

REED v. ROSS.

[Baldw. 36.]¹

Circuit Court, E. D. Pennsylvania. Oct. Term, 1829.

PLEADING AT LAW—ACTION ON
JUDGMENT—PLEA.

“Nil debet” is not a good plea to an action brought in this court to a judgment obtained in the circuit court of the United States for the district of Delaware.

[Cited in *Baxley v. Linah*, 16 Pa. St. 248.]

[This was an action of debt by William Reed, a citizen of Pennsylvania, against Maria G. Boss, a citizen of Delaware, administratrix, etc., of David Boss, and others. Heard on demurrer to plea.]

J. M. Read, for plaintiff.

This is an action brought on a judgment obtained by the plaintiff against the defendant in June, 1827, in the circuit court of the United States for the district of Delaware. The defendant pleads “nil debet,” to which plea the plaintiff demurs, and the defendant joins in the demurrer. The question is whether nil debet is a good plea to an action of debt upon the judgment rendered as above. An action of debt lies on a judgment within or after a year subsequent to the recovery. 1 Chit Pl. (Ed. 1809) 103. Action of debt lies on records, or on judgments, &c. Where the record is the ground of the action, and not merely inducement, nil debet is no plea. 2 lid. Raym. 1501-1503; *Wheatley v. Lane*, 1 Saund. 218, note 4; 1 Chit. 480. There can be no averment of record or its validity. This is the case of a judgment in the circuit court of the United States, and an action of debt on it in another. Const. U. S. art. 4, § 1; Acts Cong. May 26, 1790 [1 Stat 122], and March 27, 1804 [2 Stat. 298]. The courts of the United States regard a judgment in another

circuit as one county in Pennsylvania would regard a judgment in another. *Armstrong v. Carson's Ex'rs* [Case No. 543]; *Green v. Sarmiento* [Id. 5,760]; *Field v. Gibbs* [Id. 4,766]; *Mills v. Duryee*, 7 Cranch [11 U. S.] 486; *Johnson v. Dessont* [Id. 486]; *Hampton v. M'Connell*, 3 Wheat. [16 U. S.] 234; *Montford v. Hunt* [Case No. 9,725]; *Bryant v. Hunter* [Id. 2,068]; *Biddle v. Wilkins*, 1 Pet. [26 U. S.] 686, 692; *Maybew v. Thatcher*, 6 Wheat [19 U. S.] 129. On a general demurer *nil debet* is a bad plea, however it might be if issue had been taken upon it. Judgments in sister states are not to be taken as foreign judgments. *Benton v. Burgot*, 10 Serg. & E. 240; *Evans v. Tatem*, 9 Serg. & B. 252, 259. In New York they have come to the same conclusion. In Massachusetts, unsettled. Act March 3, 1797, § 6; 1 Story's Laws, 465 [1 Stat. 513]. This is the case of an action of debt simply and directly on the judgment, not the case of a *devastavit*, or where the judgment is mere inducement. The cases cited were of judgments against the party in his lifetime, but the principle is the same if against an executor or administrator. The judgment should have the same effect here as in the district where it was rendered. This principle does not apply to liens on lands, or distribution of effects. 1 Saund. 336; Tidd, Prac. tit "Form of a Judgment against an Executor," 186. This judgment is conclusive as to assets. *People v. Judges of Ct of C. P. Erie Co.*, 4 Cow. 445, 447; *Swearingen v. Pendleton*, 4 Serg. & R. 389; 1 Rolle, Abr. 603, pl. 2; 2 D'Anv. Abr. 503; 1 Lift 404; 2 Hayes, 301; 9 Serg. & E. 259.

Mr. Ingraham, for defendant.

No case has been cited where the judgment was against an executor or administrator. The act of congress relates to judgments in the state courts, not to the court of the United States. *Montford v. Hunt* [supra]. The party there took his chance. In *Mayhew v. Thatcher*, 6 Wheat [19 U. S.] 129, the only question

was, whether it was necessary to execute a writ of inquiry. *Carpenter v. Thornton*, 3 Barn. & Aid. 52. If this suit had been brought in the circuit court of Delaware, would this plea have been good? Toll. Ex'rs (Ingraham's Ed.) 455; 2 Ld. Raym. 1502; *Burnet v. Andrews*, 1 Saund. 219; 2 Tidd, Prac. (8th Ed.) 1113; 2 Band. (Va.) 303. No objection made to the plea.

Mr. Bead replies, in conclusion.

Judgment on the demurrer for the plaintiff.

¹ [Reported by Hon. Henry Baldwin, Circuit Justice.]

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