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.

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

---

* 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.

act establishing circuit courts, passed on the 31st day of March, yet the court are clearly of opinion, that it did not take effect until the first day of April, and that the process is therefore void, as the clerk had no authority to issue the writ, and make it returnable to a court not in existence, at the time the writ issued. No appearance could make the writ good. The court below was bound to have quashed it, it differing materially, from process that is voidable merely, where appearing and pleading might cure the defect.

It is unnecessary for the court, to notice any other error assigned, as the point already decided, determines the case. The judgment of the court is reversed. (*a*) (1)

Judgment reversed.

Kane, for appellants.

Winchester, for appellee.

(*a*) An appearance of the defendant by attorney, cures any antecedent irregularity of process. *Knox et al.* v. *Summers et al.*, 3 Cranch, 496.

Process returnable out of term is void, and can not be amended. *Cramer* v. *Van Alstyne*, 9 Johns., 386.

(1) It can hardly admit of a doubt that an appearance cures all defects as to the manner in which a party is brought into court. If a party, without process, pleads to an action, it is too late for him then to say that no process was issued or served on him. He is then in court, and it is immaterial whether he appears in compliance with the mandates of the law, or whether he waives a right which he might have insisted on, and voluntarily places himself in a position in which he is required to make his defense. The decisions on this question are uniform. In *Easton et al.* v. *Altum*, 1 Scam., 250, the court said: "The authorities are numerous and explicit, that irregularity of process, whether the process be *void* or *voidable*, is cured by appearance without objection." And in *Mitchell* v. *Jacobs et al.*, 17 Ills. Rep., 236: "A defendant appearing without objection waives all objections thereto, although the process may be void, or there may have been no service." To the same effect is *Mineral Point R. R. Co.* v. *Keep*, 22 Ills. Rep., 9. The following cases have also been passed upon by the Supreme Court of this State, in each of which this question arose, and received substantially the same solution. *Pearce et al.* v. *Swan*, 1 Scam., 269. *Vance et al.* v. *Funk*, 2 Scam., 263. *Beecher et al.* v. *James et al. id.*, 463. *Palmer* v. *Logan*, 3 Scam., 57. *Bowles' heirs* v. *Rouse, adm'r.*, 3 Gilm., 409. *Whittaker et al.* v. *Murray et al.*, 15 Ills. R., 294.

Although a *general* appearance will cure all irregularities as to the issuing or service of process, yet an appearance for the purpose of objecting to such process or service will not have that effect. *Mitchell* v. *Jacobs et al.*, 17 Ills. R., 236. *Anglin* v. *Nott*, 1 *Scam.*, 395. *Little* v. *Carlisle et al.*, 2 *Scam.*, 376.