

Case No. 5,400a.
[Hempst. 36.]¹

GIBSON ET AL. V. SCULL.

Superior Court, Territory of Arkansas.

April, 1826.

ATTACHMENT—PLEADING WITHOUT SPECIAL BAIL.

Defendants in attachment may appear and plead without entering special bail to the action, and then the property attached is considered as a substitute for bail.

In error to Arkansas circuit court.

{This was an action at law by Hewes Scull against James M. Gibson and John P. Brown.}

Before JOHNSON and SCOTT, Judges.

OPINION OF THE COURT. The only question which we have to consider is whether Gibson and Brown, the defendants in the court below, had the right to appear there and plead to the attachment, without first filing special bail to the action. We have no doubt this right is given to defendants in all cases upon attachment The act of 1823 (Acts [Ark.] 1823, p. 6) provides “that in all cases upon attachment, the defendant may appear and plead the same as in other cases, provided that when such defendant does not enter into special bail as is now prescribed by law, the property shall be and remain in the hands of the sheriff until the final determination of the suit.” From the provisions of the above act we think it clear that defendants in attachment may in all cases appear and plead without giving bail, and that the property attached by the sheriff is considered as a substitute for bail. We are, therefore, of opinion that the court erred in refusing to hear the defendants unless they filed special bail to the action. Reversed.

¹ [Reported by Samuel H. Hempstead, Esq.]