

ROBINSON ET AL. vs. STATE BANK.

Where there are less than fifteen days between the date and return-day of the writ, the service of it imposes no obligation upon defendant to appear to the action, and a judgment by default rendered thereon is void, and may be quashed on *certiorari*.

On certiorari to Jackson Circuit Court.

FAIRCHILD, for the plaintiff, cited 1 *Eng.* 453. 5 *Ark.* 517. 2 *Eng.* 44.

CARROLL, contra.

Mr. Justice WALKER delivered the opinion of the Court.

Judgment by default was taken against the defendants. The writ was duly executed upon them, but it appears that there were less than fifteen days between the date of the writ and the return day thereof. In such cases the statute (*Dig. p. 796, sec. 4*) provides that the writ shall be made returnable to the second term of the court next after its date. The service of the writ imposed no obligation upon the defendants to appear to the action. This court has heretofore held a judgment by default under such circumstances erroneous and void, (*Ferguson vs. Ross, 5 Ark. 518,*) and we will adhere to that decision.

Let the judgment for this error be quashed with costs.