

LEE *ET AL.* V. TERBELL *ET AL.*

*Circuit Court, S. D. New York.*

October 22, 1887.

JUDGEMENT—PLEADING JURISDICTIONAL FACTS—CODE CIVIL PROC. N. Y. § 582.

Under Code Civil Proc. N. Y. § 582, providing that in pleading a judgment it shall not be necessary to allege the jurisdictional facts, but that it may be stated that it was “duly given or made,” an allegation of the appointment of commissioners by a judgment “duly made by and entered in” a certain court is sufficient.

At Law. Demurrer to the complaint.

Richard H. Lee, Henry H. Eaton, C. E. Stuart, and R. T. Barton, plaintiffs, Sued Henry S. Terbell, William J. Best, *et al.*, alleging that they were appointed special commissioners by a judgment duly made and entered in the circuit court of Richmond, Virginia, and that the defendants made certain bonds to them. Defendant Terbell demurred, al

leging that the judgment under which the commissioners were appointed was not sufficiently set out.

*P. Eckerson*, for plaintiffs.

*John Winslow*, for defendants.

WALLACE, J. Upon the argument of the demurrer to the complaint, although no doubt was entertained that the second ground of demurrer was not tenable, it was doubted whether the first ground was not well taken; and I was inclined to the opinion that the averments were not sufficient to show that the plaintiffs had legal capacity to sue, because of the failure to allege the facts showing that the circuit court of the city of Richmond had jurisdiction of the subject-matter of the action, and of the person of the defendants therein. Section 532, Code Civil Proc., dispenses with the necessity of alleging these jurisdictional facts; and the complaint conforms to the requirements of that section by the averments that the judgment which authorized the plaintiffs to maintain suit in their official character was "duly made."

The demurrer is therefore overruled, with costs.