

BURTON VS. FIELD ET AL.

It is not the practice of this Court to require terms of the defendant in affirming the judgment, where the error complained of has been cured by an amendment of the record of the Circuit Court, and then the transcript perfected by certiorari.

Error to the Circuit Court of Pulaski county.

Hon. JOHN J. CLENDENIN, Circuit Judge.

FOWLER & STILLWELL, for the plaintiff.

WILLIAM H. FIELD, for the defendants.

Mr. Chief Justice ENGLISH delivered the opinion of the Court.
Field & Dolly brought an action of debt against Patrick P.

Burton, in the Pulaski Circuit Court. The defendant was described by that name both in the declaration and the writ, but the sheriff returned the writ served upon *Phillip P. Burton*. The plaintiffs obtained judgment by default, and the defendant brought error, assigning for cause of reversal the misnomer in the sheriff's return. The defendants in error, before joinder, by leave of the Court below, caused the sheriff to amend his return, and then, by *certiorari* from this Court, brought up the amended record, by which the error assigned has been cured.

The counsel for the plaintiff in error insists that, in affirming the judgment, under the circumstances, it should be done upon the terms of taxing the defendants in error with the costs, and requiring them to release the recognizance, as in case of affirmance on *remittitur*.

Cases have frequently occurred in this Court where the only error complained of has been cured by an amendment, as in this case, and the practice has been to affirm without terms.

The judgment is affirmed.