

Case No. 8,324a.  
[Hempst, 21.]<sup>1</sup>

LEWIS v. HAMILTON.

Superior Court, Territory of Arkansas.

April, 1824.

SHERIFF—LIABILITY FOR COSTS NOT COLLECTED—HOW PROCEEDED AGAINST.

1. When a sheriff fails to make the costs when practicable, he becomes responsible, nor will the order of the client or attorney as to costs change or affect that liability.

[Cited in *People v. Palmer*, 46 Ill. 398.]

2. He may be reached by motion.

Appeal from the Arkansas circuit court.

{This was a suit by Eli J. Lewis, clerk, against James Hamilton, sheriff.}

Before SELDEN and SCOTT, JJ.

OPINION OF THE COURT. In this case it appears that in the circuit court of Arkansas county, a motion was made by the appellant against the appellee to recover seven dollars and four cents, costs due him as clerk of that court, in the case of John Taylor, assignee of Richard Montgomery, v.

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James Young, and which costs the sheriff of Arkansas county failed to make on execution placed in his hands. The motion was overruled on the ground that it appeared that Taylor had transferred the judgment to Samuel C. Roane, and that the latter directed the appellee to stay the collection of the debt. In our opinion it was error to deny the motion, for when a sheriff receives an execution on which costs are due a clerk, and fails to make them when practicable, the sheriff becomes responsible, nor will the order of the plaintiff in execution vary the case as to the costs, whatever may be the effect on the debt. Reversed.

<sup>1</sup> [Reported by Samuel Hempstead, Esq.]