

STRAYHORN & MAY vs. McMURRY.

Action of debt on bonds, with counts for cotton, whiskey, monies, &c.—plea of *non est factum* as to the bonds, and *nil debet* and statute of limitations as to the other causes of action—judgment for plaintiff as to the bonds, and finding for defendants as in case of non suit, as to the issues on the other counts—bill of exceptions by plaintiff undertaking to set out the evidence—writ of error by defendants—judgment reversed, because it does not appear, from the bill of exceptions, that the bonds were produced on the trial, or their execution proven.

Writ of error to the circuit court of Pope county.

THIS was an action of debt, by McMurry against Strayhorn and May, determined in the circuit court of Pope county, at the September term, 1844, before the Hon. R. C. S. BROWN, one of the circuit judges.

The first two counts in the declaration were upon money bonds, alleged to have been executed by defendants as partners. There were other counts for cotton, whiskey, monies, &c. Mays pleaded *non est factum* as to the bonds, and both defendants pleaded *nil*

debet, and the statute of limitations as to the other counts. Issues were finally made upon these pleas, and submitted to the court, sitting as a jury. The court found, and gave judgment, as stated in the opinion of this court. The *plaintiff* excepted to the finding of the court, and took a bill of exceptions, setting out the evidence, and the *defendants* brought the case to this court, by writ of error.

CUMMINS, for the plaintiff.

LINTON & BATSON, contra.

OLDHAM, J., delivered the opinion of the court.

In this case the circuit court, without the intervention of the jury, found the issues upon the first two counts in the declaration in favor of the plaintiff below, and the issues upon the remaining counts for the defendants as in case of non-suit. The bill of exceptions no where shows that any evidence whatever was offered by the plaintiff to sustain the issues on his part, which were found in his favor by the court. The writings obligatory declared on, are not set forth, nor is there a word of proof as to their execution. If the bill of exceptions contained all the evidence given in the case, as it purports to do, the finding of the court in favor of the plaintiff below was in absence of all testimony. The judgment must be reversed and the cause remanded.