

## FORTENBURY vs. TUNSTALL.

On an instrument under seal, in these words: "Due A. B. \$10.43, value received payable in good cotton," no action but covenant will lie; and consequently a justice of the peace can have no jurisdiction.

THIS was an appeal from a justice of the peace, determined in Independence Circuit Court, in June, 1842, before the Hon. THOMAS JOHNSON, one of the circuit judges. Tunstall, as assignee of Ringgold, surviving partner of Redman, sued Fortenbury on the following bond: "10 48. Due Ringgold & Redman ten dollars and forty-eight cents, value rec'd, payable in good cotton. Batesville, April 7, 1832." Before the justice, the defendant, in November, 1841, pleaded payment and the statute of limitations. Judgment before the justice for plaintiff, and appeal. When the case came into the Circuit Court, the defendant moved to dismiss, for want of jurisdiction in the justice. Motion overruled. The case was then submitted to the Court. Motion for non-suit overruled. Evidence heard by the Court; judgment for plaintiff, and appeal.

*Pike & Baldwin*, for appellant. The instrument sued on in this case, filed before the justice, and by him sent up to the Circuit Court, showed on its face that he had no jurisdiction. No action but covenant would lie on it. It is an obligation for ten dollars and forty-eight cents' worth of cotton. *Mattox vs. Craig*, 2 *Bibb*. 584. *Campbell vs. Weister*, 1 *Litt*. 30. *January vs. Henry*, 3 *Mon*. 8. *Robinson vs. Noble's Adm.*, 8 *Peters*, 181. *Dorsey vs. Lawrence, Hardin*, 509. And this Court decided the same principle at its last term.

*Fowler and Byers*, contra.

*By the Court*, LACY, J. This suit was originally commenced before a justice of the peace, and judgment given in favor of the plaintiff. An appeal was taken to the Circuit Court; and upon trial, the ap-

pellee moved the Court to dismiss the action. The Court overruled the motion, to which there was an exception; and the case is now here on error. The instrument sued on is in these words: "Due Ringgold & Redman ten dollars and forty-eight cents, payable in good cotton;" and it is subscribed by the plaintiff in error. Ringgold & Redman assigned the instrument to the present defendant. It is evident the justice had no jurisdiction of the case. No action but covenant will lie on it; and such actions are expressly excepted out of the justice's jurisdiction by the constitution. Consequently, the Circuit Court should, on the defendant's motion, have dismissed the suit for want of jurisdiction.

Judgment reversed.

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