

IN THE SUPREME COURT.

STATE OF ILLINOIS.

THIRD GRAND DIVISION OF THE APRIL TERM, A. D. 1859.

CHARLES McDONALD, Appellant,	}	Appealed from Cook Circuit Court.
vs.		
WM. HORTER, for use &c., Appellee.		

BRIEF OF APPELLEE.

In this case the Court below properly struck from the files the defendants' plea, for want of a sufficient affidavit of merit. McDonald vs Murphey et al. 20 Illinois Reports, p. 346.

The statement in the affidavit shows a clear admission of indebtedness for \$458, and for this amount alone the plaintiff took judgment and dismissed his claim for the balance.

The point raised in this case is analogous to those arising at common law, in regard to pleas to a part of the declaration, in which judgment must be taken for the amount not covered by the plea as replication to the plea, without this being done is a discontinuance. Warren vs Nexsen et al. 3 Scammon's Reps. p. 40

J. W. CHICKERING, and
H. F. WAITE, for Appellee.

40 = 149

John W Davis

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Depts. Brief

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