

clerk's office at the instant the order of attachment was issued and placed in the sheriff's hands. Section 5083 of Mansfield's Digest of the Statutes of Arkansas provides that "the court must in every stage of the action disregard any error or defect in the proceedings which does not affect the substantial rights of the adverse party, and no judgment shall be reversed or affected by reason of such error or defect." Under this section, the irregularity, if any, in the clerk issuing the order of attachment after the complaint, bond, and affidavit were filed with him, but before he had placed them in his office, must be disregarded. There is another view proper to be considered, which is equally fatal to the defendant's contention. Let it be conceded that the order of attachment was placed in the hands of the sheriff prematurely on account of the complaint, affidavit, and bond not then being in the clerk's office, still these papers had all been duly executed and filed with the clerk, and were actually placed in the clerk's office a few minutes afterwards, and from that time certainly the order of attachment, and the service thereof, and the levy made thereunder, became effectual and binding for all purposes against the defendant, and all others who acquired no rights before the papers were thus filed in the clerk's office. *Small v. McChesney*, 3 Cow. 19; *Clute v. Clute*, 3 Denio, 263; *Clute v. Clute*, 4 Denio, 241. The judgment of the court below is reversed, and the cause remanded, with instructions to grant a new trial.

BANK OF HELENA, ARK., v. BATCHELDER EGG CASE CO.

(Circuit Court of Appeals, Eighth Circuit. July 5, 1892.)

No. 74.

In Error to the Circuit Court of the United States for the Eastern District of Arkansas. Reversed.

Greenfield Quarles, John I. Moore, John J. Hornor, E. C. Hornor, M. L. Stephenson, and J. Trieber, for plaintiff in error.

James P. Clarke, for defendant in error.

Before CALDWELL and SANBORN, Circuit Judges, and SHIRAS, District Judge.

CALDWELL, Circuit Judge. The record in this case is identical, save in the name of the plaintiff, with that in the case of *People's Sav. Bank & Trust Co. v. Batchelder Egg Case Co.*, 51 Fed. Rep. 130, (No. 76,) and was submitted with that case upon a stipulation that it should abide the result in that case. The judgment of the court below is therefore reversed, and the cause remanded for a new trial.

FIRST NAT. BANK OF HELENA, ARK., v. BATCHELDER EGG CASE CO.

(Circuit Court of Appeals, Eighth Circuit. July 5, 1892.)

No. 75.

In Error to the Circuit Court of the United States for the Eastern District of Arkansas. Reversed.

Greenfield Quarles, John I. Moore, John J. Hornor, E. C. Hornor, M. L. Stephenson, and J. Trieber, for plaintiff in error.

James P. Clarke, for defendant in error.

Before CALDWELL and SANBORN, Circuit Judges, and SHIRAS, District Judge.

CALDWELL, Circuit Judge. The record in this case is identical, save in the name of the plaintiff, with that in the case of *People's Sav. Bank & Trust Co. v. Batchelder Egg Case Co.*, 51 Fed. Rep. 130, (No. 76.) and was submitted with that case upon a stipulation that it should abide the result in that case. The judgment of the court below is therefore reversed, and the cause remanded for a new trial.

BROOKS v. DUN et al.

(Circuit Court, W. D. Tennessee. June 3, 1892.)

SERVICE OF PROCESS—NONRESIDENT PARTNERSHIP—SERVICE ON AGENT.

Mill. & V. Code Tenn. §§ 3518, 3539, which authorize the service of process on any agent or clerk where the corporation, company, or individual has an office or agency in any county other than that in which the chief officer or principal resides, does not apply to a company other than a corporation or individual residing in another state or foreign country. If such substituted process be constitutional as to citizens of Tennessee within the territorial limits of the state, it cannot be as to citizens of another state, and such a statute violates the fourteenth amendment of the constitution of the United States, and the service is not due process of law.

At Law. This is an action of damages, originally brought by the plaintiff, a merchant at Memphis, in the circuit court of Shelby county, Tenn., the summons running against "R. G. Dun & Co., the mercantile agency;" and the return of the sheriff shows that it was "executed on S. Patterson, manager of R. G. Dun & Co., of the agency in Memphis, Tennessee, by making known to him the contents" thereof. By the first count of his declaration, plaintiff avers a cause of action against "defendants R. G. Dun & Co. and the mercantile agency, being a partnership association doing business in the city of Memphis, Tenn.," and by the second count he "further sues defendant R. G. Dun & Co. as partners under the style of the 'Mercantile Agency.'" At the return term, defendants by attorney "move to dismiss this cause for want of jurisdiction of the persons of the defendants, and for cause of such motion they say that the service of the summons was made on one S. Patterson, instead of having been made on the defendants, all of