

McCONNELL & ROBINSON vs. STATE BANK.

To a declaration in debt demanding three thousand dollars as the sum sued for, containing two counts for fifteen hundred dollars each, a plea of *nil debet*, "that defendants do not owe the said sum of money above demanded, or any part thereof," is a sufficient response to the declaration, and good on demurrer.

Writ of error to the circuit court of Washington county

THIS was an action of debt, by the Bank of the State of Arkansas against McConnell and Robinson, determined in the circuit court of Washington county, at the June term, 1845, before the Hon. S. G. SNEED, one of the circuit judges.

The pleadings below are sufficiently stated in the opinion of this court.

D. WALKER, for plaintiff. The question raised by the assignment of errors is, was this a good plea? We insist that it is. It denies the indebtedness in the declaration or any part of it, and is an exact copy of the form given in 2 *Harris' Entries* 62.

The cause of the demurrer was, that it did not purport to answer the several sums in the declaration demanded, or any part thereof. The sum demanded in the declaration is regularly the aggregate of all the sums alleged to be due, in the different counts. 1 *Chitty* 309. It follows therefore as a consequence that a denial of the indebtedness in the sum demanded, or any part thereof, is an answer and denial to the whole declaration.

E. L. JOHNSON, contra.

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

This was an action of debt instituted in the circuit court of Washington county. The declaration claims three thousand dollars, and contains two counts for fifteen hundred dollars each. The defendants pleaded *nil debet*, "that they did not owe the said sum of money above demanded or any part thereof." To this plea the plaintiff demurred, and the court sustained the demurrer, and a jury having found the other issue made up by the pleadings for the plaintiff, judgment was rendered accordingly, and to reverse that judgment the defendants below prosecute their writ of error to this court.

The plea of *nil debet* is not only substantially good, but is technically formal. There are not several sums demanded by the declaration, as is supposed by the demurrer, but only a single sum of three thousand dollars, and each count of the declaration is for a parcel of that sum, and the two counts make up the aggregate of the sum demanded. The plea denies the indebtedness of the defendants below in the sum of money demanded or any part thereof, and is a complete answer to the whole declaration.

The circuit court improperly sustained the demurrer, for which reason the judgment must be reversed.