
Landfair v. Lowman.

LANDFAIR V. LOWMAN.

ATTACHMENTS: *Affidavit upon belief: Irregularity waived.*

An affidavit for attachment made upon belief only, although defective is not a nullity, and by a failure to object to its sufficiency in the court below, the defect is waived and cannot be made available on appeal.

APPEAL from *Desha* circuit court.

JOHN A. WILLIAMS, Judge.

COCKBILL, C. J. The facts in this case and in that of *Lehman & Sons v. Lowman & Bro., ante*, are the same so far as the question raised by the appeal is concerned, except in this, viz: The affidavit for attachment in this case was made by the plaintiffs' attorney upon *belief*, as the jurat states, that the matters set forth were true. The motion to quash was not made upon that ground, and it is evident that the court made the order of quashal for the same reason as in the other case; for here, as in that case, leave was given to the plaintiffs to cause a new order of attachment as of the date of the filing of the separate complaint, thereby affirming the sufficiency of the affidavit. If the objection had been made and sustained by the court on the ground that the affidavit was insufficient, leave to amend and cure the defect, must have been extended to the plaintiffs, as we decided in *Sanmoner v. Jacobson*, 47 *Ark.*, 31. The affidavit was not a nullity, and by failing to object, the defendants waived the irregularity (*Ib.*), and cannot avail themselves of it here for the first time.

Reverse and remand.