J. D. JOHNSON, Appellant, vs. W. A. JOHNSON and C. M. WARING, Appellees.

LRSC 3; 1 LLR 29 (1865) (1 January 1865)

[January Term, A. D. 1865.]

Appeal from the Court of Quarter Sessions and Common Pleas, Montserrado County.

Trial—Non-suit—Retraxit.

1. Where the necessary writs and preliminaries to a valid trial have been duly executed, a jury affirmed and issue joined, a trial is presumed to have commenced.

2. •At this stage of the proceedings there must be a verdict, unless a non-suit or retraxit be entered by plaintiff. A non-suit will not be allowed, unless in consequence of the non-appearance of plaintiff or some other laches on his part, or unless defendant against his own interest assents thereto. But where this is not done the plaintiff can only avoid a verdict by entering a retraxit, which puts a final end to the suit.

This is an appeal from the decision of the court below, in regard to a verdict which took effect in bar, to an action for slander brought by the said J. D. Johnson, plaintiff, against the said W. A. Johnson and C. M. Waring, defendants, which case was before said court at its June term, 1864. The question to be decided by this court is whether the act of the plaintiff in said case at the said court was a "retraxit" or not. As it is the business of this court to view matters in a legal light, and to apply law in its letter and spirit, except in cases of equity, it appears to this court that it has only to notice the stage of the case as it stood before the court below, when it was withdrawn by the plaintiff. The ascertainment of this paves the way to a legal decision of the case, because the law is so ample and full on every subject that can possibly be mentioned, that there can be no mistake in deciding any case, unless it be made in consequence of ignorance of the law or by a misapplication of the principles. To avoid the evil so destructive to liberty, it is always necessary to notice the res gestæ of the matter and scrutinize the law regulating the same.

The records of the court below show that the usual writs and preliminaries to the action were had in due form and order. Therefore, we conclude that the defendant was brought into court and put on trial before a jury. If the defendant was put on trial, then issue was joined by the parties. Here, then,, the case was placed fairly in the hands of the court. At this stage of the action the case was entirely beyond the control of the defendants. They stood bound by law to hear a verdict, unless some relief is given by some act of the plaintiff. But it must be observed that while the defendants stood bound to hear a verdict, the plaintiff was not bound to proceed to conviction or to the terminus of the case, because the justice of the law will always allow parties in a civil action to compromise their dispute up to the very juncture of the time that the jury is ready to retire to consider their verdict. But while the law is just, it is also reasonable and therefore declares that such compromise must be made pursuant to certain rules.

When a case is at the stage of procedure alluded to above, there are only two ways for it to find a legal terminus before verdict; first, by retraxit, second, by non-suit. In defining and discriminating between these, and the way each takes effect, the law is most logical and particular, because a non-suit and a retraxit are followed by circumstances entirely different. Therefore when one is substituted for the other the equity of the law becomes inoperative, and one or both parties may be materially injured. The rule of law governing such terminus before verdict is as follows :—

First—There can be no non-suit after issue is joined, unless it be given in consequence of the absence or laches of the plaintiff, or unless the defendant, diametrically against his own interest, agrees with the plaintiff in open court that he may have a non-suit. The law leaves this point to be watched and guarded by the defendant, because it does not suppose that he could agree with the plaintiff to give him a second opportunity to prosecute him, which a non-suit under such circumstances would do. Hence the defendant either contends for a verdict or a retraxit, because by the former he may be cleared, and by the latter action is forever barred. For reasons just cited, the law will not tolerate any other mode of non-suit or terminus before verdict, because it would afterwards entail great evils upon parties to suits if there were no established rules on the subject. Non-suits by the plaintiff are always least expected, because the law supposes that he is always ready; and we add that it is reasonable to conclude that he never begins till he is ready.

The second method by which a case may find a terminus before verdict, is by retraxit. "Retraxit is a Latin word, and signifies to withdraw or to draw back. Therefore, a withdrawal at a certain stage of the action is a retraxit," because the terms are interchangeable. This act cannot be performed by any one except the plaintiff; not the defendant, because he can never withdraw that which is instituted against him. But he can demand a retraxit from the plaintiff when he is not disposed to proceed with the case, after issue is joined. All that the law requires to make an act at this stage constitute a ' 'retraxit" IS that a voluntary withdrawal be made by the plaintiff; it makes no difference what the plaintiff's motive may be 32 as to the nature of his act. (see Blackstone com., vol. 111, p. 296; Il Bouv. Law Dict.) The law has assumed the right of naming acts as well as actions.

Having carefully noticed the history and features of this case, as well as the doctrine of the law governing non-suits and retraxits, it is the opinion and decision of this court that the act of the said J. D. Johnson, plaintiff, in the court below, by withdrawing his case, was to all intents and purposes a retraxit. Therefore, the judgment of the court below is affirmed,—appellant to pay costs. The court adds that the term of retraxit ought to have been placed on the records of the court below, and would now order it if this State had statutes of Jeofails; on that account the records of this court will show the amendment.

Key Description: Actions (Abandonment; Proceedings constituting commencement; Termination)