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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.<sup>1</sup> 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 administration; 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

<sup>1</sup> 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. Siliman*, 4 Cow. 292; s. c. 6 Wend. 447; *Starbuck v. Murray*, 5 Id. 148; *Thompson v. Whit-*

*man*, 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.

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the district court of the United States for \*the western district of Pennsylvania.

The declaration was in the common form, averring the recovery by plaintiff, as administrator, &c. The defendant pleaded three pleas in bar. 1. *Ne unques administrator*. 2. That in January 1817, in the orphans' court of the county of Adams, in the state of Mississippi, the defendant was duly appointed sole administrator, and has continued to act in that capacity. 3. That the judgment was obtained *per fraudem*. The plaintiffs replied to the third plea, on which issue was joined; and demurred specially to the first and second, assigning as causes of demurrer, (1.) The said pleas set up matter which, if true, existed anterior to the judgment on which the suit was brought; and might have been urged, if effectual at all, against the original recovery. (2.) The said matters should have been pleaded in abatement, and not in bar. (3.) They contain averments against the record. (4.) That the matters therein contained are immaterial, and could not be set up after judgment, to avoid its effects, in the state from which the record came. (5.) They are in other respects uncertain, informal, and insufficient. Joinder in demurrer. The judgment of the district court was in favor of the defendant, sustaining both pleas as sufficient.

*Coxe*, for the plaintiff in error, contended:—1. The first plea is clearly defective. The plaintiff, in his representative character, had sued in the state of Pennsylvania, and recovered a judgment. In this subsequent action, brought upon that judgment, the demand is a personal one. He need not name himself administrator, but may sue and recover in his own name. 2 *Ld. Raym.* 1215; 1 *Doug.* 4; 2 *T. R.* 126; 2 *Phil. on Ev.* 290. He need not make *profert* of the letters of administration, and in this case, no such *profert* is in fact made. Even in action for an escape out of execution, on a judgment obtained as administrator, he need not style himself administrator, nor make *profert*. *Hob.* 38. In such cases, if he do sue in the second action, in his representative character, and so designate himself, it will be held mere surplusage, and can in no degree vary the relative rights of the parties. 1 *Vern.* 119; 16 *Mass.* 71; *Ibid.* 533. It would be a bad plea, that plaintiff had not been appointed administrator in the state where the second action is brought, (16 *Mass.* 533), for in such case, his right to sue is derived from the judgment which he has obtained, and is wholly independent of the letters of administration. 9 *Cranch* 151.

The judgment obtained in the district court of Pennsylvania, is conclusive evidence of the representative character of \*the plaintiff, as well as of the amount of the debt. At common law, in an action of debt [\*688 on the judgment, or in *scire facias*, the defendant can plead nothing which existed anterior to the original judgment, or might have been pleaded in bar to the original recovery. 1 *Chit. Pl.* 250; 8 *Johns.* 77; 2 *Ld. Raym.* 853; *Cro. Eliz.* 283; 6 *Com. Dig.* 306-7, tit. *Plead.* 2 *D.* 1. A judgment obtained in one of the courts of the Union, has the same validity in other federal courts, as a judgment in a state court has at common law, within the same jurisdiction, or as it possesses under the constitution and law of the United States, in a sister state. *Montford v. Hunt*, 3 *W. C. C.* 28; *Bryant v. Hunter*, *Ibid.* 48. The true test by which the validity of the plea is to be settled, is to ascertain whether it would have been held good in an action

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brought on the judgment, in the same court where the judgment was had. The cases already cited are decisive of that question.

2. The second plea is open to the same objections which exist against the first, and is otherwise informal and defective. It is argumentative; the mere fact that he was appointed administrator of James C. Wilkins, by the orphans' court in Adams county, furnishes no exemption from suit. It leaves the whole substance of the defence set up, to be made out by inference and argument, to wit, that plaintiff was not such administrator; which however, is only thus inferentially denied. This, if substantially a defence, should have been pleaded to the original action; and therefore, cannot avail the party in the present stage of the proceedings. Even if treated now as a plea to the original demand, it is essentially defective, inasmuch as it does not aver that the defendant had obtained letters of administration, prior to the institution of the suit in Pennsylvania. It would be a monstrous doctrine to introduce, that a party, after a suit has been instituted against him in one jurisdiction, may defeat all the beneficial results of a judgment, by obtaining letters of administration in another state.

3. The first plea, which in terms traverses the fact that plaintiff is administrator, and the second, which argumentatively rests upon the same ground, are both bad, as pleas in bar. In the case of *Childress v. Emory et al.*, 8 Wheat. 642, this court recognised the doctrine, that the objection that plaintiffs were not executors, must be taken advantage of by plea in abatement.

*Baldwin and Jones*, for defendant.—It will be admitted, that the first plea is defective, and no effort will be made to sustain the judgment of the district court in reference to that.

The second plea is, however, considered as furnishing a valid \*689] defence, and its character and effects have been wholly misapprehended by the adverse counsel. The demurrer admits, that defendant was the sole administrator of Wilkins, from 1817 till the institution of this suit. Under the testamentary system of Mississippi, where he resided, a debt due to the deceased is assets in the hands of the administrator, and is included in the inventory, as so much money. The plaintiff sued as administrator, and the defendant was, at the time, administrator, within the jurisdiction in which the action was instituted. Every cause of action existing there, was necessarily embraced in the powers of the party, who was alone recognised there as the personal representative of the deceased. He was bound there to account for it, and to distribute it; he was prohibited by law from sending the assets out of the state; he could not legally pay any debt, without the sanction of the court. That which he is prohibited from doing directly, he will not be compelled to do indirectly. If sued by creditors and distributees, upon his official bond, he must be responsible to them for the whole amount of the inventory; and he cannot be discharged, by showing payment to plaintiff. There is no such thing as an auxiliary administration. 9 Mass. 355. Each administrator is independent of the other; each derives his power from a competent authority, and each is independent of the other, within his own sphere. The residence of the deceased may determine the rule of distribution, and the relative rights of those entitled to the estate; but the concession that final distribution is to

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be made according to the law of Pennsylvania, though the record is wholly silent as to the place of his residence, leaves the question before the court entirely open.

But the courts in Pennsylvania have no jurisdiction over the defendant. He derives his power from the Mississippi court; to it, and to it alone is he responsible. He cannot be cited to account, or to pay over to creditors or distributees there; all this is to be done in Mississippi. This debt, therefore, which the defendant is answerable for, in his own state, and in the manner prescribed by the local law, cannot be assets in the hands of the Pennsylvania administrator.

The objection of the plaintiff that these matters existed anterior to the first judgment, and should have been pleaded in bar to the first action, is inapplicable. It is admitted, that the record is conclusive, upon all the matters which the judgment professes to decide. But if the Pennsylvania court had no cognisance of the subject-matter, if it belonged exclusively to another tribunal, if the alleged debt or claim was exclusively \*within the jurisdiction of the orphans' court of Mississippi, or if defendant [\*690 acted in such a capacity, that no court of common-law jurisdiction could decide between the parties upon the subject-matter of controversy, then the question presented is one of jurisdiction, and it is well settled, that a court, when called upon to enforce the judgment of another tribunal, may examine into and decide upon the question of jurisdiction. 4 Cranch 269.

The district court of Pennsylvania has admiralty jurisdiction; if this suit was brought on an admiralty decree, or on a stipulation, or on a bond to the marshal, and it should appear on the record, that the admiralty had no jurisdiction over the original cause of action, set forth in the libel, the objection might be urged anywhere, and at any time. The whole proceedings would be a nullity. 3 Cranch 331. So, if the objection on this ground appeared incidentally, the effect would be the same. In this case, then, the plea discloses a case beyond the proper jurisdiction of the court in Pennsylvania, and this we are permitted to do with effect.

It is said, these matters should have been pleaded in abatement, and not in bar. Pleas in abatement are such as go to the place where suit is brought, to any personal privilege of defendant, or to the form or species of action. If the party fails to plead in abatement, it is a submission to the process, and admits the jurisdiction, so far as that he is rightfully before the court. But if the plaintiff cannot sue anywhere, if his cause of action is not cognisable in the court where he sues, even express consent cannot give jurisdiction. The objection is fatal, and wherever it is shown to exist.

THOMPSON, Justice, delivered the opinion of the court.—This case comes up from the district court of the United States for the Mississippi district, upon a writ of error. The action, in the court below, was founded upon a judgment obtained in the district court of the United States for the western district of Pennsylvania, in the term of October, in the year 1823, for the sum of \$32,957.34. The declaration is in the usual form of an action of debt on a judgment. The defendant pleads in bar—1. That the plaintiff is not, and never was, administrator of John Wilkins, deceased. 2. That at the January term, in the year 1817, of the orphans' court for the county of Adams, and state (then territory) of Mississippi, he, the defendant, was

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duly appointed sole administrator of John Wilkins, deceased, and entered into bond with surety, and took the oath prescribed in such case, according to the \*statute in such case made and provided; and that he \*691] took upon himself the duty and office of administrator, and has continued to act as such administrator ever since. 3. That the judgment in the declaration mentioned, was obtained by fraud. To the first two pleas, a special demurrer was interposed, and issue to the country taken upon the third, and judgment rendered for the defendant, upon the demurrer; to reverse which, the present writ of error has been brought.

The first plea of *ne unques administrator*, has been abandoned, as altogether untenable; and the counsel on the part of the defendant in error, have rested their argument entirely on the validity of the second plea; and have treated this as a plea in bar to the jurisdiction of the court in which the judgment was rendered. It is a little difficult, to discover what is the true character of this plea; it can, in substance, amount to nothing more than an allegation, that the plaintiff was not the lawful administrator of John Wilkins. And in that respect, is but a repetition of the same matter set up in the first plea, and that too, in a more exceptionable form. For the conclusion is drawn argumentatively from the fact set up in the plea, that he, the defendant, was duly appointed sole administrator of John Wilkins in the orphans' court of the county of Adams, in the state of Mississippi; and thence to infer, that the plaintiff could not be the lawful administrator in Pennsylvania. Such a plea will not stand the test of a special demurrer. If it was intended, by this plea, to set up that the defendant was the first, and only rightful administrator of John Wilkins, and that the debt due from him, thereby became assets in his hands, the plea is defective, in not alleging when administration was granted to the plaintiff. The declaration alleges, that John Wilkins died a citizen of Pennsylvania; and from anything that appears to the contrary, administration might have been granted to the plaintiff, before it was to the defendant.

The simple fact that administration had been granted to the defendant in Mississippi, would not raise any question with respect to the jurisdiction of the court; and if it furnished any matter of defence on the merits, against the recovery, on the ground, that it was taking out of his hands assets, the administration of which belonged to him, it should have been set up in the original action. Nothing appears to invalidate the judgment upon which the present action is founded. The cause of action does not appear, and we cannot say, that the subject-matter was not within the jurisdiction of the court, when it was rendered; or that there was any disability in the plaintiff, to sue in that court; or that the judgment was void for any cause \*692] whatever. When the court in which the judgment is \*rendered has not jurisdiction over the subject-matter of the suit, or when the judgment is absolutely void, this may be pleaded in bar, or may, in some cases, be given in evidence under the general issue. But 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 a case, which existed anterior to the judgment. 1 Chit. Pl. 481. Hence, 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 former suit; but

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only to allege, generally, that the plaintiff, by the consideration and judgment of that court, recovered the sum mentioned therein. Chit. 354.

The original cause of action having passed *in rem judicatum*, how far the circumstance, that the defendant had taken out letters of administration in Mississippi, would have availed as a defence, against a recovery of the original judgment, cannot now be inquired into. It should have been set up in the former suit. But if the first administrator acquired a right to this debt as assets, and that matter was now open to inquiry, there is nothing appearing on this record, to show that the defendant had acquired any such priority. When letters of administration were taken out by the plaintiff, does not appear; nor was he bound to show that in his declaration. He was not bound to make *profert* of the letters of administration. This was so decided in the case of *Crawford, Administrator of Hargrave, v. Whittal*, 1 Doug. 4, note *a*. It was an action of *indebitatus assumpsit*, upon a judgment recovered by the plaintiff, as administrator, against the defendant, in the mayor's court at Calcutta. And the declaration alleged, that the defendant was indebted to the plaintiff, as administrator, in the sum therein mentioned, which had been adjudged to him as administrator, &c. The defendant demurred specially, and showed for cause, that there was no *profert* of letters of administration. But the court said, this was unnecessary, because in this action (upon the judgment), the plaintiff had no occasion to describe himself as administrator. If, then, it was a fact of any importance, in deciding the legal rights of the parties in this case, that administration had been first granted to the defendant in Mississippi, that should have been alleged in the plea, and no objection can be taken to the declaration, as containing the first fault in pleading.

That it is not necessary, in cases like the present, for the plaintiff to name himself as administrator, follows as matter of course, from his not being bound to make *profert* of \*letters of administration, and that when he does so name himself, it may be rejected, as surplusage, is [\*693 well settled by numerous authorities. In the case of *Bonafous v. Walker*, 2 T. R. 126, it was objected, that the action ought to have been brought by the plaintiff, as administratrix; because the judgment on which the party had been committed in execution, had been obtained by her as administratrix of her husband. But the court said, that it was unnecessary, for the instant the plaintiff recovered the judgment, it became a debt due her, on record, and was assets in her hands, for which it was not necessary for her to declare as administratrix. (See also Hob. 301; 2 Ld. Raym. 1215.) The case of *Talmage, Administrator, &c., v. Capel and others*, 16 Mass. 71, decided in the supreme judicial court of Massachusetts, is very full and explicit on this point. The plaintiff declared as administrator, &c., in debt upon a judgment recovered by him as administrator, in a court of common pleas, in the state of New York. The defendant pleaded in bar, that the parties, at the time of rendering the judgment, were all inhabitants of the state of New York, and that the plaintiff was appointed administrator in that state, and had not been so appointed in Massachusetts. To which plea, there was a demurrer and joinder, and the court held the plea bad. That the action, being on a judgment already recovered by the plaintiff, it might have been brought by him, in his own name, and not as administrator. For the debt was due to him, he being answerable for it to the estate of the

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intestate, and it ought to be considered as so brought ; his style of administrator being merely descriptive, and not essential to his right of recovery. That it was important to the purposes of justice, that it should be so ; for an administrator appointed in Massachusetts could not maintain an action upon this judgment, not being privy to it ; nor could he maintain an action upon the original contract, for the defendants might plead in bar the judgment recovered against them in New York. The debt sued for is, in truth, due to the plaintiff, in his personal capacity, and he may well declare, that the debt is due to himself.

If in the case before us, the judgment is considered a debt due to the plaintiff in his personal capacity, it is totally immaterial, whether the defendant was, or was not, administrator of John Wilkins, in the state of Mississippi. That could not, in any manner, affect the rights of the plaintiff. The plea, therefore, tenders an immaterial issue, and is bad on demurrer. In whatever light, therefore, we consider this plea, whether as to the matter itself set up, or to the manner in which it is pleaded, it cannot be sustained as a bar to the present action.

We are accordingly of opinion, that the judgment of the court  
\*694] \*below must be reversed, and the cause sent back, with directions to allow the defendant to plead *de novo*, if he shall elect so to do.

THIS cause came on, &c.: On consideration whereof, it is adjudged and ordered by this court, that the judgment of the district 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 district court, with directions to permit the defendant to plead *de novo*, if he elect so to do.