States has also declared, that in suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved. Any attempt to set up the wager of law, would be utterly inconsistent with this acknowledged right. So that the wager of law, if it ever had a legal existence in the United States, is now completely abolished. If, then, we apply the rule of the common law to the present case, we shall arrive, necessarily, at the conclusion, that the action of debt does lie against the executor, because the testator could never have waged his law in this case.

Upon the whole, the judgment of the Circuit Court is affirmed, with 6 per cent. damages, and costs.

[Practice. Pleadings.]

Siglar and Nall, Administrators of William Nall, deceased, *Plaintiffs in Error*,

v.

John Haywood, Public Treasurer of the State of North Carolina, *Defendant in Error*.

An executor or administrator is not liable to a judgment beyond the assets to be administered, unless he pleads a false plea.

If he fail to sustain his plea of *plene administravit*, it is not necessarily a false plea, within his own knowledge; and, if it be found against him, the verdict ought to find the amount of assets unadministered, and the defendant is liable for that sum only.

In such a case, the judgment is *de bonis testatoris*, and not *de bonis propriis*.

1823.

Siglar v. Haywood.

ERROR to the Circuit Court of Tennessee. This was an action of debt, brought in the Court below by Haywood, the defendant in error, against Siglar and Nall, the plaintiffs in error, upon a judgment obtained against their intestate, William Nall, in the Superior Court for the District of Hillsborough, in the State of North Carolina, for the sum of 2980 dollars and 5 cents. The defendants pleaded, (1) *Nil debet*, and (2) *Plene administravit*. The plaintiff replied to the second plea, that the defendants have, and on the day of commencing this suit had, divers goods, &c., whereof they could have satisfied the plaintiff for the debt aforesaid. On the trial, it appeared by the accounts exhibited by the defendants, that a part of the intestate's goods and chattels remained in their hands unadministered. On which, the plaintiff's counsel moved the Court to instruct the jury, that the plea of *plene administravit* was, therefore, false, and that on that ground, the plaintiff was entitled to his verdict on the whole issue. The instruction was given by the Court, to which the counsel for the defendants excepted. The jury returned a verdict for the plaintiff, for the sum of 2565 dollars and 16 cents debt, and 4429 dollars and 53 cents damages, for the detention thereof; and also found, "that the defendants have not fully administered all and singular the goods and chattels, rights and credits, which were of the decedent, and which came to their hands to be administered, previous to the issuing of the writ of capias in this cause, as the plaintiff in replying hath alleged."

1823.

Siglar v. Haywood.

Upon which, judgment was entered as follows: "Therefore it is considered by the Court, that the plaintiff recover against the defendants 2565 dollars and 16 cents, the residue of the debt aforesaid, in form aforesaid assessed, and also his costs," &c. And the cause was brought by writ of error to this Court.

Feb. 4th.

Mr. *Sergeant*, for the plaintiffs in error, (no counsel appearing for the defendant in error,) made the following points, together with several others which it is not thought necessary to state, because they are not noticed in the opinion of the Court.

1. That the Court erred in the above instruction given to the jury.

2. That the verdict was erroneous, because it did not find what goods and chattels, rights and credits of the intestate, or what amount thereof, remained in the defendants' hands unadministered.

3. The judgment was erroneous, because it is against the defendants generally, and *de bonis propriis*, when it ought to have been *de bonis testatoris*.

Under the first point he argued, that the law was well settled, that executors are no further chargeable than they have assets, unless they make themselves so by pleading a false plea, i. e. such a plea as would be a perpetual bar to the plaintiff, and which they *know* to be false, as *ne unques executor*, or a release to themselves. But if they

1823.

Siglar v. Haywood.

plead a former judgment by another person, *et nil ultra*, and the plaintiff replies *per fraudem*, yet judgment shall be *de bonis testatoris*.[a] The only plea that can involve the defendant in personal responsibility, (except as above stated,) *and that only for costs*, is a plea disputing the debt.[b] *Harrison* v. *Beecles*,[c] is in point. The plea there was *plene administravit*. It was proved, that the defendant had assets, but of less amount than the plaintiff's claim. It was contended, that the plaintiff was entitled to recover the whole amount. Lord Mansfield decided, after consultation with the other Judges, that he could only recover the amount of assets proved, which has been the law ever since.

Upon the second point, if an executor plead *plene administravit*, and issue is joined thereon, and the jury find, that the defendant had goods in his hands, but do not find the value, the verdict is void for uncertainty.[d]

As to the mode of entering judgment against an executor or administrator, and afterwards proceeding thereon, he cited 2 *Tidd's Pract.* 842. 894. 929. 1017—1020.

a 1 *Roll. Abr.* 931.

b 1 *Chitty's Pl.* 485. See form of plea, and note on it in 2 *Chitty*, 499. It agrees with the form used in this action. Under this allegation "hath not, nor on the day, &c. had," &c. the defendant may give in evidence any due administration of assets. 2 *Saund.* 220. note 3. *Chitty, ut sup.*

c Cited 3 *Term Rep.* 685. 690.

d *Co. Litt.* 227 *a*. Fairfax v. Fairfax, 5 *Cranch's Rep.* 19. Booth v. Armstrong, 2 *Wash. Rep.* 301. Harrison v. Beecles, 3 *Term Rep.* 688, 689. note.

1823.

Siglar v. Haywood.

Feb. 5th.

Mr. Chief Justice MARSHALL delivered the opinion of the Court. This case presents several questions of some difficulty; but, as the argument has been *ex parte*, and there are other points on which the judgment must necessarily be reversed, the Court will confine its opinion to those on which no doubt can arise.

At the trial of the issue of fully administered, the plaintiff's counsel moved the Court to instruct the jury "that as it appeared, by the accounts exhibited by the defendants, that a part remained in their hands unadministered, that the plea was, therefore, false, and that on that ground he was entitled to their verdict on the whole issue." This instruction was given by the Court, and to this opinion the counsel for the defendants excepted.

It is now well settled, and the case cited from *Cranch*, in the argument, is founded on the principle, that if an administrator fails to sustain his plea of fully administered, he is not, on that account, liable to a judgment beyond the assets to be administered. The plea is not necessarily false within his own knowledge; he may have failed to adduce proof of payments actually made. It is not required that the plea should state with precision the assets remaining unadministered; and an executor or administrator would always incur great hazard, if he were required to state and prove the precise sum remaining in his hands, under the penalty of being exposed to a judgment for the whole amount claimed, whatever it might be. To state a full administration, without proving it, would be useless. The rule and usage, there-

1823.

Siglar v. Haywood.

fore, is, that if the plea of fully administered be found against the defendant, the verdict ought to find the amount of assets unadministered, and the defendant is liable for that sum only. The instruction of the Court, on this point, is erroneous, and, consequently, the verdict and judgment founded on it, must be set aside and reversed.

The same error is in the verdict. Instead of finding the amount of assets remaining unadministered, it finds the whole amount claimed, which, as was decided in the case already mentioned, is clearly erroneous.

There is also additional error in the judgment which is rendered against the administrators, *de bonis propriis* instead of being *de bonis testatoris*. For these errors, the judgment must be reversed, and the verdict set aside, and the cause remanded for farther proceedings according to law.

Judgment reversed.

JUDGMENT. This cause came on to be heard on the transcript of the record of the Court of the United States for the seventh circuit in the District of East Tennessee, and was argued by counsel on the part of the plaintiffs in error. On consideration whereof, this Court is of opinion, that there is error in the record and proceedings of the said Circuit Court, in this, that the said Court instructed the jury, on the trial of the issue, on the plea of fully administered, that, as it appears by the accounts exhibited by the defendants, a part remained in their hands unadministered,

the plea was, therefore, false, and that, on that ground, the plaintiff was entitled to their verdict on the whole issue; and, also, in this, that the jury have found a verdict, on the plea of fully administered, against the defendants, without finding the sum unadministered; and, also, in this, that the judgment on the said verdict is absolute against the administrators themselves, instead of being, to be levied of the goods and chattels of their intestate, in their hands to be administered. Whereupon it is considered by the Court, that the said judgment be reversed, and the verdict be set aside, and the cause remanded to the said Circuit Court, that further proceedings may be had therein according to law.

[Local Law.]

THE CORPORATION OF THE CITY OF WASHINGTON, and others, *Appellants*,

v.

PRATT, FRANCIS, and others, *Respondents*.

Under the 8th section of the act of 1812, to amend the act for the incorporation of the city of Washington, a sale of unimproved squares or lots in the city, for the payment of taxes, is illegal, unless such squares and lots have been assessed to the true and lawful proprietors thereof.

The lien upon each lot, for the taxes, is several and distinct, and the purchaser of each holds his lot unencumbered with the taxes due on the other lots held by his vendor.