

ROYSTER, *Ex Parte*.—FIRST CASE.*Petition for Habeas Corpus.*

To entitle a person in confinement, by virtue of any warrant, order or process, to a writ of *Habeas Corpus*, a copy thereof must accompany his petition, or a legal excuse must be shown for the omission.

For if it appear that the warrant, order or process shows a valid and legal commitment, the application should be denied.

The bill upon which a writ of *ne exeat* is founded constitutes part of the process by which the sheriff is authorized to arrest and confine the defendant; and his petition for *Habeas Corpus* should be accompanied by a copy thereof, and of the order of the judge directing the writ to issue, otherwise the petition is insufficient.

PETITION to this court for *Habeas Corpus*, by David Royster, imprisoned by the sheriff of Pulaski county, under a writ of *ne exeat*. The petition was not accompanied by a copy of the bill upon which the writ was obtained, nor of the order of the judge directing the clerk of the Pulaski circuit court to issue the writ. A copy of the writ under which the sheriff held the petitioner in confinement, was alone exhibited with the petition. In other respects the petition was similar to the one reported in "*Royster, Ex Parte—second case*," immediately following this case.

WATKINS & CURRAN, for the petitioner.

OLDHAM, J., delivered the opinion of the court.

To entitle a person in confinement under or by virtue of any warrant, order or process, to a writ of *Habeas Corpus*, he must accompany his petition with a copy of the warrant, order or process, or show a legal excuse for the omission. *Beard, Ex Parte*, 4

*Ark. R. 9. Rev. St. 434, sec. 5.* For, if it should appear to the court or judge, to whom the petition may be addressed, that the warrant, order or process shows a valid and legal commitment, the application should be denied.

The statute provides that every writ of *ne exeat* shall be accompanied by the bill upon which it is founded. *Rev. St. 582, sec. 8.* It thus constitutes and forms part of the process by which the sheriff is authorized to arrest and confine the defendant. The petition is in this respect insufficient. It does not exhibit a copy of the bill or judge's order therein directing the writ of *ne exeat* to issue, nor show a legal excuse for the omission. A copy of the writ alone accompanies this petition; the presumption of law is, that it was regularly issued for proper cause until the contrary is made to appear by legal evidence. Application denied.

