

MURPHREE AND OTHERS vs. THE BANK OF THE STATE.

Where a note is declared on as payable to *the Bank of the State of Arkansas*, and on oyer it is found to be payable to *the Branch of the Bank of the State of Arkansas at Batesville*, the variance is fatal, on demurrer. After demurrer to the declaration by one defendant correctly sustained, judgment against all the defendants, without any further steps taken by them, is erroneous.

THIS was an action of debt, determined in the Independence Circuit Court, in December, 1841, before the Hon. THOMAS JOHNSON, one of the Circuit Judges. The Bank sued on a bond, stated as payable to "the Bank of the State of Arkansas, or order." On oyer craved by Murphree, one of the defendants, a bond was filed, payable to "the Branch of the Bank of the State of Arkansas at Batesville." He demurred for the variance, and his demurrer was sustained. No leave was asked to amend the declaration, nor was it amended; and judgment was, at the next term, rendered against Murphree, by *nil dicit*, and against the other defendants, by default.

The case was argued by *W. Byers*, for the plaintiffs in error, and *Hempstead & Johnson*, contra.

By the Court, DICKINSON, J. The demurrer was rightly sustained, as the declaration was clearly insufficient, and determined the suit as

to Murphree, until the pleading was amended. And, as the judgment of the Circuit Court is jointly entered against all of the defendants below, and not capable of being severed, it is, for that reason, erroneous.

Judgment reversed.
