

J. J. W. JOHNS, Plaintiff in Error, vs. **HERMANN E. HIRSCH**, Agent for A.
Woerman, Defendant in Error.

[January Term, A. D. 1902.]

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

Ejectment

Withdrawal of Suit.

Where before the case was called at the bar the appellant entered a withdrawal, the withdrawal was said to be in keeping with the statute and was allowed.

Before this case was called up for hearing and the suitors called at the bar, the clerk informed the court that the counsellor for the plaintiff in error had filed in his office a withdrawal of the suit, notwithstanding the case was assigned for trial today.

The court is of the opinion that a withdrawal of a case may be filed at any time "before the suit is ready for trial," and that a case is to be considered upon trial, within the meaning of the statute, after it is called up and the suitors called at the bar by the clerk. In the present case the withdrawal having been filed in the clerk's office prior to the case being called up for hearing, it is a right which the plaintiff in error may exercise.

Therefore this court allows the withdrawal, with the reservation therein contained that the party withdrawing shall pay all costs in cases of withdrawal.