

BORDEN ET AL. vs. THE STATE, USE OF ROBINSON.

If the writ of error vary from the judgment below as to the names of the parties, it will be quashed on motion.

*Writ of Error to the Pulaski Circuit Court.*

FOWLER, for defendant, filed a motion to quash the writ of error.

WATKINS & CURRAN, contra.

The facts are stated by the court.

JOHNSON, C. J. The judgment of the court below is rendered in favor of the State of Arkansas, against William B. Borden, Ebenezer Walters, Thomas W. Newton, David J. Baldwin, Joseph Fenno, Benjamin J. Borden, Peter T. Crutchfield and John Wassell. The writ of error commands the clerk of Pulaski Circuit Court to certify the record and proceedings in a case wherein the State of Arkansas, for the use of Samuel Robinson, is plaintiff, and William B. Borden and others, are defendants. There is a manifest variance between the judgment actually rendered in the court below, and the one described in the writ of error. The question presented by the motion in this case cannot now be regarded as open, as it has already been fully settled by the repeated adjudications of this court. We do not deem it necessary to re-argue the point involved, as the cases of *Gasquett & Co. v. Berry*, 1 *Eng. R.* 246; *Jackson v. Wight*, *ib.* 387; and *Miller v. Heard & Co.*, *ib.* 76, are conclusive upon the question. The motion is therefore sustained, and the writ quashed.