

## PARKS ET AL. vs. WEEMS.

Where a summons is served by leaving a copy at defendant's residence, the sheriff's return must show a strict compliance with the statute.

Judgment by default reversed because the return of the sheriff in such case does not show that the person with whom the copy was left was "of the family" of defendant.

The rule in *Gilbreath vs. Kuykendall*, 1 Ark. Rep. 50, enforced.

*Writ of Error to Washington Circuit Court.*

DEBT, on a writing obligatory, brought by James Weems, against Aaron Parks and Joel D. Parks, partners under the style of A. & J. D. Parks, and Robert Parks, determined in the Washington Circuit Court, in November, 1848, before SNEED, judge.

The sheriff returned upon the summons personal service as to Aaron and Robert Parks, and, as to the other defendant, "I also executed the said writ on the within named Joel D. Parks, on the 20th day of October, 1847, at the county of Washington and State aforesaid, by then and there leaving a true copy thereof, at his usual place of abode, with Aaron Parks, a white person over fifteen years." At the return term, judgment was taken against defendants by default, and they brought error.

D. WALKER, for the plaintiff, referred to 4 Ark. R. 428. 3 Eng. R. 44.

WALKER, J. Not sitting.

SCOTT, J. As to Joel D. Parks, the sheriff's return failing to show that the white person over fifteen years of age, with whom the copy of summons was left, at his usual place of abode, was "of the family" of this defendant, the judgment by default, in this case, cannot be supported. The provisions of the statute, for this constructive service of process, must be strictly pursued, as has been repeatedly held by this court. 3 Ark. 505. 4 Ark.

428. 5 *Ark.* 154. *Ib.* 664. 1 *Eng.* 380, 552. 2 *Eng.* 44. The judgment must be reversed, and the cause remanded to be proceeded in as if all the defendants had been regularly served with process, as held in *Gilbreath vs. Kuykendall*, 1 *Ark.* 50, and numerous other cases in this court.

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