

Case No. 12,570b.

SCULL v. KUYKENDALL.

{Hempst. 9.}¹

Superior Court, Territory of Arkansas. June, 1821.

WRITS—CAPIAS—ERROR—CORRECT ALIAS.

A suit should not be dismissed because a capias not served was erroneous when an alias capias executed on the defendant is correct, as the court should not look beyond the last writ.

Error to Arkansas circuit court.

{This was an action by Hewes Scull against Joseph Kuykendall.}

Before JOHNSON and SCOTT, JJ.

OPINION OF THE COURT. The court below dismissed this suit because there was an error in the original writ, although it was not served, but an alias had been regularly obtained and served on the defendant. We can see no reason for dismissing the suit for an error in a writ which was never served. It can only be considered as a clerical misprision, by which the defendant could not possibly be prejudiced. The alias capias which was served on the defendant is in every respect correct, and the court ought not to have looked beyond it Reversed.

¹ {Reported by Samuel H. Hempstead, Esq.}