

## Case No. 13,123a.

SMITH V. WALKER ET AL.

{Hempst. 289.}<sup>1</sup>

Court Superior Court, Territory of Arkansas.

July, 1835.

## APPEAL—BOND—FORM—CERTAINTY.

1. Appeal bond which does not set out the nature of the action, nor the court to which the appeal is prayed, is informal, but not void, and should not be adjudged invalid.
2. It is sufficiently certain to prevent a second recovery against either principal or security.

Appeal from Hempstead circuit court.

{This was an action, on a bond, by Hiram Smith against Alexander S. Walker and James Gibson.}

Before JOHNSON and YELL, JJ.

OPINION OF THE COURT. This was an appeal from the Hempstead circuit court, and was submitted to the court upon a reargued case, as to whether the bond upon which this suit is instituted was void or not. The first part of the bond is in the usual form, binding themselves to the plaintiff Smith in the penal sum of one hundred and twenty dollars, and then follows the conditions, namely: "That whereas the said A. S. Walker has this day prayed an appeal, wherein Hiram Smith is plaintiff, and the said Walker is defendant, now if the said A. S. Walker," etc. This bond neither sets out the nature of the action, nor the court to which the appeal is prayed, and is certainly informal. There is enough, however, in the bond to authorize a court to enter a judgment It is sufficiently certain to prevent a second recovery against either the principal, or Gibson the security, and the object of the bond being clearly legal, and nothing appearing on the face of it to show it to be void, it is to be taken as valid. Chit. Cont. p. 73. This court is of opinion

there was error in the court below, in sustaining the demurrer on account of the supposed invalidity of the bond. Judgment reversed.

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

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