

ANTHONY *vs.* HUMPHRIES AD. USE &C.

A *scire facias* issued and attested by the clerk of the circuit court, reciting a judgment in the circuit court, but commanding the sheriff to summon the defendant to appear before the *Probate court* and show cause, &c., is not void but amendable, and may be amended by inserting "Circuit court" for "Probate court."

*Writ of Error to Pulaski Circuit Court.*

This was a motion to amend a writ of *scire facias*, made after judgment of revivor, determined in the Pulaski circuit court, at the April term, 1846, before E. H. ENGLISH, special judge.

The writ is the same as copied in a note to *Anthony vs. Humphries ad. use &c.*, (4 *Eng. R.* 183, 184.) The court ordered the writ to be amended, Anthony excepted, set out the writ, &c., and brought error.

F. W. & P. TRAPNALL, for plaintiff.

WATKINS & CURRAN, contra.

Mr. Justice WALKER delivered the opinion of the Court.

The writ of *scire facias* in this case was issued and attested by the clerk of the circuit court, and recited a judgment in the circuit court, but commanded the sheriff to summon the defendant to appear before the judge of the probate court. On motion leave was granted to amend by substituting the words "circuit court" instead of "probate court." In this there was no error as decided by this court in a similar case between the same parties. *Anthony vs. Humphries*, 4 *Eng.* 176.

Let the judgment be affirmed.

