GATTON VS. WALKER.

The effect of the act of 5th December, 1846, (*Digest, p.* 795,) authorizing the commencement of suits by filing the evidence of debt in the clerk's office, merely dispenses with the declaration, but has no further or other effect, either upon the form or substance of the writ, or upon the pleadings subsequent to the declaration.

And when a defence is made to an action brought under said act, it must be presented by pleas appropriate to the form of action which the plaintiff may have adopted as indicated by his writ.

The summons in this case, showing that the plaintiff proceeded to recover a money demand, and distinctly indicating that he adopted the action of debt as the form of his remedy, declared good.

The return of the sheriff upon the writ shows a good service within the rule laid down in *Gilbreath vs. Kuykendall,* 1 *Ark. Rep.* 50, as it distinctly describes the time, place and manner of the service, and the name of the party on whom it was made.

The service of the writ having been made more than fifteen days before the return term, plaintiff was entitled to judgment on failure of defendant to appear and plead, as held in *Tagert vs. Harkness,* 1 *Eng. Rep.* 528.

Writ of Error to the Circuit Court of White County.

This was an informal suit brought under the act of 5th December, 1846, (*Digest, p.* 795,) by James Walker against Augustin Gatton, in the White circuit court, and determined before SUTTON, judge.

On the 9th of March, 1847, the plaintiff filed in the office of the clerk of the circuit court of said county, the following note:

"$192.91. SEARCY, *April 1st,* 1845.

I promise to pay John W. Bond, or order, one hundred and ninety-two dollars and ninety-one cents, for value received, with interest at 10 per cent. per annum. A. GATTON."

Endorsed: "I assign the within note to James Walker, for value received. Jan'y the 25th, 1847. J. W. BOND."

On the filing of which the clerk issued a summons for the defendant, as follows:

"In the Circuit Court of White County, in vacation.

The State of Arkansas, to the Sheriff of White county, in said State—Greeting:

You are hereby commanded to summon Augustin Gatton, if he be found within your county, to appear before the judge of the circuit court of said county, in the town of Searcy, in said county, on the first day of the next term of said court, which will be holden on the first Monday of April next, then and there to answer the complaint of James Walker, assignee of John W. Bond, to a plea that he render unto him the sum of one hundred and ninety-two dollars and ninety-one cents, which to him he owes and from him unjustly detains, to his damage one hundred and fifty dollars; and have you then there this writ.

In testimony whereof," &c.—attested by the clerk in the usual form, and sealed, &c.

Sheriff's return: "I executed the within by reading to the within named Augustin Gatton. at his residence, in White county, on the 17th day of March, 1847.

J. G. ROBBINS, Sh'ff."

At the return term the defendant failed to appear, and the plaintiff took judgment for the amount of the note sued on by default in the usual form of entering judgments in actions of debt.

The defendant brought error, and his counsel assigned for errors:

1st. The judgment of the court below was for defendant in error, whereas it should have been for plaintiff in error.

2d. There was no declaration, petition, or statement, in writing, filed on the commencement of the suit whereto the defendant below could confess or make default.

3d. The writ disclosed no form of action known to the law, and disclosed no sufficient cause of action, and the ground of complaint disclosed is inconsistent with, and variant from, the note filed:

4th. No valid summons issued, and there was no timely ser-

vice thereof upon defendant below to authorize judgment against him; and

5th. The judgment is for an amount of damages not claimed in the writ, and not by law recoverable."

WATKINS & CURRAN, for plaintiff in error.

P. JORDAN, contra. The suit was legally commenced by filing the note. *Digest, p.* 795. The writ was good in substance and form. *Jeffrey vs. Underwood,* 1 *Ark. Rep.* 119. The service was in time to warrant the judgment by default. *Tagert vs. Harkness,* 1 *Eng. Rep.* 528.

SCOTT, J. The act of our legislature, approved the 5th of December, 1846, entitled "an act to change in part the manner of commencing suits in the circuit courts of this State," authorizes a suit at law to be commenced in any of the circuit courts of this State by filing in the office of the clerk of such court a note, or other writing obligatory, or due bill, or other evidence of debt. Which note, writing obligatory, or due bill, or other evidence of debt, it is enacted, "shall be a sufficient declaration on which a writ of summons or capias ad respondendum against the person, or of attachment against the property of the defendant shall be issued." Its effect is only to dispense with the declaration in case a party may choose to adopt this mode of commencing a suit on any of the instruments of writing specified in this act in lieu of the other more general mode applicable to suits on these instruments, as well as to all other suits at law; which general mode is prescribed in the first section of chapter one hundred and sixteen of the Revised Statutes; but it has no further or other effect, either upon the form or substance of the writ, or upon the pleadings subsequent to the declaration. And when a defence is made to an action brought under the provisions of this act it must be presented by pleas appropriate to the form of action which the plaintiff may have adopted as indicated by his writ.

The summons, issued in the case before us, not only shows that the plaintiff proceeded to recover a money demand; but also distinctly indicates that he adopted the action of debt as the form of his remedy. And the only legitimate question presented by the record before us is as to the sufficiency of the service to warrant the judgment by default. We think the return of the sheriff endorsed on the summons comes fully up to the rule laid down in the case of *Gilbreath vs. Kuykendall,* reported in 1 *Ark., p.* 50, as it distinctly discloses the time, place, and manner of the service, and the name of the party on whom it was made; and, as the service was more than fifteen days before the return day of the summons, the plaintiff, on the defendant's failure to appear and plead at the return term, was entitled to a judgment by default, as held in *Tagert vs. Harkness,* reported in 1 *Eng.* 528. And as there is no error in the judgment below it must be affirmed.