

PEYATTE ET AL. V. ENGLISH.

[Hempst. 24.]¹

Superior Court, Territory of Arkansas. Oct., 1824.

PLEADING—WHAT THE PLEA MUST
CONTAIN—PLEA IN BAR—INSOLVENT ESTATE.

1. Every plea must contain an answer to the whole cause of action or some certain part of it.
2. A plea that an estate is insolvent, is not a good plea in bar.
3. If the administrator of an insolvent estate pursues the course pointed out by law, he cannot be held personally liable.

[This was an action by James Peyatte and wife against Simeon English, administrator to John English.]

Before JOHNSON, SCOTT, and TRIMBLE, JJ.

OPINION OF THE COURT. This is an action of debt, brought by the plaintiff against the defendant, as administrator of John English, deceased, upon an obligation executed by the intestate to the plaintiff. The defendant has pleaded in substance that the estate of which he is administrator is insolvent, and to this plea the plaintiff has demurred, and the only question presented to the court is, whether the plea is good as a bar to the action. We are of opinion that it is not, because, according to the well-established rules of pleading, every plea must contain an answer to the whole cause of action set out in the declaration, or to some certain part of it. Steph. Pl. 215; 6 Com. Dig. "Pleader," 3 M. 40, 41. The plea in question is not an answer to the whole declaration, for the reason, that although the estate may be insolvent and unable to discharge the full amount of debts against it, yet it may be able to pay a portion of them. It is not an answer to any certain claim of the plaintiff; because the plea does not state what part of the debt the estate is able to pay, and even then it would not be good. On these

grounds, we think the plea insufficient. But it has been argued, that unless the defendant be allowed in this action to plead the insolvency of the estate, he must be subjected personally to liability in another action brought upon this judgment. The answer to this is, that if the defendant has taken the legal steps and pursued the course pointed out by the administration law in relation to insolvent estates, he cannot be injured in his individual character, in any action which may be brought against him on the judgment which may be rendered in this case. Demurrer sustained.

¹ [Reported by Samuel H. Hempstead, Esq.]

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