AMOS CHIPPS, Appellant, *v.* THOMAS YANCEY, Appellee.

APPEAL FROM POPE.

The plea of *nil debet* is not a good plea to an action of debt upon a record.

*Opinion of the Court.** This was an action of debt on a judgment rendered in the State of Kentucky. The defendant pleaded *nil debet*, to which there was a demurrer, which the court sustained. To reverse this opinion, this appeal was taken. It is considered by the court, that the judgment of the court below, sustaining the plaintiff's demurrer, to the defendant's plea, be affirmed with costs.(*a*) (1)

*Judgment affirmed.*

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FRANÇOIS COLEEN and ABRAHAM CLAYPOLE, Appellants, *v.* DANIEL FIGGINS, Appellee.

APPEAL FROM MADISON.

The act of the General Assembly creating circuit courts, was approved on the 31st of March, 1819, and on the same day a writ issued out of the clerk's office of the circuit court of Madison county, returnable to the May term following.

The writ is void, as the act had no operation until the 1st day of April.

Appearance can not make the writ good, that and pleading, will cure voidable, but not void process.

*Opinion of the Court.*† It appears from the record in this cause, that the writ issued by the Madison circuit court, on the 31st day of March, 1819, and made returnable to May term following, and that the act creating circuit courts, passed on the same day the writ issued. Although it appears, that the

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* Justice WILSON having decided this cause in the court below, gave no opinion.

(*a*) *Nil debet* is a bad plea in an action of debt brought on a judgment obtained in another State. *Armstrong* v. *Carsars, exr.*, 2 Dall, 302. *Mills* v. *Duryee*, 7 Cranch, 480.

*Nil debet* is not a good plea to an action of debt on a recognizance, nor to any action founded on a record or specialty. *Bullis* v. *Giddins*, 8 Johns., 82.

(1) In an action of debt brought on a sheriff's bond, the plea of *nil debet* is bad on demurrer. Where a bond is the foundation of an action of debt, *nil debet* is not a good plea. It is otherwise where the instrument is but the inducement to the action. *Davis* v. *Burton et al.*, 3 Scam., 42. *King* v. *Ramsey*, 13 Ills. R., 622.

† Justice REYNOLDS having decided this cause in the court below, gave no opinion.