

MILLWEE EX PARTE.

The point in this case settled in *Dorris vs. Grace, supra*.

Application for Mandamus.

GARLAND & NASH, for the application.

GALLAGHER & NEWTON, *contra*.

Mr. Justice CLENDENIN delivered the opinion of the court.

This is an application for mandamus against the Hon. Augustus N. Hargroves, judge of the 9th judicial circuit of this state, to compel him to grant an injunction, which, it appears by the endorsement on the bill, now filed with the petition in this case, he refused to grant.

From the bill of complaint and the exhibits, we learn that on the 18th of February, A. D. 1863, the petitioner purchased from William P. McIntosh, the defendant in the bill, a negro slave, for the sum of fourteen hundred dollars, upon a credit of twelve months; that he executed three writings obligatory to said McIntosh, two for five hundred dollars each, and one for four hundred dollars, due at twelve months, with ten per cent from due; that McIntosh executed a bill of sale to petitioner; that petitioner afterwards paid one of said five hundred dollar notes, and two hundred dollars on account of the other; that McIntosh instituted his action of debt, upon the balance due on said notes, in

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the circuit court of Sevier county; that service of process was had; that at the September term of said circuit court, petitioner, Millwee, appeared and craved oyer of the instruments sued on, which being granted, he filed his three pleas: 1st. of *nil debet*, not sworn to; 2d. payment, and 3d a special plea, sworn to: that the consideration of the instruments sued on, was a negro slave, which was warranted a slave for life, and that by the proclamation of Abraham Lincoln, president of the United States, and the organic law, slavery had been abolished, etc., that the plaintiff moved to strike out the plea of *nil debet*, took issue to the plea of payment and demurred to the third plea; that petitioner Millwee then withdrew his pleas, and judgment was rendered against him.

The petitioner then presented his bill praying for an injunction and setting up, in substance, the same matter presented by the special plea.

Independent of the question, that the defendant, having elected to defend at law, he is bound by his election, we are clearly of the opinion that the first reason assigned for refusing to grant the injunction—for want of equity on the face of the bill—was a good and sufficient one, and is based on the law as decided at the present term of this court in the case of *Dorris vs. Grace*.

The mandamus is therefore refused.
