

STATE BANK *vs.* DAVIS.

See *State Bank v. Roddy et al.*, *ante.*

*Appeal from Independence Circuit Court.*

S. H. HEMPSTEAD, for appellant.

BYERS & PATTERSON, contra.

Mr. Justice WALKER delivered the opinion of the Court.

The issue in this case is like that of the *State Bank v. Roddy et al.*; and upon motion of the defendant the record was excluded from the jury because in the commencement of the order of court in which a non-suit was entered, in stating the names of the parties to the action, there is an omission of the name of one of the defendants, and because other parties, who executed the note in suit, appear to have been sued in the first action, which are not embraced in the last. These are the only grounds of variance which exist in point of fact, so far as we have been able to discover. And these we have heretofore held to be immaterial. *State Bank v. Roddy et al.*, and the cases there cited.

The circuit court erred in excluding the record as evidence, and for this error the judgment must be reversed, and the cause remanded, to be proceeded in according to law.