

S. F. Phillips

Case

Judge Toussaint

My Dear Sir

Mr. Manning brought

a suit against four persons (jointly) for land which his claim had been on execution sale against one of them. The claims under the deeds under which three of them hold, are fraudulent against the creditors of the 4th defendant. I put in several answers for the defendants raising points which I hope may be fatal to the Plaintiff. The case is Lambert against Perdegrun & Sons &c. Mr. de. claims, as I hear that I had no right to answer without giving bail bond or security for costs: see Rev. Code page 166 Sect. 46, & Acts of 1856 c. 14. I submit that neither of these have anything to do with our present practice. Defendants - or rather parties in possession of land formerly had to apply for leave to defend actions of ejectment. That was part of the fiction. The acts referred to

allude to this. It is not so in the present form of action. The acts in regard to Exemption therefore have no application. A defendant depends here by the same right he depends anywhere: that is by the Sovereign right of having been placed at the back end of a writ.

This appears plain to my mind. In the present case if needed the defendants could have made the affidavits mentioned in the act of 1856.

I take this means of communicating with you, as de Madree, who appears with me, says de. intends (treating the answers filed as nullities) to ask judgment.

Receipt
30 Nov. 69.

Yours Very Truly,
J. F. Plunkett

P.S. In the Case of Rockingham, which the Dept. wish tried on its merits only, will the Supreme Court overlook the fact that the motion was made out of the Dist.

The distinction between N.C. & N.Y. seems to be that any Judge in the State may hear a motion in N.C. - but within the District? Will vol. 50?