

## KEATH vs. BERKLEY &amp; WOOD.

To give a justice of the peace jurisdiction, the cause of action must be filed with him before suing out the summons.

If the transcript of the record does not show that fact, the judgment of the circuit court rendered on appeal, will be reversed; and the case remanded with instructions to permit the justice to amend his record according to the facts of the case.

*Writ of Error to the Circuit Court of Clark County.*

Keath instituted a suit before a justice of the peace and obtained judgment against Berkley and Wood, who appealed to the circuit court. Upon a trial in the circuit court judgment was rendered in favor of Keath for a less sum than he recovered before the justice, and against him for the costs. He sued out a writ of error to reverse the judgment against him for the costs; but upon examination of the transcript of the record it does not appear that the account upon which he brought his suit was marked filed by the justice of the peace.

WATKINS & CURRAN, for the plaintiff.

RINGO & TRAPNALL, contra.

OLDHAM, J. It does not appear that any account or demand whatever was filed before the justice before the suing out a summons to invest him with jurisdiction; consequently, according to the repeated decisions of this court, the subsequent proceedings are void. The judgment of the circuit court must be reversed and the cause remanded with directions to permit the justice to amend his transcript so as to show that the plaintiff's account was filed with him before the writ of summons issued, provided he can do the same in accordance with the facts; otherwise to dismiss the appeal for want of jurisdiction.