

SCULL v. BRIDDLE.

{2 Wash. C. C. 200.}¹

Circuit Court, D. Pennsylvania. April Term, 1808.

PRACTICE AT LAW—MOTION IN ARREST OF JUDGMENT—MISNOMER—AMENDMENT.

1. After bail given, and plea pleaded, the defendant cannot arrest the judgment on the ground of misnomer.
2. By the provisions of the act of congress, a variance, which is merely matter of form, may be amended at any time.
3. The proceedings were amended by the recognisance of bail, and the name of the defendant, in the recognisance, inserted in the declaration.

Motion in arrest of judgment, because the writ was against Edward Briddle, and the declaration against Edward Biddle. The defendant gave special bail by the name of Edward Briddle. Cases cited by defendant's counsel: 2 Wils. 394; 3 Term R. 611.

WASHINGTON, Circuit Justice. It was competent for the defendant to have pleaded in abatement, that he was sued by the name of Edward Biddle, whereas his name was Edward Briddle. But instead of this, he ⁸⁹⁴ gives bail by his right name, and pleads in bar of the action. The variance is mere form, and the act of congress, in such a case, permits the court to amend at any time. Let the proceedings be amended, conformably to the recognisance of bail.

Motion overruled.

¹ [Originally published from the MSS. of Hon. Bushrod Washington, Associate Justice of the Supreme Court of the United States, under the supervision of Richard Peters, Jr., Esq.]

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