

**Yeaton Vs. Lynn**

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**Court :** US Supreme Court

**Decided On :** 1831

**Appeal No. :** 30 U.S. 224

**Appellant :** Yeaton

**Respondent :** Lynn

**Judgement :**

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**Yeaton v. Lynn**

**30 U.S. (5 Pet.) 224**

*ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR*

*THE COUNTY OF WASHINGTON IN THE DISTRICT OF COLUMBIA*

## **SYLLABUS**

L. as executor to W. instituted an action of assumpsit on 8 April, 1826. The declaration stated L. to be executor of W. and claiming as executor for money paid by him as such. The defendant pleaded nonassumpsit, and a verdict and judgment

were given for the plaintiff. After the institution of the suit and before the trial, the letters testamentary of L. were revoked by the Orphan's Court of the County of Alexandria, he having, after being required, failed to give bond with counter-security as directed by the court.

The powers of the Orphan's Court of Alexandria are made by act of Congress identical with the powers of an orphans' court under the laws of Maryland. It is a court of limited jurisdiction, and is authorized to revoke letters testamentary in two cases: a failure to return an inventory or to account. The proceedings against L. were not founded upon either of these omissions. The appropriate remedy, on the failure of the executor to give counter-security, is to take the estate out of his hands, and to place it in the hands of his securities.

The issue tried by the jury was on the plea of nonassumpsit. As the plaintiff was incontestably executor when the suit was brought and when issue was joined, and could then rightfully maintain the action, and the revocation of the letters testamentary was not brought before the court by a plea since the last continuance, as it might have been; the defendant must be considered as waiving this defense, and resting his cause on the general issue.

A plea since the last continuance waives the issue previously joined, and puts the case on that plea.

It is not doubted that the revocation might have been pleaded, and it ought to have been pleaded in order to bring the fact judicially to the view of the circuit court. It ought to appear upon the record that judgment was given against the plaintiff in the circuit court, because he was no longer executor of W., not because the defendant was not indebted to the estate of W. and had not made the assumpsit mentioned in the declaration.

The rule is general that a plea in bar admits the ability of the plaintiff to sue, and if the parties go to trial on that issue, the presumption is reasonable that this admission continues.

When a suit is brought by an administrator, during the minority of the executor, his powers as administrator are determined when the executor has attained his full age, and the fact that he has not attained his full age must be averred in the declaration. But if this averment be omitted and the defendant pleads in bar, he admits the ability of the plaintiff to sue, and the judgment is not void.

A distinction seems to be taken between an action brought by a person who has no right to sue and an action brought by a person capable of suing at the time, but who becomes capable while it is depending. In the first case, the plaintiff may be nonsuited at the trial; in the last, the disability must be pleaded.

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The rule is that when matter of defense has arisen after the commencement of a suit, it cannot be pleaded in bar of the action generally, but must, when it has arisen before plea or continuance, be pleaded as to the further maintenance of the suit and when it has arisen after issue joined, *puis darrein continuance*.

It may safely be affirmed that a fact which destroys the action, if it cannot be pleaded in bar, cannot be given in evidence on a plea in bar, to which it has no relation. If any matter of defense has arisen after an issue in fact, it may be pleaded by the defendant, as that the plaintiff has given him a release or in an action by an administrator that the plaintiff's letters of administration have been revoked.

The defendant in error, as executor of John Wise, on 8 April, 1826, instituted an action of assumpsit in the circuit court. The declaration contained two counts, the first for money paid, laid out, and expended; the second on account for money paid, &c.;, in which the defendant is alleged to have been found in arrears to the plaintiff as executor. The letters testamentary of the plaintiff, as executor of John Wise, were recorded by the orphans' court on 9 November, 1826.

The jury found a verdict for the plaintiff, and assessed the damages at \$2,431.59, with interest from 1 January, 1820, subject to the opinion of the court on a case

agreed. The circuit court gave judgment for the plaintiff, and the defendant prosecuted this writ of error.

The case is stated in the opinion of the court.

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MR. CHIEF JUSTICE MARSHALL delivered the opinion of the Court.

This is an action on the case brought by Adam Lynn as executor of John Wise, for the use of Thomas C. Lyles and others, against William Yeaton, in the Circuit Court

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of the United States sitting in the County of Alexandria. The declaration contains two counts, one for money paid by the plaintiff Lynn as executor for the use of the defendant and the other on an account settled by the said plaintiff as executor with the defendant for money due by the defendant to the plaintiff as executor, as aforesaid.

The cause was tried on the issue of *nonassumpsit*, and the jury found a verdict for the plaintiff below, subject to the opinion of the court on a case agreed. Judgment was given for the plaintiff, and the then defendant has brought that judgment before this Court by a writ of error.

The case agreed is in the words following.

The plaintiff to support the issue on his part gave evidence to prove that John Wise the testator, in his lifetime had endorsed a note as security for the defendant to one Robert Young for the sum of \_\_\_\_\_, upon which note judgment was obtained by said Young against such drawer and endorser, and execution of one of the said judgments being levied upon the goods, &c.;, of the defendant, he gave a forthcoming bond with the said testator as his security in such bond, upon which bond judgment was regularly entered against principal and security in the lifetime

of testator. The plaintiff then produced and read in evidence to the jury the proceedings in two chancery causes, the one by the said Robert Young against the said Adam Lynn *et al.*; the other by the Bank of Alexandria against the same defendants, thereto annexed. And the plaintiff in order to show that the decree in the first of the said chancery cases had been paid and satisfied by the plaintiff by way of a discount between him and the said Young, gave evidence to prove that the plaintiff had endorsed a note as security for said Young, discounted for his said Young's use in the Branch Bank of the United States, upon which note the said bank had recovered judgment against the said Young for \$300 with interest from 4 March, 1817, till paid, and costs. The said note and judgment had been taken up by plaintiff, as security for said Young, on 24 March, 1820, and thereupon assigned over to the plaintiff, and that the said Robert Young, by way of indemnity and payment to the plaintiff, assigned over to him the said judgment obtained by Young against the defendant and all his claims and

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remedies, &c.;, upon the estate of the testator, as by a short copy of the said judgment and assignment endorsed thereon thereunto annexed. That the plaintiff before the institution of the said suits in chancery, and after the death of the testator, had sold out sufficient of the stocks mentioned in the said deed to pay the said debt due the said Young, but without any reference to the said suits or to the said Young's claim, nor for the purpose of satisfying any creditor of the testator, and, at the time of the institution of said suits, had the money in his hands proceeding from such sales, which money he has retained as against such of the *cestuis que trust* named in the said deed as are named as equitable plaintiffs in this case; that the will of the said John Wise was duly proved and recorded in the orphans' court, and letters testamentary thereon duly granted to the plaintiff, and other proceedings relative there to therein had, as appeared by the annexed transcript of proceedings in the orphans' court, and that the said Bank of Alexandria recovered judgment of the plaintiff, as appeared by the annexed record of the said judgment to bind assets.

And it is agreed that the verdict to be rendered in this cause shall be subject to the opinion of the court whether the plaintiff is entitled to recover in this action for so much of the assets which the said deed purports to convey in trust, as has been appropriated under the said decree in manner aforesaid, to satisfy the said debt due to the said Robert Young, and discounted with the plaintiff as aforesaid.

The judgment which was obtained by Robert Young, against John Wise in his lifetime and William Yeaton, the defendant, is stated in the case agreed to have been for the proper debt of the defendant, for which John Wise was surety. This debt has never been paid by the defendant, and was not paid by John Wise in his lifetime.

After this judgment, William Yeaton became insolvent, and John Wise sold his real estate in Alexandria and invested the proceeds in bank stock in the name of Adam Lynn, the plaintiff, after which he executed a declaration of trust in favor of his children and grandchildren and departed this life, having first made his last will and testament of which he appointed the plaintiff executor, who took upon himself the execution thereof.

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The chancery causes mentioned in the case agreed were instituted in July, 1818, for the purpose of setting aside as fraudulent with respect to creditors this deed to Adam Lynn the plaintiff, and for obtaining payment of the debt due to the plaintiffs respectively out of that fund. The court, in July, 1824, decreed that the deed of trust be annulled and vacated so far as respects the complainants, and that the said Adam Lynn do sell and dispose of so much of the trust fund as will satisfy and pay to the complainants their debt aforesaid with interest and costs. The case shows that previous to this decree, on 24 of March, 1820, the plaintiff had paid this judgment obtained by Young against Yeaton, with Wise as his surety, and that he had sold a sufficient quantity of the stock standing in his name to meet the claim, the proceeds of which sale he held in his hands at the time the debt was paid to Young.

It is obvious that the debt due from Yeaton, the defendant, to Young for which Wise was surety has been paid out of the estate of Wise. Consequently that estate has an unquestionable claim on Yeaton for the amount paid. The judgment rendered by the circuit court in favor of Adam Lynn, who was both executor and trustee of John Wise, is resisted on the ground that he has sued as executor, though he paid the money either on his private account or as trustee.

The bill in chancery on which all the proceedings between Wise and Lynn were annulled, so far as respected this debt, and by the decree on which Adam Lynn was directed to pay the sum due to Robert Young, states that Lynn was both executor and trustee. The executor and trustee were both necessary parties to the suit, and had they been distinct persons must both have been brought before the court. The two characters being united in the same person and that person being directed to execute the decree, it would seem reasonable to presume that he acted in the character in which he ought to perform the particular act, especially if it be necessary to give the act its full effect, and to make it rightful.

The trust property had been sold in anticipation of the decree, and the money retained by the trustee and executor. When the investment in the name of Lynn, and the declaration of trust, were vacated and declared void so far as

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respected this debt, the money into which the trust property had been converted, and which remained in the hands of Wise's executor, became a part of Wise's estate, and consequently were assets subject to this debt. The payment of this money to Robert Young was rightful if made by the executor, and being part of the funds of the estate, ought to enure to the benefit of the estate. We think, therefore, that the action is sustainable in the name of the executor.

The form in which the question on the case is submitted to the court strengthens this opinion. It assumes that the money for which the suit was brought composed a part of the assets, and had been appropriated under the decree of the court to satisfy the debt due to Robert Young.

The plaintiff in error further contends that this judgment ought to be reversed because the letters testamentary granted to Adam Lynn were revoked by the Orphans' Court of Alexandria before it was rendered.

The powers of the Orphans' Court of Alexandria are made by act of Congress identical with the powers of an orphans' court under the laws of Maryland. It is a court of limited jurisdiction, and is authorized to revoke letters testamentary in two cases: a failure to return an inventory or to account. The proceedings against Adam Lynn were not founded on either of these omissions. A petition was filed by his sureties stating their apprehension of loss from their suretyship and praying that the proper measures might be taken for their relief. The appropriate remedy given by the law in such case is to require counter-security, and, on the failure of the executor to give it, to take the estate out of his hands and place it in the hands of his sureties. The statute forbids the judge to exercise any implied power. On the failure of the executor in this case to give counter-security, the judge, instead of making the order prescribed by the act, revoked the letters testamentary. Some of the judges are of opinion that the orphans' court transcended its powers and that the judgment of revocation is void. It is unnecessary to decide this point, because we are all of opinion that as the issue tried by the jury was on the plea of *nonassumpsit*, as the plaintiff was incontestably executor when this suit was brought and when that issue was joined, and could rightfully maintain this

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action, as the revocation of the executorship was not brought before the court by a plea since the last continuance, as it might have been, the defendant is to be considered as waiving the defense and resting his cause on the general issue. There is the more reason for supposing that the defendant Yeaton made this election, because a plea since the last continuance waives the issue previously joined and puts the cause on that plea. It is also remarkable that the case agreed states expressly that letters testamentary were granted to Adam Lynn, but does not state the revocation of those letters. The proceedings of the orphans' court are referred to generally.

It is not doubted that this revocation might have been pleaded, and we think it ought to have been pleaded, in order to bring the fact judicially to the view of the circuit court. It ought to appear upon the record that judgment was given against the plaintiff in that court, because he was no longer executor of John Wise, and not because the defendant was not indebted to the estate of Wise, and had not made the assumpsit mentioned in the declaration.

The rule is general that a plea in bar admits the ability of the plaintiff to sue, and if the parties go to trial on that issue, the presumption is reasonable that this admission continues.

In principle this case is not unlike a suit brought by an administrator during the minority of the executor. His power as administrator is determined when the executor has attained his full age, and the fact that he has not attained his full age must be averred in the declaration. But if this averment be omitted, and the defendant pleads in bar, he admits the ability of the plaintiff to sue, and the judgment is not void. 5 Com.Dig. title Plead. 2 D. 10, 267. The inference that he could not be permitted to give this fact in evidence is very strong.

A distinction seems to be taken between an action brought by a person who has no right to sue, and an action brought by a person capable of suing at the time, but who becomes incapable while it is depending. In the first case, the plaintiff may be nonsuited at the trial; in the last, the disability must be pleaded. 1 Chitty on Pleading 437, Am.Ed. 319; 4 T.R. 361; 3 T.R. 631.

The rule is that

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action generally, but must, when it has arisen before plea or continuance, be pleaded as to the further maintenance of the suit, and when it has arisen after issue joined, *puis darrein continuance*. "

1 Chitty 635, Am.Ed. 456.

It may safely be affirmed that a fact which destroys the action, if it cannot be pleaded in bar, cannot be given in evidence on a plea in bar to which it has no relation. This is decided in 7 John. 194.

"If any matter of defense has arisen after an issue in fact, it may be pleaded by the defendant, as that the plaintiff has given him a release, . . . or in an action by an administrator, that the plaintiff's letters of administration have been revoked."

In *Stonner v. Gibbons*, Moore 871, an action of debt was brought against an administrator, and pending the action, after demurrer joined, the letters of administration were repealed. The court refused to allow this matter to be pleaded after demurrer, though it might after issue joined. The distinction between allowing the plea after demurrer and after issue is not now sustained, but certainly the defense could not have been received, as the plea was disallowed.

Upon this point the Court is unanimous. We are all of opinion that the revocation of the letters testamentary, not having been pleaded, could not be given in evidence. The judgment is

*Affirmed with costs and damages at the rate of six percent per annum.*

This cause came on to be heard on the transcript of the record from the Circuit Court of the United States for the District of Columbia holden in and for the County of Alexandria and was argued by counsel, on consideration whereof it is considered, ordered, and adjudged by this Court that the judgment of the said circuit court in this cause be, and the same is hereby affirmed with costs and damages at the rate of six percentum per annum.