

MILLER vs. BELL, USE, &C.

Plaintiff declared against *Mathew S. Miller*, as maker of the obligation sued on: the bond granted on oyer is signed "*M. S. Miller*:" demurrer for variance: HELD, No variance. inasmuch as the declaration did not undertake to set out the particular manner in which defendant signed the bond, &c., as held in *Rector vs. Taylor & Gardiner, ante*.

Appeal from St. Francis Circuit Court.

Action of debt, on a writing obligatory, by Thomas G. Bell, use Wm. B. Swon, against Mathew S. Miller.

The declaration complained of *Mathew S. Miller*, of a plea, &c., and alleged that "the said defendant, on, &c., at, &c., by his certain writing obligatory, sealed, &c., bound himself to the said plaintiff in the said sum of," &c.

Defendant craved oyer, and plaintiff filed the bond sued on, which was signed, "*M. S. Miller*." Defendant demurred for variance, and the court overruled the demurrer, and defendant rested, and suffered final judgment to go on the demurrer.

The cause was determined before the Hon. JOHN T. JONES, Judge.

E. H. ENGLISH, for the appellant.

PIKE & CUMMINS, contra.

Mr. Justice WALKER delivered the opinion of the Court.

This was an action upon a writing obligatory, signed M. S. Miller. The plaintiff declared against Mathew S. Miller. The only point presented was, whether, upon oyer, there was a variance between the bond given on oyer and the declaration. The precise point was discussed and settled at the present term in the

case of *Rector vs. Taylor & Gardiner*. It is there held that this is no variance.

Let the judgment of the Circuit Court be, in all things, affirmed.
