

JOHN H. BLACKWELL *against* THE STATE.ERROR *to Franklin Circuit Court.*

A sci fa. on a recognizance is in the nature of an original action. A sci fa. on a judgment is sometimes, and for some purposes regarded as a continuation of the former suit. In the latter case the circuit court has jurisdiction without regard to the amount in controversy. A recognizance is a contract; and the circuit court has no jurisdiction in case of sci. fa. on a recognizance, unless the sum in controversy exceeds one hundred dollars.

This was a proceeding by sci. fa. on a recognizance. The writ of *scire facias* sued out in the name of the State, after reciting that "whereas, at the term of the circuit court of Franklin county, holden on the first Monday in March, 1839, Samuel Wackard, defendant in an indictment for larceny, being solemnly called, appeared not; it was considered by the court that the State of Arkansas have and recover of and from the said Wackard and Blackwell, the sum of seventy-five dollars each, as set forth in the recognizance," commanded the sheriff "to summons and the said Wackard and Blackwell to appear on the first day of our next circuit court to be holden in the town of Ozark, on the first Monday in September next, and show cause, if any they have, why such judgment should not be rendered final against them." At the time to which the writ was returnable, the plaintiff in error appeared, and, after craving oyer of the obligation mentioned in the writ, moved the court to dismiss and abate the suit, because the sum demanded was within the jurisdiction of a justice of the peace; and also, to quash the bond entered into by the plaintiff in error; but the court overruled the motion and entered up a decision in favor of the State, that she "have and recover of the said defendants seventy-five dollars each, the amount of said recognizance, and all costs by her, about her suit, in this behalf expended; and that execution issue for the same." The plaintiff in error then moved the court to arrest the judgment, on the ground that the sum in controversy was seventy-five dollars only, and not within the original jurisdiction of the court, which motion was also overruled.

BLACKBURN, for plaintiff in error:

The court ought to have sustained the motion of the defendant below to dismiss and abate the suit, because, first, the writ of scire facias was issued jointly against two persons, on two separate demands; second, because it lacked all the requisites of a scire facias in this, to wit: 1st, it set out no recognizance; 2d, it did not set the judgment forth *prout patet per recordum*; 3d, it did not require the sheriff to make known to the bail, &c.; 4th, it did not sufficiently specify the place to appear. 2 *Tidd's Practice*, 996. And lastly, the court, after overruling the defendant's motion, gave judgment against both principal and security, which the plaintiff in error contends, was error; 1st, because there had not been any service at all on the said Wackard; 2d, the service on the said John, as appears by the sheriff's return, was by reading, which is not a sufficient service of a *scire facias*.... It must be by copy. 2 *Tidd*, 1037; and 3d, there was no rule on the said John to plead over, after the overruling of his motion, as is required in all cases. 2 *Tidd*, 1041. The court giving judgment, not by *nil dicit*, as they were bound to have done, if the defendant was regularly in court, and failed to plead.

R. W. JOHNSON, Atto. Gen., *Contra*:

A scire facias is a judicial writ founded upon some matter of record, as judgment, recognizances, &c. (See Bacon's Abridgement, Title sci. fa.) and is common law remedy peculiarly appropriate upon forfeiture of recognizance, though action of debt is a concurrent remedy. 1 *Chitty*, 104. That recognizance is entered into, *conditioned* for the delivery of the person of another at a certain time to abide his trial and the judgment of the court upon a *charge of crime or misdemeanor*, cannot alter or affect the character of the obligation which is for the payment of a sum certain and is after the forfeiture, of such nature that its validity cannot be impeached by any supposed defect or illegality in the transaction on which it was founded; nor is any reference to the circumstances or consideration on which the record is founded, a matter of consequence. 1 *Chitty*, 354. By a forfeiture of the recognizance, a