

WARNER *vs.* BRIDGES.

Where A employs B to collect notes and accounts for him, he cannot maintain an action for the sum collected by B until after demand and refusal.

Appeal from the circuit court of Randolph county.

This suit was brought by Bridges against Warner before a justice of the peace, upon an account. Bridges obtained judgment, and Warner appealed to the circuit court of Randolph county. The case was determined before the Hon. WM. CONWAY B., at the April term, 1845.

It was submitted to a jury, and there was a verdict and judgment for Bridges. Warner moved for a new trial upon the ground that the verdict was contrary to evidence, &c., which the court refused, he excepted, took a bill of exceptions, setting out the evidence, and appealed to this court.

BYERS & PATTERSON, for the appellant.

From the evidence Warner was only the agent of Bridges in the collection of accounts; and his possession was the possession of Bridges until Bridges made a demand and Warner refused to account. *Palmer & Southmayd vs. Ringo & Ashley*, 3 Ark. R. 75. *Cummins vs. McLain et al.*, 2 Ark. R. 402. *Sevier vs. Halliday*, 2 Ark. R. 512.

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

Warner had possession of certain notes and accounts belonging to Bridges, which by agreement he was to collect, and out of the proceeds discharge a judgment in his favor as administrator against Bridges, and the residue pay to him. The evidence is very indefinite in reference both to the amount of the judgment, and the amounts of the notes and accounts. No time was designated by agreement between the parties in which the notes and accounts should be collected, and the overplus, after the discharge of the judgment, be paid to Bridges. The defendant below was thus employed as the agent of the plaintiff for the collection of the notes and accounts, and had he collected the whole amount, he would not be liable to an action until a demand made and refusal to pay, and so it has already been determined in *Taylor vs. Spears*, decided at the present term. The evidence is wholly silent as to a demand,

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for which reason a new trial should have been granted, and the
court below erred in refusing the same.

Reversed.

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