

Case No. 5,020.

FOY v. TALBURT.

{5 Cranch, C. C. 124.}¹

Circuit Court, District of Columbia.

March Term, 1837.

JUSTICE OF THE PEACE—JURISDICTION OF ACTIONS AGAINST EXECUTORS—EFFECT OF JUDGMENT.

1. A justice of the peace has not jurisdiction of an action against an executor; and money paid by the defendant in such a case, while in commitment upon a ca. sa. issued upon the judgment of the justice, was money paid by duress, and may be recovered in an action for money had and received.
2. A judgment of a justice of the peace, being in part for a matter not within his jurisdiction, is void in toto.
3. The plaintiff cannot in an action before a justice of the peace, recover upon a cause of action different from that stated in the warrant.

This was an action for money had and received, to recover money paid by the plaintiff [Mordecai Foy] while in commitment upon a ca. sa, issued upon a judgment of a justice of the peace against the plaintiff as executor de son tort of a living man, for damage done to land.

R. J. Brent for defendant [Jane Talburt], contended that money paid under valid process cannot be recovered, and cited 5 Wheeler, 89; Selden, 72; Cobb v. Curtiss, 8 Johns. 367; White v. Ward, 9 Johns. 231, 232; Phillips v. Hunter, 2 H. Bl. 414; Brisbane v. Dacres, 5 Taunt 144, 160; Marriot v. Hampton, 7 Term R. 269; 1 Wheeler, 232; Walker v. Ames, 2 Cow. 428; Norfolk v. Gantt [2 Har.&J. 435], in the court of appeals in Maryland.

Mr. Bradley, contra, admitted the law as cited; but it does not apply to a judgment void because the court which rendered it had not jurisdiction of the cause. It is not then, valid process; but wholly void.

The jury having been sworn, THE COURT, at the motion of Mr. Bradley, instructed the jury, that if, from the evidence, they should be of opinion that a judgment was rendered in 'this case by a justice of the peace against the present plaintiff as executor, and that upon such judgment a ca. sa. was issued, and the plaintiff committed to prison, and that while there he paid the said judgment and costs, then the said money was paid by duress. Verdict for the plaintiff, \$54.15.

¹ [Reported by Hon. William Cranch, Chief Judge.]