Process--The Verity Rule--Conclusiveness of Officer's Return

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not analogous; and that the plain meaning of words should not be distorted, it is submitted that the only plaintiff which the declaration purports to set out is the Kingman Mills, and since these words cannot fairly be said to import either a natural person or an artificial person having legal capacity, there is no plaintiff and consequently the proceeding is a nullity from its inception. _Western etc. R. Co. v. Dalton Marble Works_, 122 Ga. 774, 50 S. E. 978; _Mexican Mill v. Yellow Jacket Silver Min. Co._, 4 Nev. 40, 44, 97 Am. Dec. 510.

—M. H. M.

**Process—The Verity Rule—Conclusiveness of Officer's Return.**—The defendant sued the plaintiff in an action of debt. Process was returned as served on the plaintiff, but in fact service was made on a third party. Judgment was rendered against the plaintiff by default. The plaintiff brought a bill in equity to vacate the judgment. The lower court sustained the defendant's demurrer. Held, that an officer's return is only *prima facie* evidence of service where a defendant has no notice of pendency of the action in any manner or form. Reversed. _Nuttalburg Smokeless Fuel Co. v. First Nat. Bank of Harrisville_, 109 S. E. 766 (W. Va. 1921.)

Formerly West Virginia followed the common law rule that as between the parties, except in cases of fraud and collusion, a sheriff's return of process is conclusive evidence of service as to matters properly returnable by the officer. _Milling Co. v. Read_, 76 W. Va. 568, 85 S. E. 726; _Bowyer v. Knapp_, 15 W. Va. 277. The court will not set aside a return by a sheriff. _Goubot v. De Crouy_, 3 Tyr. 906, 149 Eng. Reprint 611. Were the law otherwise, titles might be attacked many years after they were acquired. _Miedreich v. Lauenstein_, 232 U. S. 296. This rule seems to have been based on the necessity of securing the rights of the parties and of giving validity and effect to acts of ministerial officers. Whether or not this would be accomplished by making returns *prima facie* evidence is a matter for legislation and not for the courts. _Tillman v. Davis_, 28 Ga. 494, 73 Am. Dec. 786. In the principal case the court points out that the rule arose when the sheriff was the king's representative and partook of the king's fiction that he could do no wrong. No such fiction exists here and our present method of selecting officers is no index of security or infallibility. Under the common
law verity rule, when judgment went against one having no notice of suit, his only remedy was against the sheriff and his bondsmen, who must often pay heavily for an innocent mistake. Miedreich v. Lauenstein, supra. Under the rule laid down in the principal case this litigation and the probable miscarriage of justice are avoided. As one court points out, justice requires that the rule should not prevent relief against a return which is untrue through mistake. Alegretti v. Stubbert, 126 Ill. App. 171. In the majority of the states the rule of verity has been abolished or modified by the courts or by statute. Kavanaugh v. Hamilton, 53 Colo. 157, 125 Pac. 512; Hilt v. Heimberger, 235 Ill. 235, 85 N. E. 304; 11 Ency. of Ev. 721; 21 R. C. L. 1321. The court, in overruling the verity rule previously followed, follows the reasons pointed out by Edson R. Sunderland in his article on "The Sheriff's Return", 16 Col. L. Rev. 281, where this question is ably discussed. The verity rule, although based upon the protection to the parties who have relied on judicial proceedings, upon the faith of which rights have been adjudicated and value parted with, nevertheless often works great hardship where the only recourse of the victim of the false return is against the sheriff and his bondsmen, which may avail him nothing. When all the interests are weighed it would seem that the balance is in favor of making a return prima facie, rather than conclusive evidence of service.

—R. G. K.

WEST VIRGINIA BAR ASSOCIATION NOTES:

NEWS OF THE PROFESSION

BAR EXAMINATION.—At the semi-annual examination held at Charleston by the Board of Law Examiners, on March 8th and 9th, the following applicants successfully passed all requirements:

  E. Z. Duty, Man
  J. W. Madden, Morgantown
  Roscoe C. Preston, Williamson
  William C. Revercomb, Charleston
  Earnest A. See, Mathias
  Joseph L. Silverstein, Charleston
  Charles D. Mahood, Princeton
  E. V. Fortney, Kingwood.