

HICKMAN v. MACON COUNTY.

*Circuit Court, E. D. Missouri, N. D.*

May 27, 1890.

ACTION ON JUDGMENT.

It is no objection to a suit on a judgment that the time within which an execution could be issued on the judgment has not expired.

At Law.

This was a suit in two counts, the first count being on coupons of certain county bonds, and the second count on a judgment recovered by the plaintiff against the defendant in the United States circuit court for the western district of Missouri, in the year 1883, before Macon county was attached to the eastern judicial district of Missouri. Defendant disputed the right to recover on the judgment, for the reason that an execution might yet be sued out on the judgment in the Western district, and also for the reason that, under the fourth section of the act of February 28, 1887, (24 St. U. S. 425,) the case might be transferred from the western district to this, the eastern, district of Missouri.

*Thos. K. Skinker*, for plaintiff.

*Robt. G. Mitchell*, for defendant.

THAYER, J., (*orally, after stating the facts as above.*) It has been held that a suit on a judgment may be maintained in the same court in which

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the judgment was recovered, although the time has not expired within which; an execution may be sued out on the judgment. Such rulings, it seems, are based on the ground that the right to an execution on a judgment is merely cumulative, and does not take away the commonlaw right to sue on an unpaid judgment as often as the judgment creditor elects to sue. *Simpson v. Cochran*, 23 Iowa, 81, 92 Amer. Dec. 410, and cases cited. This doctrine would probably have to be accepted with the qualification that, in case of more than one judgment being recovered on the same demand, a payment of either in full, with costs, would render the judgment creditor responsible for the costs made in the other proceedings. The law seems to be very well settled, however, that suits on judgments in courts other than that in which they were recovered; may be maintained at the will of judgment creditors, regardless of the fact that the time allowed, either by statute or the commonlaw, for taking out an execution on the original judgment, has not expired. *Simpson v. Cochran*, *supra*; *Kingsland v. Forrest*, 52 Amer. Dec. 232; Freem. Judgm. § 432, and citations. Judgment will be entered for plaintiff.