

Case No. 14,310.

TYLER ET AL. V. HYDE ET AL.

{2 Blatchf. 399.}¹

Circuit Court, S. D. New York. July 1, 1852.

PLEADING AT LAW—MOTION TO STRIKE OUT PLEA.

The sufficiency, in point of substance, of a plea which is regular in form, cannot be inquired into on motion.

After the decision in this case [see Case No. 14,309], on the demurrer to the plea puis darrein continuance, the defendants, under the leave then given them to plead over, put in a special plea, which the plaintiffs now moved to strike out, on the ground that it was, in effect, a repetition of the plea puis darrein continuance which was adjudged bad. The defendants opposed the motion, and insisted that the plea was regular and valid because it pleaded the judgment and decision of the circuit court of the United States for the Eastern district of Louisiana, as it now stands upon the records of that court.

Edwin W. Stoughton, for plaintiffs.

George R. J. Bowdoin, for defendants.

BETTS, District Judge. The court will not, on this motion, enter into a consideration of the sufficiency of the plea in point of substance, or inquire whether it is founded upon the rightful decree of the circuit court in Louisiana. It may, possibly, become necessary for this court to determine, when the proofs are presented, which decree of that court is the valid one governing the case, should two be certified from it which are in conflict in particulars affecting the merits. The privilege accorded to the defendants to plead over, was subject to no restrictions, and they are entitled under it to interpose any plea which would have been good if put in independently of that leave. The defendants plead at their peril, and their plea, being regular in

form, cannot be displaced by motion. The plaintiffs must demur to it or take issue on the facts it sets up.

Motion denied.

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