

CASES ARGUED AND DETERMINED

IN THE

Supreme Court of Arkansas

DURING PART OF THE JANUARY TERM, ADJOURNED TO APRIL,
A. D. 1846; AND OF AMERICAN INDEPENDENCE, THE
SEVENTIETH YEAR.

STATE BANK, EX PARTE.

The sheriff had stated all the necessary facts in his summons, but omitted to sign his name thereto—Held that, after judgment by default, on motion of the plaintiff, he should have been permitted to amend his return, by signing it officially.

Writ of error to the Circuit Court of Washington County.

The Bank of the State of Arkansas brought an action of debt against Webster *et al.* in the circuit court of Washington county, and recovered judgment against them by default, at the May term 1841:

At the November term 1843, the attorney for the bank filed a motion that the sheriff be permitted to amend his return upon the writ, by signing his name thereto, which he had omitted to do when he made his return upon the writ. The court refused the

motion, the counsel for the bank excepted, took a bill of exceptions, and brought error.

WALKER, for the plaintiff.

JOHNSON, C. J., delivered the opinion of the court.

This is a motion interposed by the plaintiff in the case of the Bank of the State of Arkansas vs. John B. Webster, Alexander H. McKisick and James B. Simpson, in the circuit court of Washington county, to permit the sheriff to amend his return upon the original summons issued in this case. The only question presented is whether the circuit court erred in refusing permission to the sheriff to amend his return by affixing his official signature thereto. The sheriff is at liberty at any time, and it is his imperative duty to state the facts in his return as they actually occurred, and certainly nothing is more essential than that he should sign it in his official character. The return in this case requires nothing to render it complete and sufficient in law to compel the defendants to appear in obedience to the mandate of the writ, or to subject them to the consequences of a default, except the signature of the sheriff by whom it is presumed to have been executed. He is the officer of the law to execute all writs and process directed to him by the proper authority, and when so executed, he is legally bound to furnish the party interested with such evidence of the fact as will enable him to save his legal rights. If he did execute the writ, it was not only his right, but his duty to have certified the same over his official signature. The return thus amended, the record would have presented a judgment by default, regularly entered after legal notice to the defendants. Judgment on the motion to amend the return reversed, and the cause remanded with instructions to the circuit court to sustain the motion, and permit the sheriff to amend his return to the original writ of summons.