

FULLERTON vs. HOUPT.

Declaration radically defective in form and substance, and judgment thereon by default, reversed.

Writ of Error to Hot Spring Circuit Court.

This case comes from the Hot Spring Circuit Court, and the declaration is the work of that singular, but conscientious man, *John D. Pollok*, who was a *preacher* and a *lawyer*, and who now sleeps with his fathers. The declaration is in these words:

“Egbert Houpt, as executor of the last will and testament of Henry Houpt, deceased, plaintiff in this suit, by attorney, complains of John W. Fullerton, defendant herein, of a plea that he render unto said plaintiff the sum of six hundred dollars, which said defendant owes to, and detains from, said plaintiff.

For said plaintiff declares and says, that heretofore, to wit: on the 28th day of December, A. D. 1848, to wit: at the county aforesaid, the said defendant, by and under this style and signature of J. W. Fullerton (alias John W. Fullerton), made his two certain writings obligatory, sealed with his seal, and now here to the court shown, bearing date the day and year last aforesaid, one for one hundred dollars, whereby he (J. W. Fullerton) promised to pay on or before the first day of March, A. D. 1849, and the other one for five hundred dollars, whereby he promised to pay on or before the first day of October, A. D. 1849, the above

sum of five hundred dollars, making in both the sum of six hundred dollars, the sum above demanded, for value received, and then and there delivered said writings obligatory unto said plaintiff's testator.

Yet the said defendant, although often requested so to do, has not as yet paid said sum demanded, and in said writings obligatory specified, *but only a small part thereof, to wit: the sum of thirteen dollars and forty-five cents, as shown by a credit on the back of the writing obligatory for the sum of one hundred dollars,* but to pay said writings obligatory, *hath almost wholly failed, neglected and refused, and still neglects and refuses, to the damage of said plaintiff to the amount of the sum of five hundred and eighty-six dollars, the sum specified hereinbefore, and to the further damage of said plaintiff to the amount of the sum of twenty-five dollars and forty-five cents, and therefore suit is brought."*

J. D. POLLOK, Att'y.

Defendant made default, and plaintiff's attorney took judgment for the amount of the larger obligation, withdrawing the other.

Mr. Justice SCOTT delivered the opinion of the Court.

The declaration in this case is radically defective both in form and substance.

Let the judgment be reversed, and the cause remanded, with leave to the plaintiff below to file an amended declaration.