

WISE vs. YELL.

A judgment rendered by the circuit court upon a transcript from a justice of the peace, when it does not appear of record that it found its way into that court in some one of the modes pointed out by law, is a mere nullity and void.

Appeal from the Circuit Court of Bradley County.

Yell sued Wise before a justice of the peace of Bradley county; and the justice rendered judgment in favor of the defendant. Yell petitioned the circuit court of Bradley to issue a writ of *certiorari*, commanding the justice to send up the cause for re-hearing in that court. The court, it seems from the record, ordered the writ to be issued, but it does not appear from the record that the writ ever issued. A transcript, however, of the proceedings in the case before the justice, was filed in the circuit court, and the cause tried before SUTTON, judge, at the April term of the Bradley circuit court, 1845, and judgment rendered in favor of Yell. Wise appealed, and assigns for error, among other things, that the circuit court took cognizance of the case without its having been brought before the court, by any mode known to the law.

GOULD, for appellant.

YELL, contra.

JOHNSON, C. J., delivered the opinion of the court.

The question raised by the record is whether the circuit court had jurisdiction of the case. The appellee filed his petition in the circuit court for a writ of *certiorari* to bring up the proceedings had before the justice, and the prayer of the petitioner was granted, but there is nothing in the record going to show that the writ was issued. Upon inspection of the record we find a transcript of the proceedings had before the justice, but it does not appear to have been filed in obedience to the process of the court. The transcript

of the justice's proceedings appears in the circuit court, and both parties seem to have taken it for granted that the court had jurisdiction, and accordingly appeared and litigated the matters in controversy. A judgment rendered by the circuit court upon a transcript from a justice of the peace, when it does not appear of record that it found its way into that court in some one of the modes pointed out by law, is a mere nullity and void. It does not appear from the record in this case that the circuit court ever acquired jurisdiction either by appeal or certiorari or in any other mode known to our constitution and laws. It is clear therefore that no jurisdiction ever vested in the circuit court to try and determine the case.
