HENSLEY ET AL. *vs.* MOORE.

Suit on a bond before a justice; defendant interposed the statute of limitation as a defence; judgment for plaintiff, and defendant appealed: tried in the circuit court without formal pleadings, and judgment for plaintiff; defendant, without moving for a new trial, or putting the evidence on record, brought error. *Held,* that though the bond appeared on its face to be barred by the statute of limitation, yet this court would presume in favor of the judgment below that plaintiff introduced proof to take the case out of the statute.

Writ of Error to Lawrence Circuit Court.

On the 28th July, 1845, Wm. Moore sued Larkin Hensley before a justice of the peace of Lawrence county, on a writing obligatory for $23.32, dated October 11th, 1838, and due first of January, 1839. The defendant, says the justice's transcript, "pleaded limitation on the case, which plea was overruled," and judgment rendered for plaintiff for the amount of the obli-

gation. Hensley appealed to the circuit court, giving E. W. Hensley as security in the appeal. The transcript of the record of the proceedings in the circuit court in the case follows in substance:

"Lawrence Circuit Court, October Term, 1846.—October 15th day.

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Now, on this day came the defendant by attorney and filed his plea in bar herein, to which the plaintiff, by attorney, joins issue, and the court not being advised, takes time to consider thereof."

"October Term, 1846, October 15th day.

Moore *vs.* Hensley, } Appeal from J. P.

Now, on this day came the parties, by their respective attorneys, and say they are ready for trial, and neither party requiring a jury, the case is submitted to the court, the plea in bar heretofore filed by the defendant being overruled, and the evidence being heard and the premises seen and fully understood, this court doth find for the plaintiff the sum of $23.32 debt, and $15.54 damages with costs; it is therefore by the court considered and adjudged, that plaintiff have and recover of and from Larkin Hensley, the said defendant, and E. W. Hensley as his security in the appeal, the aforesaid sum of $23.32 for his debt, and $15.54 damages, together with all the costs in this suit, &c."

There is no plea, motion for new trial, or bill of exceptions contained in the transcript.

Hensley and his security in the appeal brought error.

FOWLER, for the plaintiff. The writing sued on was barred

by the statute of limitations, more than five years having elapsed from the time it fell due, and from the taking effect of the statute, before suit was instituted. *Rev. Stat. p.* 528, *sec.* 11. 5 *Ark. Rep.* 512, *Baldwin vs. Cross.* 1 *Eng. R.* 266, *Dickinson vs. Morrison.* 2 *Eng. Rep.* 452, *Davis Ex. vs. Sullivan. ib.* 488, *Watson vs. Higgins.*

The formality of pleadings in writing is dispensed with, in proceedings before justices of the peace, and in cases in the circuit court on appeals from their judgments. *Rev. Stat. chap.* 87. 2 *Eng. Rep.* 148, *Howell vs. Vinsant.*

And even if it be true, that Hensley could have interposed no defence in the circuit court, which he had not relied on before the justice of the peace, which is not admitted, yet the record fully shows that the substantive grounds of his defence was the statute of limitations.

And if no formal pleadings be required, and the record should fail to show the grounds of defence, the inference of law must necessarily be that every legal defence was made of which the case was susceptible; which in this case does include the statute of limitations. The note itself, and the date of the commencement of the suit fully disclosing the propriety of such defence.

Where there is no occasion for written pleadings in cases of appeal from justices of the peace, not only the statute of limitations, but even the character in which the party sues may appear or be contested in evidence. 7 *Smedes & Marsh. Rep.* 254, *Hairston vs. Francher.*

WATKINS & CURRAN, contra. The first objection, and in fact the only point in this case is, that the court overruled or found against Hensley's plea. The record shows that, before the justice of the peace, he pleaded the statute of limitations: when the case reached the circuit court, the record states that Hensley "filed his plea in bar," but no plea of any kind appears in the transcript: and in the entry of the judgment it is stated that both parties "saying they are ready for trial and neither

party requiring a jury, the case is submitted to the court, and the plea in bar heretofore pled being overruled," &c. The record not only fails to show what kind of a plea it was, but utterly fails to set out one particle of the evidence, nothing of the kind being attempted. How can this court decide upon the sufficiency of the plea, when it is not in the transcript, or upon the sufficiency of the evidence, when no bill of exceptions was taken setting out the evidence? True, *prima facie*, the note sued on is barred; but even if the court could presume that was the plea referred to in the record, how could this court know, but what the plaintiff was within some exception in the statute, or proved some matter, such as payment or acknowlegment, in avoidance of the statute.

JOHNSON, C. J. The presumption of the law is clearly in favor of the correctness of the judgment of the circuit court. True it is that the instrument sued upon appears upon its face to be barred by the statute of limitations, but it is not shown that the defendants below, desired to avail themselves of that defence, and in case they had actually insisted upon it, and had failed to reserve all the evidence adduced upon the trial, the legal presumption would still have been that the plaintiff introduced testimony which took it out of the operation of the statute. The presumption, of course, is much stronger where there is no showing of record that the statute was relied upon as a defence. The judgment of the circuit court is therefore presumed to be correct and is consequently in all things affirmed.