

BURTON vs. HYNSON.

A plea *puis darrein continuance* is a waiver of all previous pleas: and if the judgment on the plea be against the defendant it will be peremptory.

Writ of Error to the Circuit Court of Independence County.

DEBT, by Hynson against Burton on a writing obligatory. Burton pleaded payment, set-off, and accord and satisfaction. Replications and issues to the first two pleas, demurrer sustained to third, and cause continued. At a subsequent term defendant filed a plea *puis darrein continuance*, alleging the bankruptcy of plaintiff, plaintiff replied, demurrer to replication sustained, Hynson appealed, and this court reversed the judgment, and remanded the cause. (See *Hynson vs. Burton*, 5 Ark. R. 492.)

At the August term 1844, plaintiff filed the mandate of this court, and in pursuance thereof the court overruled defendant's demurrer to plaintiff's replication to defendant's plea *puis darrein continuance*. On motion of plaintiff, a rule was made upon defendant requiring him to file bills of particulars under his pleas of payment and set-off by the next term, and the cause was continued.

At the February term, 1845, defendant asked leave to file an amended plea of accord and satisfaction, which was refused by the court, and he excepted. On motion of plaintiff the cause was again continued.

At the February term 1846, plaintiff moved the court for judgment against defendant "upon the demurrer" theretofore "sustained by the court quashing defendants plea *puis darrein continuance*."

The court rendered judgment against defendant "as for want of a plea," for the amount of the bond sued on, and defendant excepted, showing in his bill of exceptions that he offered to prove that the

debt declared for had been paid, but the court refusing to permit such proof made, rendered judgment as aforesaid. Defendant brought error.

PIKE & BALDWIN and FOWLER, for plaintiff.

BYERS & PATTERSON, contra.

CONWAY, B., J. did not sit in this case, having tried the cause below.

OLDHAM, J. A plea *puis darrein continuance* is always pleaded by way of substitution for the former plea on which no proceeding is afterwards had. *Steph. Pl.* 83. If matter in abatement be pleaded *puis darrein continuance* the judgment, if against the defendant, will be peremptory, as well on demurrer as on trial. The plea is a waiver of the first plea, and no advantage can afterwards be taken of it. *Chit. Pl.* 697. The court therefore did not err in rendering judgment for the plaintiff, and we therefore affirm the same.
