ANNA A. BROWN, legal guardian of the heirs of the late Coy C. Brown's Estate, Petitioner in Error, v. **JOHN L. ALLEN**, and **MARTHA L. DIGGS**, formerly Martha L. Brown, Administrator and Administratrix of the Estate of the late Coy C. Brown, and **N. B. WHITFIELD**, acting in his capacity as Judge of the Monthly and Probate Court, Grand Bassa County, Respondents.

ARGUED JUNE 4, 1913. DECIDED JUNE 13, 1913.

Dossen, C. J., McCants-Stewart and Johnson, JJ.

1. An affidavit to be valid must contain the exact title of the cause either 'in the caption or the body.

2. It is not necessary to set out the Christian name of an attorney of a party to a suit who signs as deponent to an affidavit.

3. The service of a process is valid when served by the county marshal upon the authority of the marshal of this court and such authority shall be inferred when the process bears the endorsement of the marshal of this court.

4. No return or verification thereof by the marshal is necessary to a mandate directed to a judge of inferior jurisdiction as returns are made by such judge and his certification is sufficient.

Mr. Chief Justice Dossen delivered the opinion of the court:

Illegal Administration of Estate—Motion to Dismiss. This motion was offered by counsel for defendants in error to dismiss the case upon the following grounds:

1. Because the affidavit to the assignment of errors is alleged to be defective, in that it does not contain the exact title of the cause;

2. Because the affidavit to the said assignment of errors is not signed in the Christian name of the defendant; and

3. Because the returns to the mandate of this court, ordering the judge below

to transmit to this court the records in the case for review, are not verified by the ministerial officer of this court, nor signed in the handwriting of the marshal for the County of Grand Bassa.

As to the first point, the court says that it adheres to the ruling in the case *Horace v. Johnson* (I Lib. L. R. 516) and uniformly upheld by this court since, with respect to the essential requisites of an affidavit in a cause of this nature in which ruling it is distinctly laid down that an affidavit, to be valid must contain "the exact title of the cause."

In this case, the court is of the opinion, after carefully scrutinizing the affidavit, that this requirement has been sufficiently complied with to meet the object of the law. The fact that the title of the cause, and the parties thereto are set out in the body of the affidavit instead of in the caption, which is the more general form, is a technicality which this court can not seriously consider.

It was further contended by the counsel for the defendants in error that the signature, made by' J. H. Green as deponent, is also invalid, in that Green should have signed his Christian name in full and not used the initials of that name; and the case *Dunbar v. Republic of Liberia* was cited in support of this contention, and ingeniously applied by the said counsel in his arguments. We are of opinion that the case cited *(Dunbar v. Republic of Liberia)* is in no respect analogous to the one under consideration. That ruling was made in a criminal suit, founded upon an indictment ; and we are in perfect agreement with the principles which it enunciates with respect to the setting out of the Christian as well as the surname of a. defendant in an indictment, when known to the indictors. The reasons of this common-law rule are so obvious and generally understood, that we hardly need here to mention them. It is, we think, quite logical that where a person is charged with the commission of an offense, his identity as the agent of the offense should be distinctly set forth to enable the jury to know with certainty the person charged; therefore it is necessary to state the Christian as well as surname in such case. But we are of opinion that this is not essential where, as in this case, the attorney for a party to a suit signs as deponent the affidavit to a document.

The third and last point involves a question which the court deems it expedient to express itself fully upon for the guidance and benefit of litigants hereafter. We are of the opinion that the service of a mandate or process issued by this court, and directed to the marshal thereof, is valid in law if

made by the local or county marshal under the direction and by the authority of the marshal of the Supreme Court; the county marshal acting in such cases, in the eye of the law, as the deputy of the marshal of the Supreme Court. The authority to act on behalf of the marshal of this court is to be inferred when the mandate or process bears the endorsement of the marshal of this court. The practice of county marshals serving mandates and processes in the lower courts on behalf of the marshal of the Supreme Court, is a long established one, and is both convenient and expeditious to litigants; and one which this court is unwilling to set aside in the absence of some recent statute abrogating that practice.

It was argued by counsel for defendants in error that the returns to said mandate are also invalid because they are not verified by the marshal. The court says that Rule XII of this court, requiring the verification of returns to mandates by the marshal, does not apply to returns made by judges of inferior jurisdiction to mandates issued upon them as in the case before us. Section 2 of said rule expressly states that returns shall be made by the judge himself, in which case his certification is sufficient.

The court further remarks that the statute of 1893-4 specifically states the grounds upon which suits pending before this court may be dismissed, which statute the court feels bound to take note of in deciding this motion.

The motion to dismiss is therefore overruled, and the case ordered on for hearing.

J. H. Green, and *T. W. Haynes,* for plaintiff in error.

P. J. L. Brumskine, for defendant in error.