LEVY *vs.* SHURMAN.

Justices of the peace, possess only a special, limited and inferior jurisdiction, and their proceedings must show such facts as constitute a case within their jurisdiction, otherwise the law regards the whole as *coram non judice* and void.

The plaintiff filed with the justice, before the summons issued, a bill purporting to be a bank note, upon which the name of the defendant did not appear—held that as it did not import any liability upon the defendant, it could not constitute the foundation of a suit, and was not such a filing of the cause of action as is required by the Statute:

That the filing of the bank note gave the justice no jurisdiction, and he having none, the circuit court could acquire none on appeal from his judgment: that the whole proceedings were *coram non judice.*

In a summons, issued by a justice, the cause of action need not be described.

In a case where the circuit court has no jurisdiction, it cannot render judgment for either party.

Appeal from the circuit court of Pulaski county.

THIS was an appeal from the judgment of a justice of the peace, to the circuit court of Pulaski county, determined at the May term, 1845, before the Hon. J. J. CLENDENIN, one of the circuit judges.

On the 14h January, 1845, Mary Shurman, having filed with Justice Shaw, as the foundation of the suit, a ten dollar bill, purporting to be a note of the bank of the State of Missouri, sued out a summons, in the form prescribed by the Statute, against Jonas Levy. The name of Levy appeared upon no part of the bill. On the return day, the justice gave judgment against him for $10 and costs, after hearng the evidence; and he appealed to the circuit court.

The counsel for Levy moved the court to dismiss the case, and supersede the judgment of the justice, for want of jurisdiction; on the ground that there was no such bond, bill, or note filed with the justice, before he issued the summons, as constituted a cause of action against him; which motion the court overruled, to which he excepted, and reserved the point by a bill of exceptions.

The parties then agreed to submit the case to the court, sitting as a jury, the appellant reserving the point saved by his bill of exceptions. The court, on hearing the evidence, found for the appellee, and gave judgment in her favor for $10 and costs.

Levy appealed to this court, and assigns as error, the refusal of the circuit court to dismiss the case for want of jurisdiction.

CUMMINS & HAYDEN, for the appellant. No argument or authority need be adduced to show that the bank note was not, and could not be, the foundation of an action against Levy. He had neither signed nor endorsed it. This being the case, there was nothing filed as a foundation of the action, or to show upon what ground the plaintiff proceeded. The case therefore falls clearly within the principle decided in the cases of *Anthony Ex parte,* 5 *Ark. Rep.* 358. *Reeves vs. Clark,* 5 *Ark. Rep.* 27, and *Fowler vs. Pendleton, ante* 41.

FOWLER, contra.

JOHNSON, C. J., delivered the opinion of the court.

The question is, do the facts of this case as shown by the record, constitute a case within the jurisdiction of the justice of the peace? In adjudicating upon cases originating before justices of the peace, it is essential to keep in view the fact that they are the lowest grade of courts known to our constitution and laws. They possess only a special, limited, and inferior jurisdiction, and therefore the proceedings therein, according to the principle almost universally admitted, must show or set forth such facts as constitute a case within their jurisdiction; otherwise, the law regards the whole proceeding as *coram non judice,* and absolutely void. The 17th and 21st secs. of ch. 87, of the *Rev. Stat. Ark.,* require that whenever any suit shall be founded on any instrument of writing purporting to have been executed by the defendant, such instrument shall be filed with the justice before any process shall be issued in the suit, and that in every suit founded on an account, a bill of the items of such account shall be filed with the justice before any process shall be

issued in the suit. The appellant moved the court to dismiss this case, for the want of jurisdiction, and insisted that no such instrument had been filed with the justice of the peace, as the foundation of the action, as the statute required. The suit was instituted by the appellee against the appellant, and the instrument on file is a note drawn, or purporting to have been drawn, by the Bank of the State of Missouri, in favor of the bearer. Is this a note evidencing any indebtedness on the part of the plaintiff to the defendant, or is it such an account as will admit of proof of such an indebtedness? We are wholly at a loss to discover how it could possibly be regarded as either. The instrument on file, and which has been transcribed into the record, if genuine, would doubtless furnish strong evidence against the Bank of Missouri and that, too, as constituting the basis of the action. The appellant has done no act, so far as appears of record, which could by possibility fix his liability for the note. He did not execute it, nor has he endorsed it over to the appellee. The statute, in requiring the party suing to file with the justice the instrument or bill of particulars, before the issuance of the summons, certainly did not design to enjoin upon him the necessity of doing an act which would be utterly useless and nugatory. It is worthy of remark here that the same act that requires the cause of action to be filed before the issuance of the summons, also prescribes the form of the process, and dispenses with the necessity of any description of the cause of action therein. The reason of this is obvious, because, the instrument on file, there could no longer be any necessity of its being set out in the summons, as it could, at all times, be examined and inspected by the parties. The plaintiff is required to put his cause of action on file, in order that the adverse party may know what it is he is called upon to answer. It is the undoubted right of every individual, when commanded to appear before a justice of the peace, to go to his office, and there to ascertain what it is with which he stands charged, so that he may make immediate preparation for his defence. According to these principles, we think it perfectly manifest that the justice issued the summons, in this case, without the warrant of law. The instrument neither constituting any evi-

dence in itself, nor furnishing the ground-work upon which any proof could have been admitted between the parties to the record, the justice was not authorized to issue the summons, and, consequently, the whole proceeding is *coram non judice* and void. The justice having no jurisdiction, it necessarily follows that the circuit court could not acquire any by appeal, and therefore it should have dismissed the case for want of jurisdiction, without pronouncing any judgment whatever in favor of either party. We are therefore of opinion that the circuit court erred in giving judgment against the appellant. The judgment must therefore be reversed, and the case remanded, with instructions to dismiss for want of jurisdiction.