J. K. M. CLAY, Plaintiff-in-Error, *v.* J. K. W. FREEMAN and His Honor STEPHEN H. DICKERSON, Judge, Third Judicial Circuit, Defendants-in-Error.

WRIT OF ERROR TO THE CIRCUIT COURT OF THE THIRD JUDICIAL CIRCUIT, SINOE COUNTY.

Decided February 9, 1933.

1. Where the justice of the peace issued all the precepts with the *Justice of the Peace Code* as his guide and party performed no duty in the preparation of the precepts, it is not error where the Judge of the Circuit Court ruled that it is the act of the court and should prejudice no man.
2. Although a justice of the peace court is not a court of record in the sense that its records on appeal cannot be overstepped, yet a judgment of the justice of the peace or other written documents produced in the court or duly recorded are written evidence of high grade and are admissible in any court of law for the purpose intended.

Plaintiff, now defendant-in-error, brought an action for damages for personal injuries before a justice of the peace, which was dismissed. On appeal to the Circuit Court and trial *de novo,* judgment was given for plaintiff. On writ of error, this Court *amended* as to amount of damages and *affirmed.*

A. B. Ricks for plaintiff-in-error. *N. H. Sie Brownell* for defendants-in-error.

MR. JUSTICE GRIGSBY delivered the opinion of the Court.

On the 12th day of November, 1931, at Settra Kroo, Sinoe County, there occurred an affray between plaintiff-in-error and defendant-in-error in which it is reported that plaintiff-in-error bit off a piece of the ear of the defendant-in-error and also cut defendant-in-error on his knee. Upon this, a warrant of arrest was sworn out by one J. O. C. Broderick for infraction of the peace against J. K. M. Clay, now plaintiff-in-error. The warrant was

issued on the 20th of November, 1931, by Justice of the Peace Z. B. Russ, and upon the case coming up for hearing defendant, now plaintiff-in-error, pled guilty of the charge.

Based upon these previous proceedings, defendant-in-error brought an action of damages for personal injuries on the 6th day of December, 1931, against appellant before Justice of the Peace J. W. Monger for the amount of fifty dollars. The complaint on its face shows that it was signed by the plaintiff and sworn to by him before the justice of the peace as required by law and the justice of the peace signed the jurat that plaintiff swore to said complaint on the 3rd day of December, 1931. Besides the usual jurat found in the form of complaint laid down in the *Justice of Peace Code,* an affidavit in due form was issued with the complaint by said justice of the peace and signed by the plaintiff.

Upon the case being called for trial, a demurrer was raised as to the affidavit to the complaint not having been duly sworn to, whereupon the issuing Justice of the Peace, Mr. Monger, and others were qualified to testify to the fact that he, the justice of the peace, had not administered the oath to the plaintiff, though the complaint had the proper jurat duly signed with an affidavit in support. In the face of these facts apparent on the face of the record, Justice of the Peace Russ dismissed the case of personal injury brought by plaintiff, now defendant-in-error, and ruled him to $12.04 cost, to which plaintiff, now defendant-in-error, excepted and appealed to the Circuit Court, Third Judicial Circuit, for review. On the 5th day of July, 1932, the case came before Judge Dickerson for review. The plaintiff-in-error motioned the court to dismiss the appeal on the grounds that the appeal bond did not contain an indemnifying clause, which motion the court overruled and heard the case *de novo.*

On the 6th day of July, 1932, the case was resumed

when witnesses on both sides were qualified and deposed. The writ of arrest and judgment of the justice of the peace court were offered in evidence and admitted over the objection of plaintiff-in-error. The court in ruling on the point of the bond not containing an indemnifying clause held that the justice of the peace having issued all the precepts in the case, it was the act of the court which should prejudice no man. Oral testimony being concluded and arguments heard, the court gave final judgment on the 12th day of July, 1932, that in his opinion, the case was mismanaged in the lower court when considering the wordings of the demurrers. Having gone through the demurrers and the law controlling the case, the court said that it finds the appellee guilty and that he pay the appellant the sum of fifty dollars and all costs. It is from this judgment that an appeal is taken to this Court by writ of error for review, setting out the following assignment of errors:

"1. Because when on the 6th day of January, 1932, during the course of the trial and after both parties in the case had rested evidence, the appellant in said court, J. K. W. Freeman, defendant-in-error, was permitted by the trial Judge to offer in as written evidence the judgment of the Justice of the Peace court over the objections of the appellant, now plaintiff-in-error, which objections were on the grounds (1) that the said judgment handed in by the appellant as evidence was not properly offered and (2) that the Justice of the Peace court is not a court of record. His Honour the trial Judge ruled that the Justice of the Peace court is not a court of record. His Honour the trial Judge ruled that the Justice of the Peace court is a court of record and admitted said evidence at that stage of the case. In this, there was manifest error.

"2. And also because when on the 5th day of January,

1932, said case was called for hearing, the appellee in the court below, now plaintiff-in-error, offered a motion to the jurisdiction of the court over said motion on the grounds that the appeal bond was not that kind or specie of bond required by law; the trial Judge ruled out said motion to the jurisdiction and ordered the case to be tried on its merits.

"3. And also because when on the 12th of January, 1932, His Honour the trial Judge rendered his final judgment based upon the proceedings had before the Justice of the Peace court: he the said trial Judge having previously ruled, as pointed out above, that said Justice of the Peace Court is a court of record when under the law governing appeals from Justice of the Peace Court it was the duty of the trial Judge to try the case *de novo* and to have based his final conclusion and judgment in said case upon the findings growing out of the evidence deposed before him on appeal.

"4. And also because said final judgment is erroneous and prejudicial to the rights and interest of the plaintiff-in-error, in that it was not based upon any conclusion arrived at from the evidence adduced at the trial, but upon purported demurrers raised or not raised in some other court.

"5. And also because the final judgment to the effect 'That appellant should recover from appellee now plaintiff-in-error the sum of fifty dollars with all costs of court' was and is an erroneous judgment in that it is entirely contrary to the evidence adduced at the trial which clearly shows that the appellee J. K. W. Freeman, one of the defendants-in-error, was both aggressor and the assailant of plaintiff-in-error.

"Therefore the court in so ruling against the plaintiff-in-error committed manifest error."

As to count one of the assignments of error, this Court says: That the warrant of arrest, the pleas of the plaintiff-in-error and his wife to the case of infraction of the peace brought against them, and the judgment of the justice of the peace who conducted the trial were competent written and oral evidence and that they were properly admitted in evidence by the court on the case being heard by it. Old Blue Book 54, Legal Principles and Rules, t. II, ch. XI, secs. 1, 2, 15, 19, 21.

As to counts 2, 3, 4, and 5 the court below did not err when it ruled that defect in the appeal bond, if any, was the act of the court which should prejudice no man, especially where the justice of the peace issued all the precepts and had the *Justice of the Peace Code* as his guide, and plaintiff-in-error is shown to have performed no duty in the issuing of the precepts, he not being a legal man. *Jantzen* v. *Freeman,* 2 L.L.R. 167, 4 Lib. Semi-Ann. Ser. 17, 21, 22 (1914).

The omission of the clause of indemnification in the appeal bond is not so material or defective as to prejudice the rights of the plaintiff-in-error, because if judgment was given against defendant-in-error, the court had power to enforce its judgment. Moreover, this being a trial *de novo,* no damage has occurred to plaintiff-in-error, nor does it appear that he ever filed an appeal bond or paid the cost of the court below. Hence this Court fails to see under the circumstances how he could insist with legal propriety on the Court's dismissing the appeal because of the non-insertion of the indemnity clause in an appeal bond written by a justice of the peace.

This Court further says that although a justice of the peace court is not a court of record in the sense that its records on appeal cannot be overstepped but the appeal must be confined to only such matters as arise out of the record, yet a judgment of the justice of the peace or other written documents produced in the court or duly recorded are written evidence of high grade and are admis-

sible in any court of law for the purpose they are intended to serve. J. P. Code (adopted L. 1907–08, 16), § 42. Rendition of the judgment heard in the case *de novo* covered all illegal defects which may have arisen in the lower court. From a careful and scrutinizing perusal of the deposition in the case, it appears that plaintiff-in-error may not be responsible for all of the wounds which defendant-in-error complains of as having been inflicted upon his body: see evidence of witness Gbardee who stated that the bite on the ear of defendant-in-error was inflicted by his mother mistakenly during the affray. But it cannot be denied that it was not conclusively proven at the trial that defendant-in-error was not severely beaten by plaintiff-in-error and his wife in the combat. As further evidence of his guilt, the judgment submitted in evidence resulting from the infraction of the peace case proves that he confessed judgment at the trial instituted by the private prosecutor J. O. C. Broderick, charging the plaintiff-in-error as being responsible for the affray.

No efforts were employed on the part of the defendant to deny the allegation, but he pleaded guilty thereto; nevertheless since the affray appears to be a family feud which appears to have arisen from a fight over the daughter of the defendant-in-error who is also a ward of plaintiff-in-error, the judgment of the lower court is amended to read that defendant-in-error recover from the plaintiff-in-error the sum of twenty-five dollars and all costs. And the Clerk of this Court is hereby ordered to inform the judge of the court below as to the effect of this judgment. And it is so ordered.

Amended and affirmed.