

## GIBSON vs. EMERSON.

The 10 sec. of "An act to repeal the 10th sec. of the 62d chap. Rev. Code, &c.," approved 2d Feb. 1843, which gives justices of the peace jurisdiction in cases of invasion of privileges of licensed ferries, declared unconstitutional.

*Appeal from the Circuit Court of Hot Spring County.*

THE 10th section of "An act to repeal the 10th section of the 62d chap. Rev. Code, and for other purposes," approved 2d February, 1843, provides, "If any person or persons shall invade the privileges of any licensed ferry, by taking passengers or property off the same, such person or persons, so invading such ferry privileges, as aforesaid, shall be fined in the sum of twenty dollars for each and every such offence, to be collected by the party injured, in an action of debt, before any justice of the peace having jurisdiction of the same." *Ses. Acts 1842, p. 110.*

Under the provisions of this act Lorenzo Gibson brought an action of debt against Sam. A. Emerson before a justice of the peace of Hot Spring county, in February, 1846, for setting persons across the Ouachita River in violation of his privilege as a licensed ferryman.

As the foundation of the action Gibson filed with the justice an account as follows:

"Samuel A. Emerson  
To L. Gibson, Dr.

For 3 trips with his ferry-boat with passengers in violation of the 10th sec. of an act to repeal the 10th sec. of the 62d chap. of the Rev. Code, &c., at \$20 per trip \$60.00."

The justice of the peace gave judgment for defendant, and Gibson appealed to the circuit court of the county, where the cause was tried at the March term 1846, before CLENDENIN, judge. Counsel for appellee moved the court to dismiss the case for want of jurisdiction upon the ground that "by the Constitution of the State justices of the peace have no jurisdiction of this kind of case, and the Legislature could confer none." The court sustained the motion, and Gibson appealed to this court.

PIKE & BALDWIN, for appellant.

E. H. ENGLISH, contra.

OLDHAM, J. The question presented in this case has been directly decided by this court in numerous cases. In *McLain vs. Taylor*, 4 Ark. R. 147, it was held that the constitution "takes from justices of the peace all original jurisdiction in all actions which are not matters of contract where the sum in controversy does not exceed one hundred dollars; and even in matters of contract in actions of covenant. The object and design of the constitution were, evidently, to give jurisdiction in subject matters of contract, and not to extend that jurisdiction to any other class of cases." In *Woodruff vs. Griffith*, 5 Ark. R. 354, it was held that "the legislature being wholly incompetent to confer upon justices of the peace any other or greater power than is given to them by the constitution, their jurisdiction must of course be restricted to matters of contract (other than those upon which the action of covenant alone can be maintained at common law) where the sum in controversy is \$100 and under."

This was an action of debt instituted before a justice of the peace under the statute for the recovery of the penalty imposed by the legislature for a violation of the act. No contract existed between the parties either express or implied; and consequently, according to the principles settled in the cases above cited, the legislature possessed no constitutional power to confer jurisdiction in such

cases upon justices of the peace. The judgment of the circuit court ordering this case to be dismissed for want of jurisdiction is accordingly affirmed.

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