

## WILLIAMS vs. WILLIAMS.

Plea of no consideration to debt on a note, must be sworn to, under our statute; otherwise, it may be disregarded, and judgment taken as for want of a plea. Other points decided same as in *Mitchell vs. Conley, ante*.

*Appeal from Calhoun Circuit Court.*

ENGLISH, for the appellant. The plea of no consideration being disregarded, there was no appearance by defendant, and the judgment was therefore by default, on a bad declaration, and a void writ. See authorities cited by me in *Mitchell vs. Conley, ante*.

Mr. Chief Justice WATKINS delivered the opinion of the Court. The facts of this case are the same as in *Mitchell vs. Conley*,

just decided, except that no plea in abatement was interposed; and the writ being amended, as in that case, by order of the court, the defendant below filed a general plea in bar, that the promissory note mentioned in the declaration, was made without any consideration whatever. This plea not being verified by affidavit, was according to the repeated adjudications of this court, under the statutes, liable to be stricken from the files. The plaintiff moved the court for judgment, disregarding the plea, which was sustained, and to this the defendant excepted and prayed his appeal.

We find no error in the proceedings; and the execution of the judgment of the court below having been suspended by recognizance, the affirmance will be with ten per cent damages on the amount of the judgment complained of.

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