

ELLIOTT AND OTHERS vs. THE PRESIDENT, DIRECTORS, &c.

Though the Bank of the State of Arkansas is authorized to sue, in the counties where the Principal Bank, or a Branch, is situate, and to have writs issued to any county in the State, yet, as there is no such corporation in the State as "The President and Directors of the Branch of the Bank of the State of Arkansas at Batesville," writs cannot so issue, in a suit purporting to be brought by such a corporation.

THIS was an action of assumpsit, determined in the Independence Circuit Court, in June, 1841, before the Hon. THOMAS JOHNSON, one of the Circuit Judges. "The President and Directors of the Branch of the Bank of the State of Arkansas at Batesville, for the use and benefit of said institution," sued, and writs issued to the counties of Mississippi and Crittenden. Judgment was rendered by default. The case came up on writ of error, and was argued here by *W. Byers*, for the plaintiffs in error, and *Hempstead & Johnson*, contra.

*By the Court*, DICKINSON, J. The statute requires all suits to be brought in the county where the defendant resides, or may be found, except where the Bank of the State, or the Real Estate Bank, is plaintiff. In either of these cases, the Circuit Court of the county in which the Principal Banking-house, or that of one of its Branches, is located, may issue its writ to any county in the State. These banks must sue in their corporate names, viz: "The Bank of the State of Arkansas;" "The Real Estate Bank of the State of Arkansas." There is no such corporation in this State as the one by which the defendants in error have described themselves, nor is there any statutory provision in their favor. The Circuit Court of Independence county erred in issuing the writs to Mississippi and Crittenden counties.

We have not deemed it necessary to look into the question of misnomer, if there be one. The rules upon that subject are too well settled to leave any doubt as to the proper mode of proceeding.

Judgment reversed.