

Case No. 9,128a.

[Hempst. 299.]²

MARSHALL v. JEFFRIES.

Superior Court, Territory of Arkansas.

Feb., 1836.

PLEADING AT LAW—MISNOMER—IDEM SONANS.

“Jeffery” and “Jeffries” are not idem sonans.

Error to Lawrence circuit court.

Before JOHNSON and YELL, JJ.

JOHNSON, J. This is an action of trespass for an assault and battery, brought by Jeffries against [William B.] Marshall. Marshall pleaded a misnomer of the plaintiff named, alleging that he was called and known by the name of Jesse Jeffery, and not by the name of Jesse Jeffries. To this plea Jeffries demurred, and the demurrer was sustained. The only question for the consideration of this court, relates to the decision on the demurrer to the plea in abatement. We think the court erred in sustaining the demurrer to that plea. We do not think that Jeffery and Jeffries are the same name. They are differently spelt, and clearly cannot be said to be idem sonans. The judgment must be reversed, and the cause remanded, with directions to permit the defendant in error to reply to the plea of misnomer, if he shall apply for leave to do so, and on his failure, then to give judgment in accordance with the plea in abatement. Reversed.

² [Reported by Samuel H. Hempstead, Esq.]