CRABTREE & CRABTREE *vs.* MOORE.

When the recovery of damages is the object, and the contract is by deed or writing obligatory, as in case of leases, mortgages, articles of agreement, or an undertaking to pay, on a given day, so many bushels of wheat &c. or to deliver a horse &c., covenant is the peculiar, if not the only remedy:

In these cases the amount in controversy necessarily depends upon the assessment of a jury, and under our constitution (before amended) the jurisdiction of them belongs exclusively to the circuit courts, without reference to the amount of damages claimed.

Debt, however, at common law, is a concurrent remedy with covenant upon writings obligatory for the payment of specific sums of money, and there is nothing in our constitution or laws which prevents a party from making his election between the two actions, in such cases, provided the amount of the obligation exceeds one hundred dollars.

If the obligation be for one hundred dollars or less, being a matter of contract, the jurisdiction, under the constitution, belongs exclusively to justices of the peace, and covenant is excluded:

In such case, a party cannot, by electing covenant as the form of action, oust the jurisdiction of justices of the peace, and bring his suit in the circuit court.

Appeal from the Circuit Court of La Fayette County.

THIS was an action of *covenant* brought by Samuel Moore against H. and W. B. Crabtree, determined in the La Fayette circuit court, at the October term, 1845, before the Hon. GEORGE CONWAY, judge.

The action was founded on a writing obligatory, executed by the Crabtrees to Moore for $28, dated 18th February, 1843, and due one day after its date. Defendants filed a plea to the jurisdiction, to which plaintiff demurred, the court sustained the demurrer, and rendered final judgment for the amount of the bond. Defendants brought error.

HEMPSTEAD, for the plaintiffs—It has been settled by a series of decisions, that the courts will not suffer the jurisdiction of the justices of the peace to be ousted by any device or species of pleading. The jurisdiction vested in the different courts by the constitution certainly cannot be changed by changing the form of action. *Berry* v. *Linton,* 1 *Ark.* 257. *Wilson* v. *Mason,* 3 *Ark.* 494. *Fisher* v. *Hall,* 1 *Ark.* 277. *Fenter* v. *Andrews,* 5 *Ark.* 37. *Gregory* v. *Bewly,* 5 *Ark.* 319. *Moore* v. *Woodruff,* 5 *Ark.* 214.

This suit is obviously an attempt to confer on the circuit court a jurisdiction not intended to be given by the constitution. The cause of action is a writing obligatory for the direct payment of money, a sum certain, and debt was the most appropriate remedy, (1 *Chitty Pl.* 123, 125) and doubtless that form of action would have been adopted if the question of jurisdiction had not presented an insurmountable obstacle. The object of an action of covenant is to recover damages, and when resorted to in good faith, it is because those damages are unliquidated, and depend upon the assessment of a jury, and not a calculation by a court. *Gregory* v. *Bewly,* 5 *Ark.* 319. 1 *Chitty's Pl.* 134.

The constitution, in withholding from justices of the peace, cognizance of actions of covenant, obviously intended to embrace that class of cases where damages are the object of the suit, and are uncertain and unliquidated; because if the sealed instrument is

for the payment of money, if it is for a sum certain and without any contingency, the amount expressed "is the sum in controversy," and must necessarily determine the jurisdiction of the court as to where redress can be afforded. It would be strange indeed, to contend that a note without a seal for fifty dollars, must be sued on before a justice, and one with a seal, for the same amount may be sued on in the circuit court. If this be true, it is not the *sum in controversy,* but the simple circumstance of seal or no seal, which determines the question. *Heilman* v. *Martin,* 1 *Ark.* 158.

PIKE & BALDWIN, contra. The question simply is, did the convention that formed the constitution, intend to oust the plaintiff of his election of action, either of covenant or debt on such instrument. And it is evident that it did not, or otherwise it would have done so in express terms. See *Rev. S. Ark.* under title Constitution of Arks. 36 sec. of article 6. The language here used is "all matters of contract, except actions of covenant," (not subject matters upon which no other action would lie but covenant) "where the sum in controversy is of one hundred dollars and under." See 1 *Ch. Pl.* 134 mar. page, title, covenant. In the cases of *Hicks* v. *The State,* and *Blackwell* v. *The State,* the proceedings were by sci. fa., (not on action of covenant) and consequently fell within the limit of the constitution. See 3 *Ark. Rep.* 320, 313.

CROSS, J. The defendant brought covenant, in the Lafayette circuit court, against the plaintiffs in error, on a writing obligatory, executed by them and payable to him one day after date, for the sum of twenty-eight dollars. On the return of the summons duly served, the plaintiff appeared and pleaded in abatement that the circuit court had no jurisdiction of the cause of action, that it was exclusively within the jurisdiction of justices of the peace, &c. To this plea a demurrer was sustained, and a judgment rendered by the court against the plaintiffs for the amount of the obligation. The only question material to be considered is raised by the demurrer to the plea in abatement.

Sec. 3 of article 6 of the Constitution of Arkansas prescribes the jurisdiction of the circuit courts, and so far as the question in this case is concerned in these words: "and original jurisdiction of all civil cases which shall not be cognizable before justices of the peace, until otherwise directed by the general assembly, and original jurisdiction in all matters of contract where the sum in controversy is over one hundred dollars." The jurisdiction of justices of the peace is prescribed by sec. 15 of the same article in the words following, viz: "They shall have individually, or two or more of them jointly exclusive original jurisdiction of all matters of contract except in actions of covenant where the sum in controvery is of one hundred dollars and under." From the first of these constitutional provisions there can be no difficulty as to the question of jurisdiction in "matters of contract," where the sum in controversy is over one hundred dollars, and the latter is equally clear in like matters where "the sum in controversy is of one hundred dollars and under." The only doubt that could present itself to any mind grows out of the exceptions in the latter provision, and this will be removed we think by a proper understanding of the action of covenant. Where the recovery of damages is the object, and the contract is by deed or writing obligatory, as in the case of leases, mortgages, articles of agreement, or an undertaking to pay on a given day so many bushels of wheat, loads of hay, or to deliver a horse, &c., &c., covenant is the peculiar if not the only remedy. 1 *Tidd's Pr.* 4. 1 *Chitty,* 134. In these cases, the amount in controversy, necessarily depending on the assessment of a jury, has no influence upon the question of jurisdiction. It is the same under the provisions of the constitution, whether it be for one dollar or for five hundred dollars, and belongs exclusively to the circuit courts. The party aggrieved has no alternative either as to remedy or jurisdiction. It is otherwise, however, upon writings obligatory for the payment of a specific sum of money. In that case, according to the rules of the common law, debt is a concurrent remedy with covenant, and there is nothing in our constitution or laws which interferes with the right to adopt either the one or the other form of action at the election of the party who brings the suit, provided the amount of

the obligation exceeds one hundred dollars. When the amount is for that, or any less sum, as it is "a matter of contract" exclusive original jurisdiction is conferred upon justices of the peace "individually, or two or more of them jointly," and the exception in the constitutional provision declaratory of their jurisdiction, excludes covenant. If an individual having the legal interest in a writing obligatory for the payment of one hundred dollars or under, could bring either debt or covenant, the question of jurisdiction, instead resting on the constitution, would turn upon the mere caprice or fancy of an individual. The consequence of this would be, that under the influence of malice or ill feeling, an obligor might be involved in a tedious, distant and expensive litigation in the circuit court, instead of a summary, simple proceeding in his own neighborhood before a justice of the peace, without any advantage to the obligee, or person in whom the right of action existed. We are clear, therefore, in the opinion that the circuit court erred in overruling the plea in abatement to the jurisdiction in the case before us, and that the judgment must be reversed.