

**JAMES S. PAYNE, Appellant, vs. C. D. McKENZIE, Agent of John Brown Smith
& Co., Appellee.**

LRSC 1; 1 LLR 36 (1866)

[January Term, A. D. 1866.]

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

Imperfect judgment—Perfect judgment—Assessment of damages under an imperfect judgment—
Defendant not entitled to raise question of law where no answer has been filed.

1. Where a principal is absent from the country, he may be sued through his agent for the violation of a contract made by him.
2. Where no answer has been duly filed to the complaint, the defendant is barred from raising any questions of law as to any matter stated in the complaint.

In this case of appeal, taken from the Court of Quarter Sessions of Montserrado County, James S. Payne vs. C. D. McKenzie, Agent of John Brown Smith & Company, in an action of damages for the violation of a contract, it is the opinion of this court that after a default of the defendant for not appearing and answering to the call of his name in court, either himself or by attorney, and that after an imperfect judgment had been given against him in favor of the plaintiff, declaring that the plaintiff is entitled to recover, the court below could not legally admit any plea or suffer the jury to try any issue of fact as to the merits of the contract, but to estimate the damages only, because the default is an implied admission of the facts in the case, and of the law arising thereupon. Therefore it was only the duty of the court below to have had the matter settled by the jury as to the amount of the damages sustained, and to complete the judgment thereupon in the case. For the court could not by any rule of law or principle of justice refuse to allow the jury to be sworn after they had been empannelled by its orders to assess the damages in the case, for it is upon the ground of the defendant's default the plaintiff is entitled to recover, and the law declares that after an imperfect judgment by default, the jury shall assess the damages sustained. The court could not, merely because questions of law had suggested themselves to it, which it may have conceived would have been a good plea for the defendant, raise and decide them itself in behalf of the defendant without working the purest injustice to the plaintiff, for it is certainly contrary to the rules, proceedings and practice of law.

Nor is a defendant permitted to raise any questions of law as to any matter stated in the plaintiff's complaint, if he, the defendant, failed to have filed his answer to the plaintiff's complaint within the time prescribed by the law of the land. Whenever a defendant is absent from the state in any action for which the statute law does not otherwise direct, upon the same principle as that remedy may be sought for in a foreign country by a principal through his agent in Liberia from citizens of the Republic, for damages sustained by him, the principal, even growing out of a violation of a contract that might be directly and personally made with himself and others, remedy in like manner may be sought for against the principal, through his agent, for damages growing out of a violation of a contract, although the contract may have been made by the principal, directly and personally himself with another; provided, however, that the principal be out of the state or in a foreign country or cannot be found to be summoned.

It is very necessary here to state that an appeal is simply the granting, on motion of a party, of the right to remove his cause to some court of appeal, and as evidence of the granting of such appeals, and of the truth of the matter stated in the bill of exceptions, it is necessary that the judge of the court, against whose

decision the exceptions are taken, should sign the bill of exceptions. The appeal, however, must be taken within the sixty days after final judgment as the law directs, otherwise the court below will not be bound to send up the records in the case, unless upon a special mandate from a superior court. But to support an appeal it is indispensable that a bond should be executed and approved by the court below, a copy of which must follow the appeal, otherwise the appeal shall be dismissed. The object of the bond is particularly to indemnify the appellee from all injury arising from the appeal, and to compel a compliance with the judgment of the court to which the appeal is taken, for it is evident that an appeal may be taken before a superior court without a bond, notwithstanding its liability to be dismissed therefrom.

Therefore, the court adjudges that in this case of James S. Payne vs. C. D. McKenzie, agent, in action of damage for the violation of the contract, upon an appeal from the decision and rulings of the Court of Quarter Sessions and Common Pleas of Montserrado County, 39 respecting the liability of the agent to be argued and determined before a jury could be empanelled, this opinion adjudged in the said court below is hereby reversed, and the case is hereby remanded to said court to have the damages assessed by a jury at the March term, A. D. 1866; and that the appellee pay all costs. And the clerk of this court is hereby ordered to issue a mandate from this court to the said court below to the effect of this judgment.

Key Description: Agents (Suit against in absence of principal from country)

Appearance (Failure to appear)