HEMPSTEAD *vs.* COLLINS.

C. brought suit against H. before a justice of the peace on an account consisting of various items, both of debits and credits: the former amounting to $260.79, the latter, to $196.85, and showing a balance of $63.94 in favor of C., which was all that he claimed to be due him—held that the $63.79 was the sum in controversy between the parties, and that it was within the jurisdiction of the justice of the peace.

Appeal from the circuit court of Hempstead county.

THIS was an appeal from the judgment of a justice of the peace, determined in the circuit court of Hempstead county at the November term, 1845, before the Hon. GEORGE CONWAY, Judge.

The facts appear in the opinion of the court.

HEMPSTEAD, for the appellant.

Want of jurisdiction is fatal at any stage of the proceedings, and when it is apparent from the record or shown by evidence, the court will on motion, or *ex-officio,* without motion, dismiss the case, as no valid judgment can be rendered. Want of jurisdiction may be taken advantage of on error for the first time. *Berry vs. Linton,* 1 *Ark.* 252. *Fisher vs. Hall, id.* 278. *Smith vs. Dudley,* 2 *Ark.* 60. 7 *Monroe* 219. 1 *Bibb* 262. 3 *Mass.* 24. 3 *Caine's Rep.* 129.

That this demand was cognizable in the circuit court only seems to me to be an inevitable conclusion from the decisions of this court as to the constitutional jurisdiction in matters of contract. It was an account finally stated and footed up, and consisted of different items amounting in the aggregate to more than one hundred dollars. It was an entire contract and the amount of it was liquidated, as much so as if it had been evidenced by a promissory note. In *Wilson vs. Mason,* 3 *Ark.* 500, the court hold the doctrine that it is not each separate item, but the aggregate of an account, which

constitutes a single demand and on which suit must be based. It is true that payments appear to have been credited on this account, so as to reduce the balance claimed to less than one hundred dollars; but I contend that this circumstance does not oust the circuit court of its jurisdiction. I understand this court to have substantially decided in several cases, that payments on an express or implied contract for a liquidated amount, form no part of the contract, and that the sum stipulated to be paid on the face of the note or the aggregate of the debit items in an account, indicate the proper tribunal where redress can be afforded, and that subsequent credits will not affect the jurisdiction as indicated by that criterion. It is this that determines the question of jurisdiction and becomes in the meaning of the constitution "the sum in controversy."

Thus in *Dillard vs. Noel,* 2 *Ark.* 457, it is said that credits endorsed on a note are no part of the contract upon which the suit is founded, "and do not change or qualify the legal rights of the parties to it, otherwise than as payment of so much of the debt, of which the endorsement is but evidence of the same grade as a receipt and not otherwise connected with the original contract, but may be explained or controverted by the plaintiff." *Heilman vs. Martin,* 2 *Ark. Rep.* 158.

So in *Fisher vs. Hall,* 1 *Ark.* 278, it was decided that interest forms no part of the contract, so as to give the circuit court jurisdiction.

WATKINS & CURRAN, contra.

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

The only question presented by the record is one of jurisdiction. Collins, the appellee, brought suit against Hempstead before a justice of the peace on an account, consisting of various items both of debits and credits; the former amounting to two hundred and sixty dollars, seventy-nine cents, the latter, to one hundred and ninety-six dollars, eighty-five cents, and showing a balance of sixty-three dollars and ninety-four cents in favor of Collins. The account appears to have been filed in due time, and on the trial of

the cause the justice gave judgment against Hempstead for $63.79, the balance claimed to be due on the account. An appeal was thereupon prayed and taken to the circuit court, and the cause there defended upon the ground that the amount in controversy exceeded the jurisdiction of a justice of the peace. A judgment notwithstanding was rendered against Hempstead, which he now seeks to reverse on the same ground.

Under our State constitution, it is expressly provided that Justices of the Peace "shall have individually, or two or more of them jointly, exclusive original jurisdiction in all matters of contract, except in actions of covenant, where the sum in controversy is of one hundred dollars and under." See *Const. sec.* 15 *of Art.* 6. The sum in controversy, upon which the question of jurisdiction must turn in the present case, was clearly, we think, $63 79. Collins neither exhibited or claimed anything beyond it with that view, and the idea of controversy on the part of Hempstead in relation to an aggregate credit on the account of $196 85 would be unreasonable, if not absurd. Be this as it may, however, it nowhere appears that he did controvert it, and this would have been necessary in our estimation, according to the principle heretofore recognized by this court, first, in the case of *Heilman vs. Martin,* 2 *Ark. Rep.* 158, and again in *Dillard vs. Noel, id.* 449.

We are therefore of the opinion that the judgment of the circuit court must be affirmed with costs.