

DICKEY, USE & C. vs. PETTIGREW.

(See *Pendleton vs. Fowler*, ante 40.)

Writ of error to the circuit court of Washington county.

D. WALKER, for plaintiff in error.

OLDHAM, J., delivered the opinion of the court.

THIS was an action originally instituted before a justice. The entry of judgment by the justice states that "process issued on a note, &c.," but it no where appears that the note was ever filed with the justice, nor does it appear from the record that it was sent up to the circuit court among the papers sent up by the justice on appeal. Upon the trial in the circuit court, a note corresponding with the one described by the justice, was introduced in evidence by the plaintiff, and was for the first time made part of the record by the plaintiff's bill of exceptions. By *Rev. Stat. ch. 87, sec. 17*, it is enacted 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." According to the case of *Pendleton vs. Fowler*, this case must be dismissed.