The next question to be decided is, whether the naturalization of William Currie conferred upon his daughter the rights of a citizen, after her coming to, and residing within, the United States, she having been *a resident in a foreign country at the time when her father was naturalized? [*183

Whatever difficulty might exist as to the construction of the 3d section of the act of the 29th of January 1795, in relation to this point, it is conceived, that the rights of citizenship were clearly conferred upon the female appellee, by the 4th section of the act of the 14th of April, 1802. This act declares, that the children of persons duly naturalized under any of the laws of the United States, being under the age of 21 years, at the time of their parent's being so naturalized, shall, if dwelling in the United States, be considered as citizens of the United States. This is precisely the case of Mrs. Gordon. Her father was duly naturalized, at which time, she was an infant; but she came to the United States before the year 1802, and was, at the time when this law passed, dwelling within the United States.

It is, therefore, the unanimous opinion of the court, that, at the time of the death of James Currie, Mrs. Gordon was entitled to all the right and privilege of a citizen; and therefore, that there is no error in the decree of the circuit court for the district of Virginia, which is to be affirmed, with costs.

Judgment affirmed.

McKnight *v.* Craig's administrator.

Plea by administrator.—Costs on reversal.

In Virginia, if the defendant die after interlocutory judgment and a writ of inquiry awarded, his administrator, upon *scire facias*, can only plead what his intestate could have pleaded.[1]

In all cases of reversal, if this court directs the court below to enter judgment for the plaintiff in error, the court below will, of course, enter the judgment, with the costs of that court.

Error to the Circuit Court for the district of Columbia, sitting at Alexandria, in an action of debt, upon a judgment and *devastavit*, brought by McKnight against Craig, as executor of Mitchell.

After an office judgment by default against Craig, and a writ of inquiry awarded, in November 1807, at the rules, Craig died. At the July term 1808, his death was suggested, and a *scire facias* awarded against J. G. Ladd, his administrator. At the July term *1809 (being the fourth term after the office judgment), Ladd appeared by his attorney, and [*184 offered to plead a special plea of *plene administravit*, by himself, as administrator of Craig, to which the plaintiff objected, but the court overruled the objection, and admitted the plea to be filed.

The substance of the plea was, that Craig had made a deed of trust of certain real estate, to secure Ladd for his indorsements for Craig, at the bank, by which deed, Craig covenanted to indemnify Ladd. That Ladd had indorsed the notes of Craig to the amount of $8000, which were discounted at the bank, and continued the indorsements to the time of Craig's death. That the bank had recovered judgment against Ladd, as indorser of some of those notes, to the amount of $6009, and that Ladd had paid other of the

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[1] Janney *v.* Mandeville, 2 Cr. C. C. 31.

said notes to the amount of $3174, to avoid being compelled by suit to pay the same. That the estate, mentioned in the deed of trust, having been sold, produced only $4095, whereby the estate of Craig became indebted to Ladd in the sum of $5138, and so much of the estate of Craig was liable to be retained by Ladd in satisfaction. That Craig was bound to several other creditors, by specialties, in large sums, amounting to $10,000, and suits thereupon had been brought against Ladd, and were now pending; that he had in his hands personal estate of Craig to the amount of $960 only, which was liable to be retained by him, in satisfaction of the damage he had sustained by his indorsements for Craig, by virtue of the covenant for his indemnification, and to pay the specialty creditors aforesaid.

To this plea, the plaintiff replied the office-judgment and writ of inquiry awarded against Craig in his lifetime, in this suit; the subsequent death of Craig, and the *scire facias* against Ladd, as his administrator, returnable to November term 1808. The defendant rejoined, that Craig died on the —— day of ——, in the year 1807. *To this rejoinder, the plaintiff demurred, and assigned as cause of demurrer, that the rejoinder was no answer to the replication, and was a departure from the plea.

*185]

The court below being of opinion that the plea was good, and the replication bad, rendered judgment upon the demurrer for the defendant. The plaintiff sued out his writ of error.

E. J. Lee, for the plaintiff in error, contended, 1. That the office-judgment against Craig in his lifetime, was a debt superior in dignity to the debts stated in the plea; and 2. That the defendant, coming in upon *scire facias*, could only plead such plea as his intestate could have pleaded.

1. The office-judgment was regularly obtained, agreeable to the act of assembly of Virginia. (P. P. 80, § 36.) And according to the 42d section of the same act, it became final, after the next succeeding court, it not having then been set aside. It being an action of debt, the judgment was not interlocutory, but final. 3 Bl. Com, 395; 1 Tidd 508. Being a final judgment in the lifetime of Craig, it is entitled to a priority of payment before specialty debts.

2. But if it was only an interlocutory judgment, yet the defendant, upon the *scire facias*, could plead nothing but what the intestate could have pleaded. The act of assembly of Virginia (P. P. 110, § 20) is copied almost *verbatim* from the English statute of 8 & 9 Wm. III., c. 11, and is in these words: "And if the defendant die after such interlocutory judgment, and before final judgment, such action shall not abate, if the same were originally maintainable against the executors or administrators of such defendant, but the plaintiff shall and may have a *scire facias* *against his executors or administrators, to show cause why damages in such action should not be assessed and recovered by the plaintiff, and if such executors or administrators shall appear at the return of such writ, and not show or allege any matters sufficient to arrest the final judgment, &c., a writ of inquiry of damages shall thereupon be awarded, which being executed, judgment final shall be given for the said plaintiff," &c.

*186]

After such interlocutory judgment, the intestate could only allege matter in arrest of judgment, and his administrator can only do the same.

Upon this point, the case of *Smith* v. *Harmon*, 6 Mod. 142, and 1 Salk. 315, is decisive.

Swann, contrà.—An office-judgment in Virginia is a very different thing from an interlocutory judgment in England. It may be set aside, as a matter of right, by the defendant, at the next succeeding court, and he may plead any matter whatever, in the same manner as if no such judgment had been rendered. And by the long-established practice of Virginia, he may set it aside, at any subsequent term, by pleading an issuable plea to the merits. It is not true, therefore, that Craig could only have alleged matter in arrest of judgment. He might have pleaded anything that went to show that the plaintiff ought not to recover judgment against him.

Upon the death of the defendant, and the appearance of his administrator, it becomes a new suit, and the administrator ought to be permitted to plead anything that goes to show that the plaintiff ought not to recover judgment against him.

A debt founded upon a *devastavit* is not of so high dignity as a debt upon specialty. It is in nature of damages for a tort. It is a claim depending upon proof of matter of fact *in pais*.

*February 19th, 1810. MARSHALL, Ch. J., delivered the opinion of the court, to the following effect:—The act of assembly of Virginia, is copied almost literally from the English statute of 8 & 9 Wm. III., c. 11. The case in 6 Mod. is a decision expressly upon that statute, and is precisely in point, that the defendant upon the *scire facias* can only plead what the intestate could have pleaded; and that it is not to be considered as a proceeding against the representative of the deceased, but a continuance of the original action. The plea is such as could not have been pleaded in the original action, and is therefore bad. [*187

The judgment must be reversed, and the cause remanded for the defendant to plead to the original action, if he should think proper.(a)

To a question by *E. J. Lee*, the CHIEF JUSTICE answered, that if the plaintiff in error should obtain a judgment in the court below, it will, of course, be with costs. So, in all cases of reversal, if this court direct the court below to enter judgment for the plaintiff in error, the court below will, of course, enter the judgment with the costs of that court.

(a) The court below considered this case as coming within the act of congress of 24th September 1789, § 31 (1 U. S. Stat. 90), which authorizes the court "to render judgment for or against the executor or administrator, as the case may require." It does not appear, whether that act was taken into consideration by this court.