December term thereafter, A. D. 1849, which writ was dated on the day and year aforesaid, and came to the hands of the said sheriff on the — day of August, 1849, and before the return day thereof was levied by him on lots 1, 2, 3 and 4, in block 7, in the town of Batesville, as the property of said Conway B.: which levy was endorsed on the said writ, and the same was returned without sale for want of time; and on the 26th February, 1850, they caused to be issued out of said court, on said judgment, a writ of *venditioni exponas,* bearing date the day and year aforesaid, directed to the said sheriff of Independence, commanding him to make sale of said property, so levied on as aforesaid, and have said debt, interest and costs, before the Judge of said Court, on the 2d day of the December term thereof, A. D. 1850; which writ came to the hands of said sheriff on the 18th day of March, 1850, to be executed according to law.

And the said parties further suggest, that on the 2d day of September, 1850, the said Conway B. exhibited his bill in Chancery,

in the Independence Circuit Court, addressed to the Hon. William C. Scott, judge thereof, praying that an injunction might be issued restraining the said Sheriff and them, from any further action on said judgment and execution, and that said injunction might be made perpetual; upon which bill and prayer, the said judge, on the day and year aforesaid, in vacation, granted an injunction according to the prayer of said bill; and the said bill was thereupon filed in said Circuit Court, and a writ of injunction was issued thereon according to said order, commanding the said Sheriff and them, to stay all further proceedings on said writ; as by a certified copy of bill, order, writ, &c., made part hereof, will more fully and at large appear: and the said Sheriff, in obedience to said order and writ, returned said execution, stayed thereby, as by a certified copy of said writ and return, made part hereof, will more fully and at large appear. Which said injunction so granted as aforesaid, is still in full force, and said bill in Chancery is still pending in said Independence Circuit Court, and being prosecuted against them by said Conway B., by which they are still stayed in the collection of their said debt.

And they further suggest that the Judge of said Pulaski Circuit Court was in no wise disqualified by the constitution or law of this State from acting on said bill of injunction; and no excuse is given in said bill in chancery for the failure to make application to him for said injunction.

All which acts of the judge of the said Independence Circuit Court, of the said Conway B. are contrary to and in violation of the jurisdiction of the Pulaski Circuit Court, and of the constitution and laws of the State.

Wherefore, the said McMeechen, Slaughter and Hynes, imploring the aid of this Court, prayeth to be relieved, and that they may have the State's writ of prohibition, directed to the Judge of the said Independence Circuit Court, and the said William Conway B, to prohibit him from taking any further cognizance of said plea before him touching or concerning the premises.

And it is granted to him accordingly."

F. W. & P. TRAPNALL, *Atts.*

F. W. & P. TRAPNALL, for the Petitioners.

Mr. Justice SCOTT delivered the opinion of the Court.

It was laid down upon authority, by this Court, in the case of *Williams Ex parte,* (4 *Ark.* 540,) that "the rule was, at common law, that no prohibition lay to an inferior court in a cause arising out of its jurisdiction, until that matter had been pleaded in the original court and the plea refused, and that it must appear in the suggestion that the plea was verified and tendered in person during the sitting of the inferior court." And the same doctrine was reiterated in the subsequent case of *Blackburn Ex parte,* 5 *Ark. R.* 22.

This rule is decisive of the application at bar, because it is in principle directly applicable to it. It does not appear in the suggestion that there has been any effort at relief in the court below. Although the parties may have in fact had no actual notice of the time and place of applying for the injunction, and thus had an opportunity to have guarded the judge against the error into which he has fallen; nevertheless they might have afterwards gone before the Circuit Court of Independence county, and, upon there showing that the whole proceedings were directly in the face of the statute, (*Dig., p.* 592, *secs.* 5, 6, 7,) have doubtless had the injunction dissolved and the bill dismissed for want of jurisdiction, and thus have obtained the relief they seek here by these proceedings. And if that court had refused such relief, then the appropriate allegation of such refusal, in addition to the allegations contained in the suggestion before us, would have made a proper case for the interposition of this court in virtue of its powers of superintending control, which have in this case been invoked. There being no such allegation in the suggestion before us, the application for the rule to show cause why the writ of Prohibition should not issue, must be refused.