

HAYS EX PARTE.

Where a party appears and files with a justice a written confession of judgment, under section 109, chapt. 87, Rev. Stat., such a description of the cause of action in the confession as will identify it is sufficient. In such case the party is not required to state the technical character of the instrument upon which confession is made. The amount, date and time of payment being given with sufficient certainty to identify a writing obligatory, it will not invalidate the judgment, if, in the confession, it be called a note.

Petition for certiorari.

At the January term of this court, 1846, A. J. Hays filed a petition for certiorari, in substance as follows:

“On 11th April, 1845, one Louisa Hogins, administratrix of A. D. Hogins, commenced suit against petitioner before John James a justice of the peace of Yell county. That on that day she filed or placed in the hands of said justice, *two writings obligatory*, and that no summons was issued thereon against petitioner, and no notification served upon him.

Petitioner not wishing to controvert the justice of *two notes of hand* held by said plaintiff, agreed that judgment should be entered thereon; and wrote authority to the justice to enter up such judgment on said *notes of hand*. That said justice, in fraud of the rights of petitioner, and without jurisdiction or authority of law, pretending to be authorized by said consent of petitioner, that judgment might be given against him on said *notes of hand*, proceeded, on the 11th April, 1845, to enter up judgments against him upon two *writings obligatory*, for \$86 each, interest and costs.

Petitioner insists that said judgments are without jurisdiction and void, having been entered without notice, appearance or confession, in conformity with law; that the authority given by him to the justice to render judgment upon *promissory notes*, did not authorize him to enter up judgments upon *writings obligatory*;

that the authority was informal, and conferred no power to render the judgments.”

Certified copies of the papers and proceedings in the cases before the justice, were made part of the petition.

The petition further stated that the judgments remained unsatisfied, and executions had been issued upon them: and prayed the court to issue a writ of *certiorari* commanding said justice to send up a transcript, &c., to the end that the judgments might be declared void, and superseded, &c.

The transcript of the papers and proceedings before the justice, which accompanied the petition, in substance, follows:

“*Copy of note.*—One day after date, I promise to pay A. D. Hogins or bearer, eighty-six dollars for value rec’d. of him: this 25th Dec’r., 1842.
A. J. HAYS, [L. s.]”

[The other instrument as copied into the transcript is just like the above in all respects.]

“*Copy of authority to the justice to enter up judgment.*—“JOHN JAMES, ESQR—*Sir:* You are hereby authorized to enter judgment against me in favor of Louisa Hogins, administratrix with the will annexed, of the estate of A. D. Hogins, dec’d., on a note in favor of A. D. Hogins for eighty-six dollars, due one day after date, and dated the 25th day of Dec’r., 1842: this 11th April, 1845.”

“A. J. HAYS.”

“*Entry of judgment.*—“Louisa Hogins, ad’mrx. of A. D. Hogins, dec’d., vs. A. J. Hays: debt—On this day appeared Louisa Hogins, administratrix of A. D. Hogins, dec’d., and filed a writing obligatory, dated 25th day of December, 1842, and due one day after date, payable to A. D. Hogins for eighty-six dollars: and also appeared A. J. Hays, the defendant, and filed here in court his confession of judgment in writing, which is allowed by the court, and it is considered by the court that said plaintiff have and recover of the defendant the sum of eighty-six dollars debt, five dollars 16 cents damages, with all costs, &c.; this 11th April, 1845.”

“JOHN JAMES, J. P.”

The authority to enter up judgment on the other note, and the

judgment entry, as copied in the transcript, are in all respects like the above.

E. CUMMINS, for petitioner.

JOHNSON C. J., delivered the opinion of the court.

It is enacted by the 109th section of chapt. 87 of the Revised Statutes that "no confession shall be taken or judgment rendered thereon, unless the following requisites be complied with, first, the defendant must personally appear before the justice; second, the confession must be in writing signed by the defendant or by some person by him lawfully authorized, and filed with the justice."—The defendant in this case appeared before the justice, and filed his written confession upon two notes, each for the sum of eighty-six dollars, payable one day after date, and dated on the twenty-fifth day of December, A. D. 1842. This application is grounded upon a supposed variance between the instruments as described in the confession and those copied into the transcript. It is contended that the authority given to the justice is to enter judgment upon notes, and that he, having entered judgments upon writings obligatory, necessarily transcended his authority. All that the statute requires, in such cases, is such a description of the cause of action in the confession as to give it identity. If the defendant, instead of describing the instruments as notes, had designated them merely as claims or demands and at the same time specified the dates and amounts, so as to have given them identity, it would have been all sufficient for the substantial purposes of the law. This, we conceive, he has done. He was not required to set out the technical character of the instrument, and he could not, by doing more than the law required, prejudice the rights of the plaintiff.

Motion denied.