FIELD v. GIBBS et al.

Case No. 4,766.
{Pet. C. C. 155.}[1]

Circuit Court, D. New Jersey. Oct. Term, 1815.

SUIT UPON FOREIGN JUDGMENT—OBJECTION TO RECORD IN RESPECT TO SERVICE AND APPEARANCE—APPEARANCE BY ATTORNEY—AUTHORITY.

1. In an action of debt, on a judgment obtained against the defendants in the court of common pleas of Pennsylvania, "one of the defendants pleaded, that he had not been served with process, and had not appeared in the suit in which the judgment had been entered. On a demurrer to this plea, it appeared from the record of the judgment, that there had been a general appearance by attorney, and that the pleadings had been entered by him for both defendants. The court overruled the demurrer.

{Cited in Lincoln v. Tower, Case No. 8,355.}

2. Nothing can be assigned for error, which contradicts a record.

{Cited in Kittredge v. Emerson, 15 N. H. 262; Wilcox v. Kassick, 2 Mich. 169; Dalton v. Luck, 16 Mo. 102; Baker v. Stonebraker, 34 Mo. 173; Downing v. Still, 43 Mo. 321.}

3. Facts, in opposition to the record of a judgment obtained in one state, cannot be alleged to contradict the judgment, in an action brought upon it in another state. A judgment, in one state, is conclusive between the parties in another state.

4. Construction of the act of congress of 26th May, 1790 {1 Stat. 122}, entitled "An act to prescribe the mode in which the public acts, records, and judicial proceedings in each state, shall be authenticated, so as to take effect in every other state." In a judgment obtained in one state, against a person residing in another state, who had no notice of the suit, the remedy of the defendant is by application to the court, in which the judgment was entered. The attorney and the plaintiff are answerable in damages to the defendant, so also is the officer to whom the process was delivered; if the judgment was entered by default.

{Cited in Taylor v. Carpenter, Case No. 13,785.}

5. An attorney, who enters an appearance in a suit, without authority, is answerable in damages, for the injury he may thereby have occasioned the parties.

{Cited in Lewis v. Sumner, 13 Mete. (Mass.) 272.}

This was an action of debt, brought against Joel Gibbs and Martin Gibbs, for two thousand seven hundred and three dollars and fifty-eight cents. The first count in the declaration, was for fourteen hundred dollars; upon a judgment, obtained by the plaintiff, against these defendants, in the court of common pleas for the county of Philadelphia, in the state of Pennsylvania. The Second count was for thirteen hundred and three dollars and fifty-eight cents, for goods sold and delivered. To this declaration, Martin Gibbs pleads, as to the first count, that at the time when the proceedings in the said count mentioned, were commenced, and always, before and since, he was a citizen of New Jersey, residing and commorant in the county of Burlington, in the said state; that no writ of summons or capias, or other process, was served upon him to answer the plaintiff in that suit, nor had he any notice or opportunity to defend himself in that suit; that he never

appeared in the said court in the said suit, nor did he ever consent to any of the proceedings, or authorise any person to consent for him, thereto; therefore he says, said judgment, as to him, is void. As to the second count he pleaded nil debet, and tendered an issue which was joined. To the plea in bar to the first count, the plaintiff demurred generally, in which there was a joinder by the defendant.

WASHINGTON, Circuit Justice. The question for the" consideration of the court is, whether the matter stated in the plea to the first count, is sufficient, in point of law, to bar the plaintiff from recovering upon the judgment set forth in that count. Upon examining the record of this judgment, it appears by the declaration, that Martin and Joel Gibbs, were attached to answer the plaintiff, in that suit; and both of the defendants appeared by John P. Ripley, their attorney, and pleaded several pleas. In every succeeding stage of that cause, until

the judgment was rendered, it is stated in the record, that both defendants appeared by the same attorney. The question then is, can the defendant, Martin Gibbs plead in bar of the count on this judgment, that he was not served with process, and did not appear in the cause, or authorise any person to appear for him? The general rule of lav., to which I know of no exception, is, that nothing can be assigned for error, nor can any averment be admitted, which contradicts a record. "A record," says Lord Coke (Co. Litt 200), "imports in itself such uncontrollable credit and verity, that it admits of no averment, plea, or proof to the contrary; for otherwise there would never be an end of the controversy."

If then, the present suit had been brought in a court of the state of Pennsylvania, there could have been no doubt as to the insufficiency of this plea; because it alleges facts, which are in direct opposition to the record. See the cases in 2 Bac. Abr. 219. Is there any difference where the action is brought in one state, upon a judgment rendered in another? I think not. In the case of Green v. Sarmiento [Case No. 5,760], which was tried in the Pennsylvania circuit court, in October, 1810, the court decided, that a judgment rendered in one state, is conclusive between the parties in every other state; precisely in like manner as it would be, had a suit been brought upon the judgment in a court of the state, where that judgment was rendered. The opinion given in that case, proceeded upon the ground, that the act of congress of the 26th May, 1790 [supra], was intended to carry into effect, that part of the first section of the fourth article of the constitution, which declares, "that congress may, by general laws, prescribe the manner in which the public acts, records, and judicial proceedings of the different states, should be proved, and the effects thereof" as evidence.

The constitution declares, that they shall be entitled "to full faith and credit;" and consequently, no law was necessary or would have been proper, to make them evidence. The law therefore in using the words, "full faith and credit," must have meant to express the effect to which they were to be entitled in other states. Such is declared by the title of the law to be the design of it If, to use the words of Lord Coke again, a record imports in itself such uncontrollable credit and verity, that it admits of no averment, plea, or proof to the contrary; and on this account, nothing would be heard in a Pennsylvania court, in contradiction to this record; can it be said, that a New Jersey court, in allowing this plea, gives to the judgment such faith and credit, as would be given to it in the state of Pennsylvania? It is impossible that this can be seriously asserted. But what it may be asked, is to be done, if the judgment has been obtained against a person, residing out of the state, who was never served with process, or even notified of the existence of the suit in which it was rendered.[2] I answer, that his remedy is the same, and no other, as would be open to him, if the suit had been brought in the state, where the judgment was rendered. The court in which the judgment was given, would upon motion, accompanied by sufficient proof, stay the execution, and set aside the judgment Most certainly, if the attorney, who,

without authority, entered the appearance, be not clearly able to answer in damages for the injury he has occasioned, the parties will be responsible. That the attorney in such case, is liable for such damages, there can be no doubt.

If the judgment was entered by default, for non-appearance upon a false return of the officer, the officer is liable. The injury complained of in this case, might have resulted, if the defendant had lived in Pennsylvania, and this suit been brought there; but he could not have pleaded the same matter in bar of the action on the judgment, which he has pleaded in this suit; nor can a sound reason be given, why it can be pleaded in this court I am therefore of opinion that the plea to the first count is bad, and that judgment upon that count must be for the plaintiff.

Judgment for the plaintiff.

[1] {Reported by Richard Peters, Jr., Esq.}

[2] See the case of Borden v. Fitch, 15 Johns. 121, where the principles decided in this case are discussed with great ability.