

**A. A. HULSMANN**, Agent for Oost Afrikaansche Compagnie, Appellant, v.  
**JAMES A. JOHNSON** and **B. P. JOHNSON**, Appellees.

Supreme Court takes cognizance of matters of record, only upon the face of certified copies of the proceedings in the lower court transmitted through the proper channel.

Action of Debt on Written Instrument. On appeal from the Monthly and Probate Court of Sinoe County.

This is an action filed in the March term of the Monthly and Probate Court for Sinoe County and brought up to this court on a bill of exceptions for review. This action was withdrawn by the plaintiffs, now appellants, who reserve to themselves the right to renew their action. The defendant, now appellee, was duly notified of said withdrawal and when appellant renewed his action at the May term of court, 1907, both parties were present, issue joined, and the court proceeded with the trial of the cause by considering the questions of law raised in defendant's answer.

In this answer it was set up that plaintiffs had withdrawn their former action and instituted another without complying with the statute law requiring payment of cost, it being an express provision of the statute law that plaintiff may once amend his complaint or withdraw it and file a new one at any time before the case is ready for trial provided he pay the whole cost of the action incurred by both parties.

It appears from the records transmitted to this court dated July 5<sup>th</sup>, 1907, that a bill of costs was presented to the appellant and paid by him, the sheriff for Sinoe County receipting same and the clerk of the Monthly and Probate Court for the said county certifying and acknowledging payment in full of the whole cost in the case up to the renewal of the action. It is therefore plain from the records that the appellant did comply with the law regulating the withdrawal and renewal of actions. The sheriff, as the ministerial officer of the court, is the proper person to receive the costs and to pay over same to the parties entitled thereto.

This court takes cognizance of matters of this nature only upon the face of certified copies of the proceedings in the lower court transmitted through the proper channel, and the attempt made by the attorney for the appellees to introduce a bill of cost, could not in the least degree claim the attention of the court; but strange to say that the amount claimed as not paid to appellees appears as paid in the certified bill of cost forming a part of the records in the case. The appellees in the second count of

their answer claim to have paid the debt referred to, but as that have not been established this court takes no notice of the reference.

The court therefore adjudges that the appellees pay to appellant the sum of one hundred and seventy-five dollars as their debt, and all legal cost of the action.

The clerk of this court is commended to issue a mandate to the court below to the effect of this judgment.

Given under our hands this 10<sup>th</sup> day of February, A. D. 1909.

By the Court.