FAIRCHILD v. CAMAC.

Case No. 4,610.
{3 Wash. C. C. 558.}[1]

Circuit Court, E. D. Pennsylvania. Oct. Term, 1819.

JUDGMENT ENTERED ON WARRANT OF ATTORNEY.

A judgment having been once entered on a warrant of attorney, the warrant becomes functus officio; and although in the warrant, authority may have been given to enter judgments, in the plural, that can only mean a second judgment, where the first has been set aside; and not as authority to enter two judgments subsisting at the same time.

{Cited in Whitaker v. Bramson, Case No. 17,526.}

Rule to show cause why the judgment rendered in this case should not be opened.

The plaintiff produced a bond executed by the defendant, to the plaintiff, both subjects of the king of the United Kingdoms of Great Britain and Ireland, and at the time, residents in Ireland, bearing date in 1801, with a warrant of attorney annexed, to confess judgment thereon; under which power, this judgment was entered.

The defendant, in support or the rule, contended, that judgment had long since been entered upon this bond, in Ireland, as appeared by the following endorsement on it:—"Judgment entered the 29th of October 1803;" consequently, that there no longer remains any remedy on the bond; but an action should have been brought on the judgment. It was also objected, that according to the practice of the courts of this state, as well as of the English courts, judgment upon a warrant of attorney could not be entered up after ten years from the time the money became due, without leave of the court, upon a motion for that purpose; and the judgment in this case was entered seventeen years after.

In answer to these objections, it was insisted—1. That the entry upon the bond is not sufficient or proper evidence, to prove that a judgment had been entered up prior to the present; and if it were, still, the warrant authorizes the entering up of judgments;—and 2. That the rule as to the necessity of obtaining leave of the court after ten years, is only applicable to cases where the plaintiff has been within the state during that time.

Cases cited, M'Clure v. Dunkin, 1 East, 436; Drake v. Mitchell, 3 East, 251.

Charles J. Ingersoll, for plaintiff.

Mr. Gibson, for defendant.

WASHINGTON, Circuit Justice. The first objection is fatal to this judgment. The proof of a prior judgment is not given by the defendant, but appears upon the bond and warrant of attorney, upon which this judgment was rendered, and which the plaintiff himself gives in evidence, to support the present judgment. Taking it, then, as proved, that a judgment was entered on the 29th of October, 1803, the warrant of attorney was then functus officio.

As to the argument, that the warrant authorizes the attorney to confess a judgment or judgments, in the plural, there is nothing in it; the latter expression could only apply to an imperfect judgment, which might be set aside, or reversed for error. It could never contemplate the existence of two valid and subsisting judgments, at the same time, and upon the same bond. Rule made absolute.

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