

Biddle Vs. Wilkins

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Court : US Supreme Court

Decided On : 1828

Appeal No. : 26 U.S. 686

Appellant : Biddle

Respondent : Wilkins

Judgement :

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Biddle v. Wilkins

26 U.S. (1 Pet.) 686

ERROR TO THE DISTRICT COURT OF THE UNITED

STATES FOR THE MISSISSIPPI DISTRICT

SYLLABUS

The plaintiff, as administrator of W., had brought a suit in the District Court of the United States for the Western District of Pennsylvania and recovered a judgment. He instituted a suit in the District Court of the United States of the State of

Mississippi against the defendant in the original suit. The defendant pleaded that by the Orphans' Court of Adams County in the State of Mississippi, where the defendant resided, he had been appointed the administrator of W. and had continued to act in that capacity. *Held* that the debt due upon the judgment obtained in Pennsylvania by the plaintiff as administrator of W. was due to him in his personal capacity, and it was immaterial whether the defendant was or was not administrator of W. in the State of Mississippi. That would not in any manner affect the rights of the plaintiff, and the plea tenders an immaterial issue, and is bad on demurrer.

Where the court in which judgment is rendered has not jurisdiction over the subject matter of the suit, or where the judgment upon which suit is brought is absolutely void, this may be pleaded in bar or may in some cases be given in evidence under the general issue in an action brought upon the judgment.

The general rule is that there can be no averment in pleading against the validity of a record, though there may be against its operation, and it is upon this ground that no matter of defense can be pleaded in such case to a suit on a judgment which existed anterior to the judgment.

It has become a settled practice in declaring in an action upon a judgment not, as formerly, to set out in the declaration the whole of the proceedings in the original suit, but only to allege generally that the plaintiff, by the consideration and judgment of that court, recovered the sum mentioned therein, the original cause of action having passed *in rem judicatam*.

In an action upon a judgment recovered in favor of an administrator, the plaintiff is not bound to make a profert of the letters of administration. That it is not necessary in actions upon such judgments that the plaintiff name himself as administrator follows from his not being bound to make profert of the letters of administration, and when he does so name himself, it may be rejected as surplusage.

After judgment recovered in a suit by an administrator, the debt is due to the plaintiff in his personal capacity, and he may declare that the debt is due to

himself.

This was an action of debt brought in the court below upon a judgment obtained by the plaintiff as administrator against the defendant in the District Court of the United States for

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the Western District of Pennsylvania. The declaration was in the common form, averring the recovery by plaintiff as administrator, &c.;

The defendant pleaded three pleas in bar. 1. *Ne unques administrator*. 2. That in January, 1817, in the Orphans' Court of the County of Adams in the State of Mississippi, the defendant was duly appointed sole administrator, and has continued to act in that capacity. 3. That the judgment was obtained *per fraudem*. The plaintiff replied to the third plea, on which issue was joined, and demurred specially to the first and second, assigning as causes of demurrer:

1. The said pleas set up matter which, if true, existed anterior to the judgment on which the suit was brought, and might have been urged, if effectual at all, against the original recovery.
2. The said matters should have been pleaded in abatement, and not in bar.
3. They contain averments against the record.
4. That the matters therein contained are immaterial, and could not be set up after judgment to avoid its effect in the state from which the record came.
5. They are in other respects uncertain, informal, and insufficient.

Joinder in demurrer. The judgment of the district court was in favor of the defendant, sustaining both pleas as sufficient.

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MR. JUSTICE THOMPSON delivered the opinion of the Court.:

The action in the court below was founded upon a judgment obtained in the District Court of the United States for the Western District of Pennsylvania in the term of October, in the year 1823, for the sum of \$32,957.34. The declaration is in the usual form of an action of debt on a judgment.

The defendant pleads in bar:

1. That the plaintiff is not, and never was, administrator of John Wilkins, deceased.
2. That at the January Term in the year 1817 of the Orphans' court for the County of Adams and State (then Territory) of Mississippi, he, the defendant, was duly appointed sole administrator of John Wilkins, deceased, and entered into bond with security and took the oath prescribed in such case according to the

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statute in such case made and provided, and that he took upon himself the duty and office of administrator, and has continued to act as such administrator ever since.

3. That the judgment in the declaration mentioned was obtained by fraud.

To the two first pleas a special demurrer was interposed and issue to the country taken upon the third, and judgment rendered for the defendant upon the demurrer, to reverse which the present writ of error has been brought.

The first plea of *ne unques administrator* has been abandoned as altogether untenable, and the counsel on the part of the defendant in error have rested their argument entirely on the validity of the second plea, and have treated this as a plea in bar to the jurisdiction of the court in which the judgment was rendered. It is a little difficult to discover what is the true character of this plea. It can in substance amount to nothing more than an allegation that the plaintiff was not the lawful administrator of John Wilkins. And in that respect, is but a repetition of the same matter set up in the first plea, and that too in a more exceptionable form. For

the conclusion is drawn argumentatively from the fact set up in the plea that he, the defendant, was duly appointed sole administrator of John Wilkins, in the Orphans' Court of the County of Adams in the State of Mississippi, and thence to infer that the plaintiff could not be the lawful administrator in Pennsylvania. Such a plea will not stand the test of a special demurrer. If it was intended by this plea to set up that the defendant was the first and only rightful administrator of John Wilkins, and that the debt due from him thereby became assets in his hands, the plea is defective in not alleging when administration was granted to the plaintiff. The declaration alleges that John Wilkins died a citizen of Pennsylvania, and from anything that appears to the contrary, administration might have been granted to the plaintiff before it was to the defendant.

The simple fact that administration had been granted to the defendant in Mississippi would not raise any question with respect to the jurisdiction of the court, and if it furnished any matter of defense on the merits against the recovery on the ground that it was taking out of his hands assets the administration of which belonged to him, it should have been set up in the original action. Nothing appears to invalidate the judgment upon which the present action is founded. The cause of action does not appear, and we cannot say that the subject matter was not within the jurisdiction of the court when it was rendered, or that there was any disability in the plaintiff to sue in that court, or that the judgment was void for any cause whatever. When the court in which the judgment is

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rendered has not jurisdiction over the subject matter of the suit, or when the judgment is absolutely void, this may be pleaded in bar or may in some cases be given in evidence under the general issue. But the general rule is that there can be no averment in pleading against the validity of a record, though there may be against its operation. And it is upon this ground that no matter of defense can be pleaded in such case which existed anterior to the judgment. Chitty Plead. 481. Hence it has become a settled practice in declaring, in an action upon a judgment, not (as formerly) to set out in the declaration the whole of the proceedings in the former suit, but only to allege generally that the plaintiff, by the consideration and

judgment of that court, recovered the sum mentioned therein. Chitty 354.

The original cause of action having passed *in rem judicatam*, how far the circumstance that the defendant had taken out letters of administration in Mississippi would have availed as a defense against a recovery of the original judgment cannot now be inquired into. It should have been set up in the former suit. But if the first administrator acquired a right to this debt as assets, and that matter was now open to inquiry, there is nothing appearing on this record to show that the defendant had acquired any such priority. When letters of administration were taken out by the plaintiff does not appear, nor was he bound to show that in his declaration. He was not bound to make profert of the letters of administration. This was so decided in the case of *Crawford v. Whitall*, Doug. 4, note a. It was an action of *indebitatus assumpsit* upon a judgment recovered by the plaintiff as administrator against the defendant in the Mayor's Court at Calcutta. And the declaration alleged that the defendant was indebted to the plaintiff as administrator in the sum therein mentioned, which had been adjudged to him as administrator, &c.; The defendant demurred specially and showed for cause that there was no profert of letters of administration. But the court said this was unnecessary, because in this action (upon the judgment) the plaintiff had no occasion to describe himself as administrator. If then it was a fact and of any importance in deciding the legal rights of the parties in this case that administration had been first granted to the defendant in Mississippi, that should have been alleged in the plea, and no objection can be taken to the declaration as containing the first fault in pleading.

That it is not necessary, in cases like the present, for the plaintiff to name himself as administrator follows as matter of course from his not being bound to make profert of his

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letters of administration, and that when he does so name himself it may be rejected as surplusage, is well settled by numerous authorities. In the case of *Bonafous v. Walker*, 2 Term 126, it was objected that the action ought to have

been brought by the plaintiff as administratrix, because the judgment on which the party had been committed in execution had been obtained by her as administratrix of her husband. But the court said that was unnecessary, for the instant the plaintiff recovered the judgment, it became a debt due her on record, and was assets in her hands for which it was not necessary for her to declare as administratrix. See also Hob. 301, L. Ray. 1215. The case of *Tallmadge v. Chappel*, 16 Mass. 71, decided in the Supreme Judicial Court of Massachusetts, is very full and explicit on this point. The plaintiff declared as administrator, &c., in debt upon a judgment recovered by him as administrator, in a court of common pleas in the State of New York. The defendant pleaded in bar that the parties at the time of rendering the judgment were all inhabitants of the State of New York, and that the plaintiff was appointed administrator in that state, and had not been so appointed in Massachusetts. To which plea there was a demurrer and joinder, and the court held the plea bad. That the action, being on a judgment already recovered by the plaintiff, it might have been brought by him in his own name, and not as administrator. For the debt was due to him, he being answerable for it to the estate of the intestate, and it ought to be considered as so brought, his style of administrator being merely descriptive, and not essential to his right of recovery. That it was important to the purposes of justice that it should be so, for an administrator appointed in Massachusetts could not maintain an action upon this judgment, not being privy to it, nor could he maintain an action upon the original contract, for the defendants might plead in bar the judgment recovered against them in New York. The debt sued for is in truth due to the plaintiff in his personal capacity, and he may well declare that the debt is due to himself.

If in the case before us the judgment is considered a debt due to the plaintiff in his personal capacity, it is totally immaterial whether the defendant was or was not administrator of John Wilkins in the State of Mississippi. That could not in any manner affect the rights of the plaintiff. The plea therefore tenders an immaterial issue, and is bad on demurrer.

In whatever light, therefore, we consider this plea, whether as to the matter itself set up or to the manner in which it is pleaded, it cannot be sustained as a bar to

the present action.

We are accordingly of opinion that the judgment of the court

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below must be

Reversed and the cause sent back with directions to allow the defendant to plead de novo if he shall elect so to do.

This cause came on, &c.;, on consideration whereof it is adjudged and ordered by this Court that the judgment of the district court in this cause be and the same is hereby reversed and annulled, and it is further ordered that the cause be remanded to the said district court with directions to permit the defendant to plead *de novo* if he elect so to do.

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