

debt was created to the State, and although the recognizance may have originated in the progress of a criminal action, the nature of the subsequent right, perfected by the forfeiture can take no character from that fact, but must be regarded as all other rights arising from contract are regarded, and enforced as all such civil rights, being matter of record, are enforced.

It is clear that by the common law, action of scire facias is a proper remedy upon every recognizance; (*Tidd's Practice*, 983 and '4); nor does this common law right conflict with, nor is it forbidden by, any statutory provision of the State of Arkansas; but, on the contrary, the remedy by scire facias has been expressly authorized, and, under certain restrictions, upon forfeitures of bail bonds on practice at law, R. S. (see *Rev. Stat.*, p. 197, sec. 31,) contemplates sci. fa. as the rightful remedy. A sci. fa. sets out the cause of action fully, and is in itself a writ of summons, and a declaration; and it has been the practice to issue such sci. fa. upon a recognizance adjudged to be forfeited. That the Court has authority to give judgment of forfeiture upon a recognizance, there can be no doubt.

RINGO, C. J., delivered the opinion of the court:

As to the question presented in regard to the legal sufficiency of the writ of *scire facias*, this case is clearly within the principle stated and acted upon by this Court, in the case of *Hicks vs. The State*, decided at the present term, between which and the present as regards this question, there is a most singular and striking coincidence; the writ, in each case, presenting, in almost every respect, omissions and defects precisely similar: neither showing any right of action, or title to any execution whatever. Consequently, the Court erred in awarding execution thereupon against the plaintiff in error.

In regard to the second question, we conceive the rule to be too well established to be now questioned, that a scire facias upon a recognizance is always regarded as in the nature of an original action, while a scire facias upon a judgment is sometimes, and to some purposes, regarded as a continuation of a former suit: 2 *Saund.* 71, n. (4). In the latter case, the Circuit Court has jurisdiction, without regard to the sum in controversy. In the former,

it cannot exercise original jurisdiction, unless the sum in controversy exceeds one hundred dollars, because it cannot be denied that both judgments and recognizances are contracts, within the legal acceptance of that term, and, therefore, whenever any original action, or proceeding in the nature of an original action, is instituted on either, the party instituting such proceeding must of necessity resort to some tribunal or court competent to adjudicate upon the matter in controversy; and inasmuch as exclusive original jurisdiction, in all matters of contract (except actions of covenant) where the sum in controversy does not exceed one hundred dollars, is, by the Constitution of this State, conferred upon the justices of the peace, such proceeding must be commenced before a justice or justices of the peace. Such at least must be the case where the contract or matter in controversy is not embraced within the jurisdiction legitimately conferred by the Legislature upon any chancery or corporation court; and, as far as appears in this case, we think there can be no pretence that either of those courts has jurisdiction of the demand in controversy. As the writ does not demand a sum within the jurisdiction of the Circuit Court, the motion to arrest the judgment ought, for this cause, as well as for the insufficiency of the writ, to have been sustained. The judgment is reversed.