

HARRIS v. STATE (2).

Opinion delivered January 26, 1895.

Estoppel—Recitals of bail bond.

The sureties upon a bail bond are bound by recitals therein showing that the examining court had jurisdiction of the subject-matter of the offense charged and of the person of the accused.

Appeal from Independence Circuit Court.

JAMES W. BUTLER, Judge.

Yancey & Fulkerson and *J. M. Moore* for appellants.*James P. Clarke*, Attorney General, and *Chas. T. Coleman* for appellee.

WOOD, J. The facts in this case are similar to *Harris v. State* (1), *ante*, p. 209, except that in this case the defendant, instead of waiving an examination and asking for bail before the mayor, filed an affidavit for a change of venue to a justice of the peace, and the mayor granted the change. Before the justice the defendant waived examination, and the justice fixed his bond in the sum of five hundred dollars for his appearance before the circuit court. This was forfeited, and judgment rendered against the bail, from which they appeal.

The jurisdiction of a justice of the peace to hear and examine in felony cases is co-extensive with the county. Sec. 1985, Sand. & H. Dig. The presence of the defendant before the justice, charged with a felony committed in the county, gave him jurisdiction of the person and subject-matter. See authorities cited in *Harris v. State* (1), *supra*.

But in this case the bond itself, which is the basis of the action (sec. 2034, Sand. & H. Dig.; *Thomm v. State*, 35 Ark. 327; *Roberts v. Com.* 7 Bush, 430; *Com. v. Fisher*, 2 DuVall, 376), recites every jurisdictional fact,

to-wit, that the defendant was before the justice, charged with a felony alleged to have been committed in Independence county. The appellants could not deny these solemn recitals. *Hortsell v. State*, 45 Ark. 59; *Norton v. Miller*, 25 *id.* 108, and other cases cited in brief of the Attorney General.*

Judgment affirmed.
