SEVIER *vs.* WILSON.

Nil debet, not sworn to, pleaded to debt on a writing obligatory, may be stricken out.
And so a plea denying the assignment of the bond, not sworn to.

Writ of Error to Pulaski Circuit Court.

DEBT, determined in the Pulaski Circuit Court, in November, 1847, before the Hon. WM. H. FIELD, Judge.

Henry S. Wilson sued Ambrose H. Sevier, on a writing obligatory for $504.56, alleged in the declaration to have been executed by Sevier to Wm. Norman, of Indiana, by him assigned (by his agent, Reiley,) to McClelland, and by him endorsed to plaintiff.

Defendant pleaded, *first, nil debet,* not sworn to: *Second,* that Reiley was not the agent of Norman, and had not authority to assign the bond sued on to McClelland, in manner and form as alleged in the declaration. This plea was not sworn to.

On motion of plaintiff, both pleas were stricken out, and defendant excepted. Defendant declining to plead further, judgment was rendered in favor of plaintiff for the amount of the bond.

Defendant brought error.

HEMPSTEAD, for plaintiff.

WATKINS & CURRAN, contra.

OLDHAM, J. At common law *nil debet* is a bad plea to debt on a bond, where the bond is the foundation of the action; but in case issue be taken upon it, the plaintiff is bound to prove every allegation in his declaration: 1 *Ch. Pl.* 519: and consequently the execution of the bond. Under our statute, *non est factum* may be stricken out, if not sworn to, and, for stronger reasons, *nil debet* may be. *Sillivant & Thorn* v. *Reardon,* 5 *Ark. R.* 140.

The second plea filed by the plaintiff in error, is an argumentative denial of the assignment of the bond of Norman. A plea, denying the assignment of any instrument in writing made assignable by law, must be supported by the affidavit of the defendant. *Rev. Stat., chap.* 11, *sec.* 4. There is no error in the judgment, and the same is therefore affirmed.