

PATRICK ET AL. vs. JOHNSON.

The return of the sheriff that he had executed the writ by leaving a copy thereof at the defendant's residence *with his wife*, held insufficient, under section 13, chapter 116, Rev. Stat., to authorize a judgment against him by default—as in *Cox et al. vs. Garvin*, 5 Ark. R. 664.

The return should show that the copy of the writ was left with some *white person* of the family over *fifteen years of age*—as held in cases cited in the opinion.

Writ of error to the circuit court of Johnson county.

THIS was an action of debt by Johnson against Patrick, Adams and Floyd, determined in the circuit court of Johnson county, at the March term, 1845, before judge BROWN.

The sheriff returned that he had executed the writ by personal service upon Patrick and Adams, and “by leaving a true copy thereof at Floyd’s residence *with his wife*.”

At the return term, Patrick appeared, and craved oyer of the bond sued on, which was granted by filing the original, and he made no defence. Judgment was then rendered against all the defendants, without any appearance upon the part of Floyd. The defendants brought error.

LINTON & BATSON, for the plaintiffs.

The *Rev. Stat. Ark.* page 621, *sec.* 13, says that "a summons may be executed by reading the writ to the defendant, or by delivering him a copy thereof, or by leaving a copy thereof at his usual place of abode, with some white person of the family over fifteen years of age," and it has been repeatedly held by this court that judgment by default is erroneous where the return of the officer does not show that the summons has been served in conformity with said statute. See *Dawson et al. vs. State Bank*, 3 *Ark. R.* 505. *Ringgold et al. vs. Randolph*, 4 *Ark. R.* 428. *Cox et al. vs. Garvin et al.*, 5 *Ark. R.* 664. The return in this case shows no legal service on Floyd, and judgment against him was therefore erroneous.

RINGO & TRAPNALL, contra.

The only question in this case is as to the sufficiency of service of the summons. It was returned executed by delivering to the defendant Floyd's wife, a copy.

It may be presumed, without doing violence to probabilities, that she was a white woman, and a member of the family, and over fifteen years of age.

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

The insufficiency of the service upon Floyd is established by the decisions in *Dawson et al. vs. The State Bank*, 3 *Ark. R.* 505. *Ringgold et al. vs. Randolph*, 4 *Ark. R.* 428, and *Cox et al. vs. Garvin*, 5 *Ark. R.* 664. The circuit court, therefore, erred in rendering judgment against him; for which reason the judgment is reversed and the parties considered in court.
