HEADNOTES.

Supreme Court of Florida, Januar

Term, A. D. 1901.

Ex Parte John Parker Bronk, plaintif in errorfi vs. The State of Florida, defendant in error—Volusia county.

Taylor, C. J.:

Habeas Corpus—Not an appellate proceeding—What judgments inquire into under—Ne exeat—Alimony not debt for which imprisonment forbidden.

1. Neither error nor the regularity of judicial proceedings can be reviewed on *habeas corpus*, whether it be some informality or procedure before trial, error in the sentence itself, or some irregularity subsequent to sentence. If the record shows that the judgment, order or process under which the party is held is not merely erroneous, but such as could not, under any circumstances, or upon any state of facts, have been pronounced or awarded by the court ordering or issuing it, then the party is entitled to discharge. But if the judgment is merely eroneous, the court having given a wrong judgment when it had jurisdiction, the party aggrieved can only have relief by writ of error or other process of review. He cannot be relieved summarily by *habeas corpus*. The failure of the judge to exact a bond from the complainant to the defendant before issuing a writ of *ne exeat* as provided for by section 1474 Revised Statutes can be reviewed only in a direct proceeding on appeal, and cannot be inquired into collaterally by *habeas corpus*.

2. The judgment of a court, made within its jurisdiction, that involved the adjudication of jurisdictional facts cannot be attacked collaterally on *habeas corpus*.

3. Under our system of jurisprudence, where our courts of equity are clothed with plenary jurisdiction over the entire subject of granting divorces, and maintenance and alimony to wives either with or without divorce, and also with power to issue the writ of *ne exeat* for the enforcement of their decrees in such cases, such writ of *ne exeat* may be issued by our equity courts in suits for maintenance, before a decree is rendered fixing an amount to be paid, in all cases where it seems just to the chancellor to issue it, and a necessity therefor exists.

4. Alimony or maintenance from the husband to the wife is not *a debt* within the meaning of the constitutional inhibition against imprisonment for debt.

5. On a writ of error taken by a husband to review the judgment of the Circuit Court in a *habeas corpus* proceeding instituted by him for the purpose of securing his discharge from imprisonment under a writ of *ne exeat* issued in a suit against him by his wife for maintenance, the wife has no such standing before the appellate court as will entitle her to ask at its hands counsel fees or alimony *pendente lite* such writ of error in the *habeas corpus* proceeding.

Judgment affirmed.

Isaac A. Stewart (with whom was Egford Bly on the brief), for plaintiff in error; F. W. Marsh, Jas. D. Beggs and Geo. B. Perkins, for defendant in error.

J. D. Easterlin, plaintiff in error, vs. The State of Florida, defendant in error—Alachua county.

Taylor, C. J.:

Criminal law—Pleas in abatement—Continuance—Affidavit for—Signing instructions—Assigning error on charges generally—Chapter 4766 laws of 1899 construed.

1. The settled rule is that a plea in abatement is a dilatory plea, and must be pleaded with strict exactness, and must be cartain to every intent.

2. Under the provisions of Chapter 4766, laws approved May 26th, 1899, abolishing the County Court of Alachua county, no formal certificate of transfer was necessary to remove causes formerly within the jurisdiction of such abolished court to other courts having jurisdiction to try them. Said act *proprio rigore* effected such transfers without any other formality.

3. The refusal of an application for continuance predicted on the absence of a witness cannot be adjudged erroneous when the affidavit filed in support of such application omitted to state "that the applicant expects to procure said testimony at the next term."

4. The signing of charges by trial judges is a formal statutory requirement that may be waived by a defendant, and a failure until after verdict to except to an omission or refusal to sign them is equivalent to a waiver of such statutory requirement.

5. Where a charge is assigned as error, and where such assignment cannot be said to have been entirely abandoned, but the appellate court sees that it is in good faith insisted upon in the briefs, and that it is erroneous and prejudicial to the defendant, it is proper for such court to adjudge the error therein and to reverse the judgment, event though the defendant's counsel in his argument or brief failed to point out with accuracy the real ground upon which it is erroneous. (Carter, J. dissents.)

6. The settled rule here is that where a single general assignment of error is made to embrace refusals to give more than one instruction asserting distinct propositions of law, an apppellate court will go no further into the consideration of such an assignment after ascertaining that the trial court correctly refused any one of the several instructions thus aggregated in the single assignment of error.

7. The following instruction: "If the jury believe from the evidence that at the time and place named in the information, C. B. Easterlin, John Easterlin and J. D. Easterlin, assaulted L. C. Gracy; that at the time of the assault either one of them was armed with a pistol which was a deadly weapon, and that either one of them assaulted Gracy with said pistol, then J. D. Easterlin is guilty, whether he was the person who actually handled the pistol or not, for the act of one was the act of each, and the jury should find the defendant J. D. Easterlin guilty." *Held* to be erroneous because of its omission of the principle that the parties named therein, in order to be chargeable in law for the acts of each other, must have been acting in pursuance of a conspiracy or agreement formed between them previously or at the time to consummate the unlawful common design or purpose.

Judgment reversed.

B. A. Thrasher, for plaintiff in error; William B. Lamar, Attorney-General, for the State.

J. W. Preston as marshal and *ex-officio* tax collector of the city of Orlando, plaintiff in error, vs. The State of Florida *ex rel.* H. W. Metcalf and A. F. Williams, defendant in error—Orange county.

Per curiam.

Appellate practice—Scire facias ad audiendum errores, how returnable.

A writ of *scire facias ad audiendum errores* issued on January 28, 1897, a day within a pending term of the appellate court, and made returnable to a day within the same term, cannot be effectual to give such court jurisdiction over the person of the defendant in error served therewith, and if he in nowise appears nor waives such defect in said writ, the cause will be dismissed.

Writ of error dismissed.

V. H. Jewell, for plaintiff in error; no appearance for defendant in error.

Barney Cavanaugh Hardware Company, a corporation, the Standard Guano and Chemical Manufacturing Company, a corporation, *et al.*, plaintiffs in error, vs. Henry H. Lewis and William A. Lewis, copartners under the firm name and style of Lewis and Brother, and Callie H. Lewis, defendants in error—Jackson county.

Taylor, C. J.:

Claim—Chattle Mortgage with no right to possession cannot maintain.

A party holding a bare mortgage upon personal property in this State, with no right to present possession of such property, cannot maintain a statutory claim proceeding for such property, as against attaching creditors of the mortgagor thereof.

Judgment reversed.

Benj. S. Liddon, for plaintiffs in error; John H. Carter, Wilson & Boone and R. H. Walker, for defendants in error.

(Mr. Justice Carter, being disqualified, took no part in the decision of this case.)

William Mitchell, plaintiff in error, vs. The State of Florida, defendant in error—Escambia county.

Taylor, C. J.:

Criminal law—Opinion evidence—Grounds of objections to evidence must be stated—Argument of counsel—Harmless error—Newly discovered evidence as ground for new trial.

1. The physical or mental condition or appearance of a person or his manner, habit, or conduct may be proved by the opinion of an ordinary witness, founded on observation.

2. General objections to questions addressed to witnesses, without stating the precise ground of objection, are vague and nugatory, and are without weight before an appellate court.

3. It is not reversible error for the court to refuse to interfere with the argument of counsel because it is illogical, or not based on deductions reasonably inferrable from the facts.

4. If from the verdict returned it is clear that a charge given did not influence the jury in arriving at it, and if from the standpoint of the verdict actually found such charge was favorable to the defendant, he cannot complain of it on writ of error, even though it may have been erroneous.

5. Applications for new trial upon the ground of newly discovered evidence are looked upon with distrust and disfavor, and are granted only under the following restrictions: (1) The evidence must have been discovered since the former trial; (2) the party must have used due diligence to discover and procure it on the former trial; (3) it must be material to the issue; (4) it must go to the merits of the cause, and not merely to impeach the character of a witness; (5) it must not be merely cumulative; (6) it must be such as ought to produce on another trial an opposite result on the merits. The party applying must make his vigilance apparent, for if it is left even doubtful that he knew of the evidence, or that he might, but for negligence, have known of and produced it, he will not succeed in his application. It is no sufficient proof of diligence in this respect merely to assert in the affidavit that the defendants have used every endeavor to obtain evidence bearing on the issue involved in the case. Neither is it sufficient to show that the newly discovered evidence was not known to the defendant's counsel until after the former trial.

Judgment affirmed.

C. M. Jones (with whom was Mark D. Brainard on the brief) for plaintiff in error; William B. Lamar, Attorney-General, for the State.

NOTICE FOR PUBLICATION.

Department of the Interior, Land Office at Gainesville, Fla., Jan. 13, 1902.

Notice is hereby given that the following-named settler has filed notice of his intention to make final proof in support of his claim, and that said proof will be made before Wm. C. Hodges, U. S. Commissioner, at Tallahassee, Fla., on Feb. 24, 1902, viz: George McGilbert, of Tallahassee, Fla., Hd. 26639 for the N. W. Sec. 18, Tp. 2 S., R. 2 E. He names the following witnesses to prove his continuous residence upon and cultivation of said land, viz: P. D. Lewis, of Woodville, Fla.; W. F. Page, of Woodville, Fla.; Hill Lowry, of Woodville, Fla.; Wella Hamlin, of Woodville, Fla.

W. G. ROBINSON, Register.

Till Feb. 24.]

STATEMENT.

Made Under Section 35, Chapter 4115, Laws of Florida (1893.)

Showing the amount of taxes charged to the Tax Collector of Leon county, Florida, to be collected for the current year 1900, and the apportionment of the same to the several funds for which such taxes have been levied including poll tax with county school fund.

Total tax for year 1900, including Poll tax (1900)	$ 24,992 09
Am't collected and paid to Oct. 23, 1901	24,992 09

APPORTIONMENT.

General revenue	$ 7,301 86
Amount collected and paid to Oct. 23, 1901	7,301.86
Fines, forfeitures	2,808 21
Amount collected and paid to Oct. 23, 1901	2,808 21
Bridges, culverts, etc	2.246 67
Amount collected and paid to Oct. 23, 1901	2,246 67
County Schools, including	12,635 35
Amount collected and paid to Oct. 23, 1901	12,835 35

Attest: COUNCIL A. BRYAN,
Clerk Circuit Court Leon County, Florida.

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SORES AND ULCERS.

Sores and Ulcers never become chronic unless the blood is in poor condition—is sluggish, weak and unable to throw off the poisons that accumulate in it. The system must be relieved of the unhealthy matter through the sore, and great danger to life would follow should it heal before the blood has been made pure and healthy and all impurities eliminated from the system. S.S.S. begins the cure by first cleansing and invigorating the blood, building up the general health and removing from the system all morbid, effete matter. **A CONSTANT DRAIN UPON THE SYSTEM.** When this has been accomplished the discharge gradually ceases, and the sore or ulcer heals. It is the tendency of these old indolent sores to grow worse and worse, and eventually to destroy the bones. Local applications, while soothing and to some extent alleviate pain, cannot reach the seat of the trouble. S. S. S. does, and no matter how apparently hopeless your condition, even though your constitution has broken down, it will bring relief when nothing else can. It supplies the rich, pure blood necessary to heal the sore and nourish the debilitated, diseased body.

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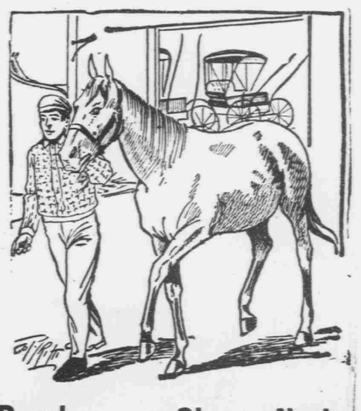

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