12/99. Dist. in Higgs v. Warner, 14/199.

FORD *vs.* CLARK.

By moving for a new trial, a party waives previous exceptions, unless made grounds of the motion, and preserved by bill of exceptions to the decision of the court overruling the motion.

Appeal from the Philips Circuit Court.

DEBT, by Clark vs. Ford, on two notes executed by Applegate & Ford, in 1837, due in that year and 1838. Suit was brought in 1846.

After demurrer overruled, six pleas were filed:

1st. *Nil debet,* on which issue was taken.

2d. Limitation of three years: Replication, continued non-residence: Rejoinder, that, in 1838, plaintiff came into Arkansas: Surejoinder denying that fact and issue.

3d. That before suit brought, Clark assigned, endorsed, and delivered the notes to Boyd, Heard & Megs, who still hold the legal interest. Replication denying the whole.

4th. Assignment, &c., *after* suit brought to ——.

5th. That when suit brought, plaintiff had not the legal interest in the notes.

6th. Assignment and delivery on the —— day —— to ——.

Demurrers to 4th, 5th and 6th pleas sustained.

A petition for discovery was filed setting out the pleadings, and averring that the Plaintiff endorsed one note in blank, thereby assigning to bearer; and endorsed the other to the persons named in the 3d plea, or to some other persons whose names have been rendered illegible by erasure, and delivered the note to them; and that these facts, and that of the return of the plaintiff into the State could only be proved by obtaining discovery from himself: and so prayed discovery as to these facts.

To this petition, the plaintiff filed an answer and demurrer. By the answer, he admitted that, long before the institution of the suit, he *passed* the note alleged to have been endorsed to Boyd, Heard & Bryan, in payment of a debt due them by him; but, after its maturity and non-payment, it was returned to him, and he paid them the amount of it: and that they had no legal interest in it when the suit was commenced. It denies that plaintiff ever was in Arkansas.

The demurrer extended to so much of the petition as enquired as to the other note; and as to the assigning, setting over and delivering, and afterwards erasing the endorsement on the note *passed* to Boyd, Heard & Bryan, on the ground that the matters so sought to be discovered were not material to the issue.

Exceptions were taken to the answer for the non-discovery of the matters covered by the demurrer.

The court sustained the demurrer to the petition—sustained the exceptions so far as they related to the issue on the 3d plea, and overruled them as to the residue.

An amended answer was then filed denying any assignment or delivery to Boyd, Heard & *Megs;* and the defendant filed a 7th plea of assignment, &c., to Boyd, Heard & *Bryan,* which was stricken from the files.

The case was then tried by a jury: after the evidence was heard, instructions were asked by both parties—and the *record* shows the court refused to allow the defendant to produce authorities or to argue the questions of law arising on the instructions.

But, after giving some instructions and refusing others, the court refused to allow the defendant's counsel to argue the *facts* to the jury.

Verdict for plaintiff, motion for new trial overruled, and exceptions.

PIKE, for the appellant.

F. W. & P. TRAPNALL and W. H. & A. H. RINGO, contra.

Mr. Justice WALKER delivered the opinion of the Court.

It becomes unnecessary for us to examine into the merits of the several causes of error alleged to have been committed prior to the motion for a new trial; because the appellant, by his motion for a new trial, waived his right to insist upon them, and failed to preserve them in his bill of exceptions to the opinion of the court in overruling such motion.

Under this state of case, as heretofore repeatedly decided, our investigation is limited to the inquiry as to whether the evidence sustains the verdict of the jury. Of this, there can be no doubt. The note sued on and the answer to the petition for discovery, are fully sufficient for that purpose.

Let the judgment of Phillips Circuit Court be, in all things, affirmed.