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CASES ARGUED AND DETERMINED

IN THE

SUPREME COURT

OF

NORTH CAROLINA.

JUNE TERM, 1868, JANUARY TERM, 1869, AND JUNE TERM, 1869.

REPORTER

S. F. PHILLIPS.

ANNOTATED BY

WALTER CLARK.

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1905.

STATE v. ALEXANDER REINHARDT and ALICE LOVE.

White persons and persons of color cannot intermarry in North Carolina.

(*State v. Hairston, ante,* 451, cited and approved).

FORNICATION AND ADULTERY, tried before *Logan, J.,* Spring Term, 1869, of LINCOLN.

The jury returned the following special verdict:

The jury find that Alexander Reinhardt is a person of color within the third degree, and Alice Love is a white woman; that on or about 27 December last, both being at the time single persons, the rites of matrimony were celebrated between them in due form of law by a licensed minister of the Gospel; that they then resided in the county of Lincoln, and at the time of the finding of the bill of indictment they lived in said county as man and wife. Whether from this state of facts the defendants are guilty of fornication and adultery the jury are ignorant and pray the advice of

(548) the Court.

The Court being of the opinion that the defendants had a right under the law to enter into a contract of marriage, ordered a verdict of not guilty to be recorded.

Whereupon the Solicitor prayed and obtained an appeal.

Attorney-General, for the State.

No counsel *contra.*

READE, J. The principles involved in this case are the same as in *State v. Hairston, ante,* 451, and therefore the opinion in that case will be certified in this, to the end, etc.

PER CURIAM. Order accordingly.

Cited: S. v. Ross, 76 N. C., 250; *McMillan v. School Committee,* 107 N. C., 614.

W. H. HUGHES, admr., etc., v. THOMAS J. PERSON and others.

Where an affidavit, made to obtain an order of arrest and an attachment, is based upon an apprehension by the affiant of some *future* fraudulent act by the defendant, such affidavit must specify the grounds of the apprehension; but where the affidavit relies upon an act already done, it need state it only in general terms; as, *here,* "That the said P. has disposed of and secreted his property with intent to defraud his creditors."

MOTIONS, to vacate an order of arrest and to discharge an attachment, made before *Watts, J.,* at NORTHAMPTON, at Spring Term, 1869.

The allegation upon which the order and attachment had been granted was (so far as material here) as follows:

"That the said Thomas J. Person has disposed of and secreted his property with intent to defraud his creditors."

His Honor allowed the motions, and the plaintiff appealed.

(549)

Barnes and *Peebles & Peebles,* for the appellants.

Bragg, Conigland and *Ransom, contra.*

READE, J. His Honor "vacated the order of arrest and discharged the attachment" "in consequence of the insufficiency of the affidavit upon which they were issued," and from this there was an appeal.

There were many points presented in the argument at this bar, but we consider that only upon which the case was disposed of below—the sufficiency of the affidavit.

The words in The Code are "removed or disposed of," etc. The words in the affidavit are "disposed of and secreted," etc. It was objected, not that the change of the words would make any material difference, but that it would not be sufficient if the affidavit were in the very words of The Code; for, that it is necessary that the affidavit should state the *facts* which are supposed to make out the case, so that the Court can see from the facts set out whether there has been a fraudulent disposition. The cases from the New York Courts seem to support the objection; and we follow these cases so far as to declare that when the plaintiff in his affidavit for the attachment or arrest relies upon his apprehension of what the defendant is