

FOREMAN vs. GIBSON.

After demurrer to the declaration and the general issue subsequently pleaded,
the court has no discretion to allow a plea in abatement.

Appeal from Washington Circuit Court.

Hon. FELIX J. BATSON, Circuit Judge.

ENGLISH, for the appellant. The plea in abatement was out of time, after demurrer to the declaration, and much more after the plea of not guilty. The proper motion was to strike it out. *Knott et al. vs. Clements.ad.*, 13 Ark. R. 335.

Mr. Chief Justice WATKINS delivered the opinion of the Court.

After a demurrer to the declaration, and the general issue pleaded at the succeeding term, the defendant, at the third term, filed a plea in abatement, alleging that the appointment of the guardian *ad litem* for the plaintiff "was not made on his the said plaintiff's application." The Court below overruled a motion to strike this plea from the files, and the plaintiff, resting upon his exception, declined to reply to it; whereupon, final judgment was rendered in favor of the defendant.

The judgment of the Circuit Court will be reversed, and the cause remanded, with instructions to disregard the plea in abatement, and that the cause be proceeded in to trial upon the plea to the action.