

SEDAM V. TAYLOR ET AL.

{3 McLean, 547.}¹

Circuit Court, D. Indiana.

May Term, 1845.

MARSHAL—FAILURE TO TAKE SUFFICIENT
SECURITY—PLEADING AT LAW—PLEA IN BAR.

1. To an action on a marshal's bond, for taking insufficient security on a replevin bond, a plea that a levy was made on goods and chattels, lands and tenements, sufficient to satisfy the judgment, is good in bar.
2. Such a plea is good in bar to an action brought on an injunction or appeal bond.

At law.

Mr. Wright, for plaintiff.

Morrison & Bright, for defendants.

OPINION OF THE COURT. This action is brought on the official bond given by the defendant Taylor, as marshal, for taking insufficient security on a replevin bond. The defendants pleaded that, after the taking and return of the replevin bond, a fi. fa. was issued and placed in the hands of the marshal, who, before the bringing of this suit, did levy on divers goods and chattels, lands and tenements of the said sureties in the replevin bond; to the full value of the judgment interests and costs, which levy remains undisposed of, &c. To this the plaintiff replies, that the lands and tenements levied upon by the fi. fa. were subject to a prior lien of a judgment against the said sureties, for the sum of \$2,760.38, on which execution was issued, and the above land sold, the proceeds of which sale were insufficient to pay that judgment, &c. To this replication, the defendants demurred.

The replication is bad, as it does not answer the plea. In the plea, the levy is alleged to have been on divers goods and chattels, lands and tenements. The plea does not answer to the goods and chattels,

but to the lands and tenements only. The replication may be true, and the plea of the defendant may, notwithstanding, be a bar to the plaintiff's action. The sureties of the marshal were bound collaterally, for the performance of his duty. The plaintiff, in this action, seeks to make them liable, where the plea avers there was a levy on goods, &c., to the full value of the judgments. This is, clearly, a bar to the action. Such a levy is a bar to an action on an injunction or appeal bond. *Cass v. Adams*. 3 Ohio, 223; *M'Intosh v. Chew*, 1 Black. [66 U. S.] 289.

On leave, the replication was amended.

¹ [Reported by Hon. John McLean, Circuit Justice.]

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