IRWIN v. HENDERSON et al.

Case No. 7,084.

[2 Cranch, C. C. 167.][1]

Circuit Court, District of Columbia. April Term, 1819.

LIEN OF JUDGMENT—ATTACHMENT—PRACTICE.

1. The act of limitations of Virginia of the 19th of December, 1792 (page 107), is not a bar to a judgment, if execution has been issued thereon, and returned within ten years after the date of the judgment
2. If the plaintiff, demurs to the defendant's plea to a chancery attachment, he thereby waives his right to move to strike out the plea, on the ground that it was pleaded without giving special bail.

This was a chancery attachment, to recover the amount of a judgment at law obtained by the plaintiff [Thomas Irwin] against the defendants in the year 1805, for $901.83, with interest from the 26th of May, 1804 and costs. The present suit was commenced on the 20th of November, 1816. The defendant [Alexander] Henderson was discharged under the insolvent act in 1806. The bill states that he had since acquired property sufficient to pay the debt, which was in the hands of the defendant [James] Sanderson. The defendant Henderson appeared under the rule of this court, without discharging the attached effects, and pleaded that the judgment was rendered in 1805, more than ten years before the commencement of this suit; that in January, 1806, the plaintiff issued a ca. sa. which the marshal returned "countermanded." That, on the 8th of February, 1813, the plaintiff sued out a fi. fa. upon the judgment, which was returned "no effects," and that the defendants did not at any time within ten years before the commencement of this suit ever promise or agree to come to any account for, or to pay, or in any way satisfy the complainant any money or other thing for, or on account of, the said judgment, or any other debt or demand. To this plea, there was a general demurrer and joinder.

Mr. Jones, for plaintiff, moved the court to strike out the plea, because the defendants had not given the security required to dissolve the attachment, contending that the rule of court only allowed the defendants to appear and answer, but not to plead, without dissolving the attachment.

THE Court, however, (THRUSTON, Circuit Judge, absent,) was of opinion, that by demurring to the plea, the plaintiff had waived his right to move to strike out the plea for that cause; but gave no opinion whether it would have been good cause for striking out the plea if the motion had been made before the demurrer.

THE COURT gave judgment for the plaintiff upon the demurrer, being of opinion that where an execution has been returned, there is no limitation to the revival of the judgment.

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