each individual depend upon the number who are entitled, and this number is a fact, which must be inquired into, before the amount to which any one is entitled can be fixed. If this fact were to be examined, in every case, it would subject the executors to be harassed by a multiplicity of suits, and if it were to be fixed by the first decree, that decree would not bind persons who were not parties. The case cannot be distinguished from the rule which is applied to residuary legatees. The bill filed in this case, does not even state the number of persons belonging to the different families, nor to that family in whose behalf the suit is brought; nor does it assign any reason for not making the proper parties. It does not allege, that the other legatees refuse to join, as plaintiffs, or that they cannot be made defendants. For this cause, the decree must be reversed, and the case remanded to the circuit court, that the plaintiffs may amend their bill.

*682] *The objections to the report, are not entirely unfounded, and it is not quite satisfactory. It does not, we think, show with sufficient clearness, whether the plaintiffs in that court were entitled to the first bond. But as the case must go back, to amend the bill, a new report will, of course, be made; and if that shows, that the funds of the estate were sufficient to pay the debts and legacies, without applying this bond to that purpose, the plaintiffs below will be entitled to that also.

This cause came on, &c.: On consideration whereof, it is decreed and ordered by this court, that the decree of the circuit court in this cause be and the same is hereby reversed and annulled; and it is further ordered, that the cause be remanded to the said circuit court, for further proceedings to be had therein, and that the plaintiffs may amend their bill.

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*683] *William B. Alexander, Francis Swann and Thomas Swann, Plaintiffs in error, *v.* Elisha Brown, Defendant in error.

Execution.—Forthcoming bond.

Under the law of Virginia, which directs the sheriff holding an execution against the goods and effects of defendants, to take forthcoming bonds for the property levied upon by the execution, and authorizes execution to issue for the amount of the debt due upon the original execution, after ten days' notice to the obligors in the bond, of the motion for execution, the property levied on not having been re-delivered according to the condition of the bond; if the notice given to the obligors, of the plaintiff's intention to proceed is sufficiently explicit to render mistake impossible, it will be sustained, although the whole of the defendants in the original execution, may not be named in the notice. Nice and technical objections to the notice, where every purpose of substantial justice is effected, ought not to be favored. p. 684.

Error to the Circuit Court for the District of Columbia.

This case was argued by *Swann*, for the plaintiffs; and *Jones*, for the defendant. The material facts of the case appear in the opinion of the court.

Marshall, Ch. J., delivered the opinion of the court.—This was a motion to the circuit court for the district of Columbia, sitting in Alexandria, for an award of execution upon a forthcoming bond, taken in pursuance of the execution law of Virginia. That law directs, that if the owner of any goods or chattels, which shall be taken by virtue of a writ of *fieri*

facias, shall tender sufficient security to have the same goods and chattels forthcoming, at the day of sale; it shall be lawful for the sheriff or other officer, to take bond from such debtor and sureties, payable to the creditor, reciting the service of such execution, and the amount of the money or tobacco due thereon, and with condition to have the money or tobacco forthcoming, at the day of sale appointed by such sheriff or other officer; and shall thereupon suffer the said goods and chattels to remain in the possession, and at the risk of the debtor, until that time. And if the owner of such goods and chattels shall fail to deliver up the same, according to the condition of the bond, or pay the money or tobacco mentioned in the execution, such sheriff or other officer, shall return the bond to the office of the clerk of the court, from whence the execution issued, to be there safely kept, and to have the force *of a judgment; and thereupon, it shall be lawful for the court, where such bond shall be lodged, upon the motion of the person to [*684 whom the same is payable, his executors or admistrators, to award execution for the money and tobacco therein mentioned, with interest thereon from the date of the bond, till payment, and costs; provided the obligors, their executors or administrators, or such of them against whom execution is awarded, have ten days' previous notice of such motion.

In this case, the condition of the bond recited a *fieri facias* against William B. Alexander and Richard B. Alexander, but was levied on the property of William B. Alexander only. The bond was executed by William B. Alexander, and his sureties. The notice of the motion to award execution on this bond, was addressed to the obligors, and imported that the motion was to award execution on their forthcoming bond, bearing date, &c., and taken by virtue of a writ of *fieri facias* issued, &c., "in my name, against William B. Alexander, &c." On the motion, the forthcoming bond, and the execution on which it was taken, were shown to the court; and the proceedings were regular in all respects, except that the notice stated the bond to be taken by virtue of a writ of *fieri facias*, issued against William B. Alexander, whereas, it was in fact issued against William B. Alexander and Richard B. Alexander. It was admitted, that this was the execution on which the forthcoming bond was taken, and the only execution in which the said William B. Alexander was a party. The counsel for the defendants took exceptions to the notice, but the court gave judgment on the motion; which judgment is brought before this court by a writ of error.

The act of assembly prescribes, that the forthcoming bond shall recite the material parts of the execution on which it is taken, but gives no other direction respecting the notice, than that it shall be served ten days before the motion. Its sole purpose is to inform the party, that the motion is to be made, thereby enabling him to show that the money has been paid; or, that for any other reasons, execution ought not to be awarded. If it gives him the information, which enables him to do this, it effects all the substantial purposes of justice. A false recital of the execution would be fatal, because it might mislead the obligor; but in this case, the execution was against William B. Alexander, though not against him alone. He could not mistake the case in which the motion was to be made, because, it is admitted, that this was the execution on which the bond was taken, and the only execution in which the said William B. Alexander was a party.

After judgment has been rendered, an execution issued thereon and

levied, the property restored to the debtor, on this bond *to produce it on the day of sale, and his failure to do so, we do not think, that nice and technical objections to the notice, where every purpose of substantial justice is effected, ought to be favored. The law only requires notice, and where the notice is sufficiently explicit, to render mistake impossible, we think it justifies the award of execution. The judgment is affirmed, with costs and damages, at the rate of six per centum per annum.

Judgment affirmed.

*686] *Richard Biddle, Administrator of John Wilkins, *v.* James C. Wilkins.

Action on judgment by administrator.—Pleading.—Profert.

The plaintiff, as administrator of W., had brought a suit in the district court of the United States for the western district of Pennsylvania, and recovered a judgment; he instituted a suit in the district court of the United States of the state of Mississippi, against the defendant in the original suit; the defendant pleaded, that, by the orphans' court of Adams county, in the state of Mississippi, where the defendant resided, he had been appointed the administrator of W., and had continued to act in that capacity; *Held*, that the debt due upon the judgment obtained in Pennsylvania, by the plaintiff, as administrator of W., was due to him in his personal capacity, and it was immaterial, whether the defendant was or was not administrator of W., in the state of Mississippi; that would not, in any manner, affect the right of the plaintiff; the plea tenders an immaterial issue, and is bad on demurrer. p. 691.

Where the court in which judgment is rendered, has not jurisdiction over the subject-matter of the suit, or where the judgment, upon which suit is brought is absolutely void, this may be pleaded in bar; or may, in some cases, be given in evidence, under the general issue, in an action brought upon the judgment.[1] p. 691.

The general rule is, that there can be no averment in pleading against the validity of a record, though there may be against its operation; and it is upon this ground, that no matter of defence can be pleaded in such case, to a suit on a judgment, which existed anterior to the judgment. p. 692.

It has become a settled practice, in declaring in an action upon a judgment, not, as formerly, to set out in the declaration the whole of the proceedings in the original suit, but only to allege generally, that the plaintiff by the consideration and judgment of that court, recovered the sum mentioned therein, the original cause of action having passed *in rem judicatam*. p. 692.

In an action upon a judgment recovered in favor of an administrator, the plaintiff is not bound to make a *profert* of the letters of admininistration; that it is not necessary, in actions upon such judgments, that the plaintiff name himself as administrator, follows, from his not being bound to make *profert* of the letters of administration, and when he does so name himself, it may be rejected as surplusage. p. 692.

After judgment recovered in a suit by an administrator, the debt is due to the plaintiff in his personal capacity, and he may declare that the debt is due to himself. p. 693.

Error to the District Court of the United States for the Mississippi district. This was an action of debt, brought in the court below, upon a judgment obtained by the plaintiff, as administrator, against the defendant in

[1] In an action upon the judgment of a court of another state, the defendant may show by plea, that the court had no jurisdiction either of the person or subject-matter. Shumway *v.* Silliman, 4 Cow. 292; s. c. 6 Wend. 447; Starbuck *v.* Murray, 5 Id. 148; Thompson *v.* Whitman, 18 Wall. 457. Though the record show a return of personal service upon the defendant, it may be disproved, in an action on the judgment, to show want of jurisdiction. Knowles *v.* Logansport Gas-light and Coke Co., 19 Wall. 58.