

MCLAIN ADM'RX OF MCLAIN vs. IRWIN ET AL.

The correct practice in obtaining judgment on delivery bond, is fully settled in *Patton & Stewart vs. Wolcott*, 4 *Ark. Rep.* 579. *McKnight vs. Smith*, 5 *Ark. Rep.* 410, and *Byrd et al. vs. Brown et al.* *ib.* 709.

*Writ of error to the circuit court of Jefferson county.*

THIS was a judgment on a forfeited delivery bond, obtained on the mere motion of the *plaintiff in error*, against the defendants, in the circuit court of Jefferson county, before the Hon. Isaac Baker, one of the circuit judges, at the October term, 1843.

No statement or declaration in writing was filed, nor was any notice given the defendants of the motion, previous to the rendering of the judgment.

The *plaintiff in error* brought the case to this court, to reverse a judgment which she ascertained could be of no service to her, under repeated decisions of this court.

FOWLER, for plaintiff. This judgment is clearly erroneous according to the decisions heretofore made by this court. See 4 *Ark. Rep.* 579, *Patton & Stewart vs. Wolcott*, and *McKnight et al. vs. Smith*, 5 *Ark. Rep.* 410, and *Byrd et al. vs. Brown*, 5 *Ark. Rep.* 709.

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

This was a summary proceeding upon a forfeited delivery bond, under the act of 1843, entitled "an act concerning judgments upon delivery bonds." The practice upon this subject has been so fully discussed and explained, by this court, in repeated decisions, that we deem it unnecessary to repeat again what has been so frequently and expressly settled. *Patton & Stewart vs. Wolcott*, 4 *Ark. Rep.* 579. *McKnight vs. Smith*, 5 *Ark. Rep.* 410. *Byrd et al. vs. Brown*, *et al. ib.* 709. According to the principles settled in these cases, this judgment is clearly erroneous, and must be reversed.