ANDERSON *vs.* LEWIS & CO.

An account is not assignable, so as to vest the legal interest in the assignee, and enable him to sue upon it in his own name.

Writ of Error to Union Circuit Court.

In August, 1848, James L. Lewis & Co. sued James Anderson, before a justice of the peace of Union county, on the following account:

"1848. JAMES ANDERSON,

To JAMES J. LEWIS & CO., DR.

To one-fourth part of nine bales of cotton, bought by us of Laben Peterson, and taken by James Anderson and converted to his own use, (sixty-five dollars,) $65.00"

Plaintiffs recovered judgment before the justice for the amount of the account, and defendant appealed to the Circuit Court,

The case was determined in the Circuit Court, in April, 1849, before the Hon. JOHN QUILLIN, Judge. Trial by jury, and verdict for plaintiffs. Motion for new trial overruled, and bill of exceptions taken by defendant, setting out the evidence. The view which this Court have taken of the case, renders it unnecessary to make a further statement.

CUMMINS, for the plaintiff, argued this cause upon the proceedings in the Circuit Court; and suggested that, as the account shows no contract or liability growing out of a contract, the justice had no jurisdiction of the case.

Mr. Chief Justice JOHNSON delivered the opinion of the Court.

The first question presented by the record relates to the jurisdiction of the justice of the peace. The account on file, if it should be admitted that it exhibits any contract whatever, most certainly shows no privity as between the parties. There is no law in force in this State that authorizes an assignment or sale of an open account so as to transfer the legal interest to the assignee or purchaser, and consequently no suit is maintainable directly in his own name. If the plaintiffs below made a *bona fide* purchase of the account from Peterson, they thereby acquired the equitable interest only, and, in order to enforce their rights, they would be compelled to sue in his name for their use and benefit. Equitable interests thus acquired are under the protection of the courts of law as well as courts of equity. (See *Buckner vs. Greenwood*, 1 *Eng. R.* 206.) It was also said by this Court, in the case of *Campbell & Curcton vs. Sneed*, 4 *Eng.* 121, "It is a well settled principle that courts of law will notice the assignment of a chose in action and protect the interest of a *cestui que trust* against every person who has notice of the trust." This account is not in such shape as to admit of evidence going to fix any indebtedness on the defendant below and in favor of the plaintiffs. The plaintiffs having failed to file a cause of action between themselves and the defendant, the justice necessarily acquired no jurisdiction over the subject matter of the suit.

(See *Levy vs. Shurman*, 1 *Eng.* 184.) It being settled that the justice had no right to exercise jurisdiction over the subject matter of the suit, we do not feel called upon or even at liberty to express any opinion as to the correctness of the subsequent proceedings during the trial of the cause. The justice never having acquired jurisdiction, it follows that the Circuit Court could not exercise it through the appeal.

The judgment of the Circuit Court herein rendered is, therefore, reversed, and the cause remanded, with instructions to strike it from the docket.