

CARROLL v. WADDELL.

Opinion delivered December 16, 1929.

1. JUSTICE OF THE PEACE—JUDGMENT—COLLATERAL ATTACK.—Where a justice of the peace has jurisdiction of the parties and subject-matter, he has the same right to determine every question that arises in the pending cause as does a superior court under like circumstances; and if he commits error in his conclusions of law, the judgments of his court are no more open to collateral attack than those of the circuit court.
2. JUSTICES OF THE PEACE—JUDGMENT—COLLATERAL ATTACK.—Where defendant, instead of appealing from a judgment of a justice of the peace, sued the plaintiff, his attorney and the justice of the peace for a malicious prosecution of the action, the circuit court properly sustained a demurrer to the complaint.

Appeal from Hot Spring Circuit Court; *Thomas E. Toler*, Judge; affirmed.

Oscar Barnett, for appellant.

D. E. Waddell and *D. M. Halbert*, for appellee.

MCHANEX, J. Appellee Waddell sued appellant and obtained a writ of garnishment before judgment on the Farmers' & Merchants' Bank of Malvern in the justice court of appellee Caldwell, in which suit appellee Halbert acted as Waddell's attorney. There was a judgment rendered against appellant in said suit, from which no appeal was prosecuted. Instead of appealing the case on account of feeling himself aggrieved because of such judgment, he brought suit in the circuit court against Waddell, the justice of the peace, Caldwell, and the attorney, Halbert, charging that a false affidavit was made to obtain the writ of garnishment or attachment against the bank, and that it was willfully, wrongfully and maliciously sued out. Other matters were set out in the complaint, but we deem it unnecessary to state them. The circuit court sustained a demurrer to the complaint, hence this appeal.

The court was correct. Appellant's remedy, if he was dissatisfied with the judgment of the justice of the peace, was to appeal to the circuit court. By failing to perfect an appeal and try the case out *de novo* in the

circuit court, he must be held to have acquiesced in such judgment. Here the justice had jurisdiction of the subject-matter and the parties, and it is well settled that the judgment of a justice of the peace within his jurisdiction is as conclusive as the judgment of a superior court, and is ordinarily impervious to collateral attack. A justice of the peace has the same right to determine every question that arises in a cause pending in his court as does a superior court, under like circumstances; and, if he commits error on his conclusions of law, the judgments of his court are no more open to attack collaterally than those of the circuit court. *Carolan v. Carolan*, 47 Ark. 511, 2 S. W. 105; *Webster v. Daniel*, 47 Ark. 131, 14 S. W. 550; *O. P. Dixon Ptg. & Sta. Co. v. Plank*, 144 Ark. 485, 223 S. W. 36. This proceeding constituted a collateral attack on the judgment of the justice of the peace, and could not be maintained. No error was committed in refusing to permit appellant to amend, as no cause of action could have been stated.

We find no error, and the judgment is accordingly affirmed.
