

**R. A. WRIGHT**, Appellant, vs. **ARTHUR STANTLY BACON** and **FRANCIS HOWARD BACON**, sole members of the Firm of Edwards Brothers, Appellees.

[January Term, A. D. 1906.]

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

*Debt.*

This case was tried and determined at the November term of the Court of Quarter Sessions and Common Pleas, Sinoe County, 1905. The action was brought by appellees, plaintiffs below, to recover a certain sum from appellant, defendant below, which appellees averred had become due to them on account of sundry matters of merchandise stated in their bill of particulars. The appellant resisted the claims of appellees and plead, in bar of the action, the Statute of Limitations.

The pleadings were conducted to a considerable extent and rested, it appears, upon the rejoinder of the appellant. But upon the case being called for trial, the attorney for appellant tendered to the court a motion praying that the case be continued until the next term of court, for the reasons following : ( 1 ) That the material witness was absent and could not be had. ( 2 ) That appellant was sick and unable to attend the trial. The lower court dismissed said motion and proceeded to hear and determine the case. To this ruling, as well as to the several other rulings, verdict and judgment in the case, appellant excepted and appealed to this judicature for a rehearing of the case.

This case presents many features of vast importance to our commercial relations with other countries, which we do not deem expedient to notice at this time. The motion for a continuance, which was tendered to the judge of the court below and dismissed, appears to us to be founded upon legal grounds, and ought to have been granted, and the case postponed until the next term in order that transparent justice might be done to all parties concerned.

We would observe that an application for a continuance is addressed to the discretion of the court to which it is made. There are, however, certain legal grounds laid down as good causes for postponing a trial, and we are of opinion that when an application is founded upon any one of said legal reasons, and is well supported by affidavit, the court, in the furtherance of justice, should allow a postponement, unless it should come to its notice that the application is made solely with the view to baffle

the suit or defeat justice. But an arbitrary refusal of the judge to allow a continuance, when the application is well founded and supported, may be remedied by a higher jurisdiction in many ways. In the case under consideration, the application being for legal reasons, it was error on the part of the lower judge to refuse to postpone the cause.

In order that substantial justice may be had in the premises, the case is hereby remanded for trial *de novo* at the first session of the court below after the receipt of this decision, and the former judgment is hereby annulled and made of no effect. Costs to follow the termination of the suit.