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*judgments had been recovered by default in the suits at law in favor of Patton. And to the second, that, [*160 according to the deposition, Talbott had no interest whatever in the result of the suit. He held the notes as a naked trustee, the proceeds of which, when collected, were to be applied to the payment of the debt of Witherspoon and Muirhead, his clients. He had no charge upon the fund, by any agreement or understanding with Patton, or his clients, for costs or commissions, as attorney or otherwise, that would make him an interested witness. There was no foundation, therefore, for the exclusion of his evidence. But it is unnecessary to pursue this inquiry, as the ground already stated sufficiently disposes of the case.

Decree below reversed, and bill dismissed, with costs.

ORDER.

This cause came on to be heard on the transcript of the record from the Circuit Court of the United States for the District of Kentucky, and was argued by counsel; on consideration whereof, it is now here ordered and decreed by this court, that the decree of the said Circuit Court in this cause be and the same is hereby reversed, with costs, and that this cause be and the same is hereby remanded to the said Circuit Court, with directions to dismiss the bill of complainant, with costs.

EDWARD P. FOURNIQUET AND HARRIET JANE FOURNIQUET,
HIS WIFE, APPELLANTS, v. JOHN PERKINS.¹

The jurisdiction of courts of probate in Louisiana is confined to cases which seek an account and settlement of effects presumed to be held by the representative of a succession. It has not jurisdiction over cases of alleged fraud or waste, or embezzlement of the estate.

The District Courts are courts of general civil jurisdiction.²

Hence, where a petition was filed in the Court of Probate against an administrator, praying that he might account and also be held liable for maladministration and spoliation, it was proper to transfer the case for trial to the District Court.

The judgment in the District Court, being generally for the defendant, must be supposed to cover the whole case, and not to have rested upon only a branch of it, viz., a release which was pleaded by the defendant.

¹ Further decisions, 14 How., 313; 16 Id., 82.

² See *White v. Cannon*, 6 Wall., 443-450; *Dow v. Johnson*, 10 Otto, 182.

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Therefore, where a bill was filed in the Circuit Court by the same petitioners against the same defendant, it was correct for that court to consider the question as *res judicata*.

The Louisiana decisions upon the jurisdiction of the Probate and District Courts examined.

THIS was an appeal from the Circuit Court of the United States for the District of Louisiana.

In the year 1818, Mary Bynum, the widow of Benjamin Bynum deceased, was living in the parish of Concordia, State of Louisiana, with four children, of whom Harriet, the wife of the appellant, was one.

*161] In August, 1818, Mrs. Bynum intermarried with John Perkins, the present appellee.

In August, 1824, Mrs. Perkins died.

In March, 1827, Perkins filed two inventories and appraisements in the Parish Court; one, of the estate of Benjamin Bynum, deceased, amounting to \$26,055, and the other of Mrs. Mary Perkins, deceased, amounting to \$6,575. About the same time, Perkins was appointed administrator of the estate of Benjamin Bynum, and guardian of the infant children.

In May, 1827, he filed an account, showing an administration of the estate as far back as 1817. The account was filed by him as *curator ad bona* and tutor to the minor heirs.

In 1834, after the marriage of Harriet with Fourniquet (the present appellants), Perkins stated his account as guardian of Harriet Bynum separately, bringing her in debt to him \$550.81, which sum Fourniquet paid by a check on the Planters' Bank. The following receipt was also subsequently given to Perkins by Fourniquet and wife:—

“Received, Natchez, May 27th, 1834, of John Perkins, in settlement of an account, debts due, and demands, whatsoever, to the present day, one hundred dollars in full; having, on a previous occasion, received from him, as guardian of my wife, Mrs. Harriet Fourniquet, late Miss Bynum, all the estate, portion, and share she inherited by the death of her late father, Benjamin Bynum, late of Concordia, Louisiana, deceased, or her mother, Mrs. Mary Perkins, of the county of Adams and State of Mississippi, and brothers, Benjamin S. Bynum, of the county of Claiborne, State last aforesaid, deceased, and do, by these presents, jointly with my said wife, release, and for ever discharge, the said Perkins, either as guardian, or otherwise, growing out of the estate aforesaid, or in any other manner or shape whatsoever, and forever exonerate him, by these presents, his heirs, executors, and administrators, therefrom.

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"In witness whereof, we have hereunto set our hands and seals, the day and year first above written, to wit, in the year of our Lord one thousand eight hundred and thirty-four, in the presence of Elijah Bell and John E. Maddox, whose names are hereunto subscribed as witnesses thereto, the said John Perkins being also personally present, and by these presents accepting.

"Signed, sealed, and delivered.

(Signed,)

E. P. FOURNIQUET, [SEAL.]
 HARRIET J. FOURNIQUET, [SEAL.]
 JOHN PERKINS. [SEAL.]

"Witness present:

ELIJAH BELL,
 JOHN E. MADDUX.

*" *State of Mississippi, Adams County:*

"Personally before me, Woodson Wren, a justice of [*162 the peace for the county of Adams, appeared E. P. Fourniquet and Harriet J. Fourniquet, his wife, and John Perkins, whose names are subscribed to the foregoing instrument, and acknowledged that they signed, sealed, and delivered the same, as their act and deed, on the day and for the uses and purposes therein mentioned.

"Given under my hand and seal, the 28th May, 1834.

(Signed,)

"WOODSON WREN. [SEAL.]"

In 1837, the parties mutually confirmed the above instrument by the following acknowledgment:—

" *State of Louisiana, Parish of Concordia:*

"I, George W. Keeton, judge of the said parish, duly commissioned and qualified, do hereby certify and attest, unto all whom it doth or may concern, that Harriet J. Bynum, wife of Edward P. Fourniquet, and Edward P. Fourniquet, and John Perkins, personally appeared before me, and acknowledged that they had signed and sealed the foregoing instrument of writing as and for their proper act and deed. To the due execution thereof, an act being requested, the same under my seal of office to serve as occasion may require.

"Done and passed at my office, in the town of Vidalia, on the thirteenth day of January, A. D. eighteen hundred and thirty-seven.

[SEAL.]

(Signed,)

J. W. KEETON, *P. Judge.*"

In December, 1838, Fourniquet and wife, then residing in

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the State of Mississippi, filed their petition in the Court of Probates for the parish of Concordia, in the State of Louisiana, preferring their claim against Perkins for a large amount of property alleged by them to have come to his hands, and alleging that the receipt obtained from them had been given through ignorance and error, and in direct contravention of a provision of the law, and was therefore void. They charged upon Perkins, both as administrator and *curator ad bona* of the children of Mrs. Perkins, spoliations to a large amount, and prayed that he might render a full account of his transactions with respect to the successions of Benjamin Bynum and Mrs. Perkins, and with respect to his guardianship, and be compelled to make full compensation to the petitioners. In February, 1839, Perkins filed his answer, first interposing three exceptions to the prayer of the petition. The two first of these exceptions it is not material here to notice; the third was in effect a plea in bar, insisting on *163] the receipt and release above set forth. The *answer followed the allegations of the petition, and controverted them all, alleging that the respondent had discharged his duty with fidelity.

A supplemental petition and answer were afterwards filed, which it is not necessary to state particularly.

On the 10th of December, 1840, the case was transferred, by consent, to the Ninth District Court, in the parish of Concordia.

On the 24th of December, 1840, the cause came on for trial in the District Court, when the jury found a verdict for the defendant, and the court thereupon pronounced judgment in his favor.

In June, 1844, Fourniquet and wife filed a bill on the equity side of the Circuit Court of the United States in and for the District of Louisiana. It claimed, in right of the wife, part of her inheritable portion of the estates of her father and mother, and prayed for a full account of the use and profits thereof from August, 1824, to May, 1827. It averred that Benjamin Bynum, the father of Harriet, left a large, unencumbered estate at his death; that it was out of debt, and had a large amount of money on hand and debts due to it at the time when Mrs. Bynum intermarried with Perkins; that Perkins took possession of all the property, maladministered and used it as his own; that he presented false and fraudulent accounts to the Court of Probate. The bill admitted the execution of the receipt and release, but charged them to have been obtained by false representations; it stated that a suit had been brought in the Probate Court by the complain-

ants, and that it had been transferred by consent of all the parties to the District Court, but protested that the District Court had no jurisdiction of the subject-matter thereof, and therefore its judgment could be no bar to the complainants' present suit. The bill then prayed for an account and general relief.

To this bill Perkins pleaded in bar the record, proceedings, and judgment of the District Court, averring that these embraced and concluded the whole matter set forth and complained of in the bill. The plea was supported by an answer, which denied all the allegations of the bill.

On the 10th of April, 1845, the Circuit Court pronounced the following decree:—

"This cause came on to be heard at this term, and was argued by counsel; and thereupon, upon consideration thereof, it was ordered, adjudged, and decreed, as follows, viz.: That the plea of the said defendant, by him pleaded in bar to the bill of the said complainants, be sustained and judged a good and sufficient bar to the said plaintiff's action as set forth in his bill, and that the said complainants' bill be dismissed, with costs."

An appeal from this decree brought the case up to this court.

*It was argued by *Mr. Fendall* and *Mr. Henderson*, for the appellants, and *Mr. Coxe* and *Mr. Downs*, with [*164 whom was *Mr. Mayer*, for the appellee.

That part of the argument for the appellants which related to the point upon which the decision of this court turned was as follows.

3d. But as matter of law, the jurisdiction of the court which pronounced the judgment pleaded in bar was a naked usurpation. It had no authority whatever, *ratione materiæ*. Its decision was therefore wholly void, and required not to be excepted to by plea. Louisiana Code of Practice, Art. 333.

And consent could not aid or give jurisdiction in such case. Id., Art. 92; 1 Mart. (La.) N. S., 704; 14 La., 179.

Such adjudication is void. 1 Pet., 340; 2 Pet., 169; 13 Pet., 511; 12 Pet., 719; 3 How., 762.

The Code of Practice was adopted on the 2d of September, 1825, and in force throughout the State on the 2d of October, 1825. 11 La., 515.

Before this code the probate powers were somewhat distributed among the courts, and not well regulated or defined. The reported cases, therefore, before the year 1825, furnish no rule as to the jurisdiction involved in the present

inquiry. See *Tabor v. Johnson*, 3 Mart. N. S., 674. Art. 924 of the Code of Practice provides, that "Courts of Probate have the exclusive power,—2. To appoint tutors and curators for minors, &c. 4. To appoint curators to vacant estates. 5. To make inventories and sales of the property of successions which are administered by curators, &c. 9. To compel such administrators (*all* such) to render an account when required," &c.

And by the act of the Legislature of March 25th, 1828, sec. 14, it is enacted, "That all suits brought against curators and other administrators during the time of their administration or curatorship shall, after the expiration of said time, and even after said curators and administrators have rendered their account to the heirs, be and remain in the Court of Probates,"—there to be continued and tried, &c. See the act in Code of Practice, ed. 1839, pp. 194–198, or Bullard and Curry's Digest.

So stands the State law, as to the exclusive jurisdiction in the Probate Court of the matters in the suit pleaded in bar, as adjudged in the District Court. The jurisdiction of District Courts is shown in Art. 126 of the Code of Practice, and that of the Parish Court in Art. 128.

In the case from the District Court, 6 Mart. N. S., 212, it was adjudged by the Supreme Court of Louisiana, in 1827, (after the Code of Practice was in operation,) that the Probate Court *had the exclusive jurisdiction to compel *165] the defendant, whose office of tutor had expired, to account and pay over money in his hands. And that the District Court was without such authority, and thereupon dismissed the case.

But the case in 7 Mart. (La.) N. S., pp. 105–107, decided in 1828, is precisely the case pleaded in bar. The suit was instituted in the Probate Court against the curator of a minor. The judge recused himself, and the suit, by consent of parties, was transferred for trial to the District Court. Held, that under the old code, where such consent was given, the adjudication was not void; but by the Code of Practice the Probate Court alone had power to try such cases, and consent of parties could not confer the power on the District Court. Judgment therefore annulled.

To like effect is the case in 4 La., 539, and 10 La., 219, and many more could be cited.

The case in 5 La., 355, which might seem to conflict with the previous decisions, refers in its judgment to an adjudication by the District Court made before the Code of Practice.

Mr. Coxe, for the appellee, argued the case orally, and *Mr. Mayer* filed an elaborate brief. The reporter selects the following, however, from the brief of *Mr. Downs*, because it enables him to state the points upon that side rather more succinctly.

The following points are submitted against the bill, and to sustain the plea and answer:—

1. The District Court of Louisiana has jurisdiction, and was competent in law to decide such a case, with the consent of the parties, and the judgment so rendered was valid. That court was one of general jurisdiction, extending to "all civil" cases above a certain amount. The language is clear and unequivocal:—"The jurisdiction of District Courts, excepting the court of the first district, extends over all civil cases where the amount in dispute exceeds fifty dollars." Code of Practice, Art. 125, *n.* 1, and the cases there referred to; *Tabor v. Johnson*, 3 Mart. (La.) N. S., 675; *Foucher v. Caraby*, 6 Id., 550; *Dangerfield v. Thruston*, 8 Id., 241; *Donalson v. Rust*, 6 Mart. (La.), 261; 12 Id., 235.

The reasoning of the Supreme Court of Louisiana in these cases is much strengthened by a paragraph in the 924th article, defining the jurisdiction of the Courts of Probate, which, it is contended, have exclusive jurisdiction of such cases. This paragraph, the fifteenth, provides that whenever the parish judge, who is judge of the Court of Probate, is in any way disqualified from trying such cases, "the District Court or parish judge of the adjoining parish shall have jurisdiction thereof."

*It may well be doubted whether Courts of Probate have jurisdiction on questions of tort, contract, or fraud and dangers, as in this case. [**166* *McDonough v. Spraggins*, 1 La., 64; *Hurst v. Hyde*, 6 Id., 451.]

2. The case was in fact tried by the judge of the Court of Probate, who was called into the District Court for that purpose; the process, depositions, and all the proceedings were in the Court of Probate up to the moment of trial, when it was by consent of parties transferred to the District Court for the purpose of a trial by jury.

This case, then, was in fact rather a reference of an intricate and long account to experts or arbitrators, under the provisions of the laws of Louisiana, and their award or finding or report could be objected to or set aside only in the way pointed out by law. Code of Practice, Art. 442, 443, 456.

But even if the judgment was invalid, and the complainants have a right to demand its nullity, they have no right to demand it in the Circuit Court of the United States. This

is not left in our system of jurisprudence to general principles or authorities at home or abroad, but in this, as in many other cases, our legislature has provided a specific and an appropriate remedy, and declared the tribunals in which alone it may be sought. Before the promulgation of the Code of Practice, in 1825, there was some doubt and uncertainty in the laws of Louisiana on that subject, but it was entirely removed by the admirable provisions of that code on this subject, under the title of "Nullity of Judgment." Art. 604-613, inclusive. *McCombs v. Dunbar*, 1 La., 21; *Melanc-ton v. Broussard*, 2 Id., 15.

It seems clear, then, when we apply the principles of these articles and decisions to the case before the court,—

1. That the judgment in this case is invalidated by none of the nullities which authorize its being set aside.

The third paragraph of the 606th article does not weaken this position. The judge of the District Court was not incompetent, either from the amount in dispute or from the nature of the cause, as shown in the authorities previously cited under the first head. If a Court of Probate had rendered judgment on a question of title, or contract, or fraud, or tort, being a court of special and limited jurisdiction, its nullity might have been demanded; but not so with the District Court, to which the law expressly gives jurisdiction in "all civil cases."

2. But even if there was nullity in the judgment, it might have been demanded in the same court by motion for a new trial or action of nullity, or by appeal to the Supreme Court under the restrictions and within the time provided by law, *167] but *could not be demanded in any other court, especially a court of the United States.

3. That the complainants cannot maintain this action of nullity, because they acquiesced in the execution of the judgment for nearly four years before this action was brought, not even asking a new trial, or taking any appeal. Art. 612.

Mr. Justice DANIEL delivered the opinion of the court.

Although the decree of the Circuit Court is accompanied by no opinion or argument setting out *in extenso* the grounds on which the bill of the appellants (the plaintiffs below) was dismissed, yet the foundation of this decree is plainly disclosed by reference to the plea of defendant below, referred to and sustained by the Circuit Court in its fullest extent. This plea assumes the position that the matters drawn into controversy by the bill had been previously litigated between

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these parties, and by a court of competent jurisdiction adjudged and settled against the complainants. The insertion of this plea here is deemed proper, as the character of the proceedings which enter into its averments, and constitute the bar set up thereby, will furnish the readiest key to the exceptions urged against the decree of the Circuit Court. The plea is in the following words:—

“In the Circuit Court of the United States for the Fifth Circuit and Eastern District of Louisiana.

“E. P. FOURNIQUET AND WIFE v. JOHN PERKINS.

“The plea and answer of the defendant, John Perkins, to the bill of complaint and discovery of the said complainants.

“This respondent, saving and reserving all benefit, &c., &c., shows, that, on or about the 15th day of December, 1838, the said complainants did institute a suit in the Court of Probates in and for the parish of Concordia, in the State of Louisiana, against this respondent, for the same cause of action as is set forth in the said complainants’ bill. That the said suit was duly and regularly transferred for trial and judgment upon all matters in issue therein to the District Court of the ninth judicial district of the State of Louisiana, held in and for the said parish of Concordia, when and where such proceedings and pleadings were had, and such issue joined, as embraced the whole matters set forth and complained of in and by the said complainants’ bill in this behalf filed and exhibited; and that in the further due and lawful proceedings in said suit, and upon final hearing thereof, judgment was rendered in favor of this defendant, upon all the matters in issue therein; all which will appear by a transcript of the record of the proceedings *in the said suit, [*168 duly authenticated, which is hereto annexed and exhibited, and made part hereof; which said judgment is final and conclusive between the said parties, as to all the matters of the said complainants’ bill; and this respondent pleads and sets up the same as a full and complete bar to the said bill, and prays that he may have the benefit thereof as such.”

If this plea be correct in form and in substance, there can be no doubt that, the subject now in controversy having become *res adjudicata*, the decision of the Circuit Court dismissing the bill of the complainants is vindicated from just exception. But exception is urged to that decision upon alleged legal grounds, said to be disclosed on the face of the plea and of the record adduced in its support, and that these being inadequate to sustain the decision, the latter cannot be

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supported. This is the material point in this cause, requiring, therefore, particular examination.

It is insisted for the appellants, that the proceedings instituted by them in the Probate Court of Concordia against Perkins, for an account of his administration of the successions of Benjamin Bynum and of Mrs. Perkins (formerly Bynum), and for an account of his guardianship of the wife of Fourniquet, as well as to render him liable for lands, slaves, crops, and moneys belonging to those successions and to the children of Bynum, were the proper proceedings for attaining the object sought thereby, and that no other tribunal in the State of Louisiana than the Probate Court could legally take cognizance of those proceedings; and that the transfer, therefore, of the case in question from the Probate Court to the District Court of the State, though by the consent expressly given of all the parties, could not confer jurisdiction on the latter, whose decision, consequently, would be void, and could not be pleaded in bar of this suit. Again it is said, that, conceding the power of the District Court to take cognizance of a case like the present, still the proceedings before this latter court and its decision did not embrace the rights and interests of the parties as set forth in the petition to the Probate Court, but were limited to the single question of the validity of the release executed by the complainants to the defendant on the 27th of May, 1834. With regard to this second ground of exception, it may be remarked, that there is some want of precision in the record of the District Court, as to the subjects embraced within the issue which seems to have been submitted to the jury by the court; but there is no more reason for supposing that issue to have been limited to the mere fact of the validity of the release mentioned, than there is for extending it to the whole matter in controversy. The petition brought up before *169] the court was the same presented to the Court of Probate,—covered the whole gravamen of the complainants' case. All their alleged rights and wrongs were embraced within its statements and prayers. This is not understood to have been a suit in equity, nor to have been one not cognizable by a jury. The fair presumption is, that the jury had the entire case before them. No exception to their cognizance of the whole case seems to have been interposed or thought of, and they rendered a general verdict for the defendant, to which verdict no exception was taken. On other grounds it seems inadmissible to suppose that the case submitted to the jury was limited to some specific fact or inquiry, or that the judgment of the court was necessarily

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founded upon any such fact alone. By the consent order transferring the cause from the Probate to the District Court, we find a very comprehensive arrangement as to the procurement and the forms of the testimony to be used; and in the entry of the judgment upon the record of the District Court we find the language,—“By reason of the law and the evidence, and the verdict being in favor of the defendant, it is therefore ordered, adjudged, and decreed, that judgment be rendered in favor of the defendant.” Thus it appears that the mind of the court was directed to the entire case before it, and not merely to an isolated question; that its judgment has embraced the whole cause as presented upon the petition, the exceptions, and the answer of the defendant, and although the proceedings which led to the decision may seem to be irregular and anomalous, that decision must stand as a judgment, binding between the parties thereto, unless shown to be void for want of jurisdiction in the tribunal which pronounced it, or that it has been reversed and annulled by some competent supervisory authority. This brings us back to the inquiry into the competency of the District Court of the State to take cognizance of the subject on which its decision was made.

By Art. 126 of the Code of Practice it is declared that the jurisdiction of the District Courts extends over all civil causes where the amount in dispute exceeds fifty dollars. The natural import of this provision is to render the District Courts of Louisiana courts of general jurisdiction in all civil causes not embraced within the above exception. But their powers have not been left to be now deduced for the first time from the language of the article above cited. They appear to have been defined and established by the supreme judicial authority of the State, and plainly distinguished from the functions of the Probate Courts with reference to subjects like those involved in the present case. The jurisdiction of the Courts of Probate appears to be confined to cases which seek a settlement *and an accounting for [*170 effects presumed to be in the possession of the representative of a succession, holding those effects in his representative character. Where the purpose is to charge the executor or curator personally for fraud, maladministration, waste, or embezzlement of the succession, the Court of Probate has not jurisdiction, but in such cases jurisdiction is vested in District Courts. The law appears to have been so ruled in many cases by the Supreme Court of Louisiana. A few of these will be adverted to. Thus, in the case of *McDonough v. Spraggins*, 1 La., 63, on an appeal from the

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Court of Probates, the point is thus succinctly stated by Mathews, Justice, in delivering the opinion of the court:—"This suit was commenced against the defendant in his capacity of curator, to obtain a judgment rendering the succession which he represents liable to pay and satisfy the plaintiffs' demand, and also to obtain a decree against him personally, on the event of the property being insufficient to pay all just claims against it, as having illegally administered the succession of the intestate." The Court of Probates decided against the application, and the Supreme Court, in passing upon that decision, lay down the law in these words:—"As an administrator *de son tort*, or as an intermeddler, he may be answerable to creditors for waste; but those pursuits against him must take place in a court of ordinary jurisdiction." The next case on this point is that of *Bouquette's Guardian v. Donnet*, 2 La., 193. There Porter, Justice, pronouncing the decision, says—"It appears to us this is a demand against the executor in his personal capacity for the value of the property sold by him contrary to law. In other words, for a tort done by him. We think the Probate Court had no jurisdiction of the case, and that the petition must be dismissed, with costs in both courts." In 6 La., 449 is the case of *Hurst v. Hyde, Executor*, in which it is ruled, that "the Court of Probates has no jurisdiction in an action for damages occasioned by an act of the executor not legally done in relation to the administration of the succession." The last authority which will be cited to this point is one of later date. It is the decision of the Supreme Court of Louisiana in the case of *Hemken v. Ludwig, Curatrix*, a decision made in 1845, and reported in 12 Rob. (La.), 188, upon an appeal from the Court of Probates of Ouachita. This was a petition brought to subject the curatrix for what, in the legal language of Louisiana, is called a maladministration of the succession, corresponding with the term *waste* at the common law. At page 191 of the volume, Judge Simon, in delivering the opinion of the court, thus states the law:—"It is clear, the Court of Probates was without jurisdiction to decide on the *mat-

*171] ters set out in the plaintiff's petition in relation to the defendant's personal liability. It is true she is sued as curatrix, but one of the principal grounds alleged against her from which she is said to have incurred personal responsibility is, that she has concealed property belonging to the estate and has converted it to her own use, whereby she has lost the benefit of her renunciation, and has become liable, personally, to pay the debts of her husband. The main

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object of the suit is to obtain judgment against her individually, and such was virtually the judgment appealed from. It is not pretended that the property which she failed to include in the inventory is in her possession as curatrix; but that she claims the same as her own, and refuses to give it up. It is well settled that courts of probate have no jurisdiction of a claim against an administrator personally for maladministration."

That the petition of Fourniquet and wife presented to the Probate Court, and subsequently transferred to the District Court, contained charges of maladministration cannot be denied. Indeed, with respect to the succession of Mary Bynum, the mother, and Benjamin Bynum, the father, of the petitioner, Harriet, and with respect to the release charged to have been fraudulently abstracted from both the petitioners, it alleged, not merely acts of maladministration, but instances of dishonesty and spoliation extraordinary in character and extent, and claimed of the defendant, in consequence thereof, a heavy personal liability for lands, slaves, and money, unjustly appropriated to his own purposes. From Art. 126 of the Code of Practice, we have seen that the jurisdiction of the District Courts of Louisiana extends over all civil cases where the amount in dispute is over fifty dollars; in other words, that these courts are courts of general civil jurisdiction. By the authorities cited from the Supreme Court of Louisiana, it is equally apparent that the Probate Courts are not courts of general, but of special, limited jurisdiction; and that from their cognizance are excluded cases of fraud, torts, waste, or maladministration generally, committed by executors and administrators; and that these cases belong peculiarly to the cognizance of the District Courts. Such being the conclusions warranted by a review of the law, and the facts of this case being of a character to fall directly and regularly within its operation, it may well be asked what just exception can be taken to the jurisdiction of the District Court in this case? It was not a jurisdiction depending at all upon *consent*, which, it is said, cannot invest a court with power not belonging to it by its constitution. It was a transfer of a litigation, by consent, from a tribunal confessedly without authority to decide it, to a tribunal in every respect competent to *take cognizance [*172 of the subject-matter,—whose peculiar province and duty it was to take cognizance of it. The exception, at the utmost, resolves itself into matter of form, which the parties were competent to waive, and which they did waive, for it is expressly stated upon the record, that the removal of the cause from the Court of Probate into the District Court was

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by the consent of all concerned. It cannot be pretended that the forms of pleading may not be dispensed with by suitors; as it is certain that the benefit of matters both of substance and form may be lost by mere neglect or omission, where no intention of the renunciation of either is apparent or ever existed. We must conclude that the District Court had rightfully jurisdiction of the cause removed into it from the Probate Court; that its judgment is and must be binding upon the parties to it, until it shall be annulled or reversed by a competent authority. The parties to that judgment, the subject-matter thereof, and embraced within the proceedings on which it was founded, being identical with those comprised in the bill in the Circuit Court of the United States for the Ninth Circuit, now under review, the judgment was well pleaded in bar of the claims set up by the bill, and the decree of the Circuit Court sustaining this plea we hold to be correct, and the same is therefore hereby affirmed.

ORDER.

This cause came on to be heard on the transcript of the record from the Circuit Court of the United States for the District of Louisiana, and was argued by counsel. On consideration whereof, it is now here ordered and decreed by this court, that the decree of the said Circuit Court in this cause be and the same is hereby affirmed, with costs.

JAMES ERWIN, PLAINTIFF IN ERROR, *v.* ALFRED J. LOWRY,
CURATOR OF ALEXANDER MCNEILL, DECEASED.

Where a petition for the seizure and sale of the mortgaged property of a deceased person was filed, in the Circuit Court of the United States for Louisiana, against the executor of that deceased person, which petition alleged the plaintiff to be a citizen of Tennessee, and the defendant to be a citizen of Louisiana, and the proceedings went on to a sale without any objection to the jurisdiction of the court being made by the executor upon the ground of residence of parties, it is too late for a curator, appointed in the place of the executor, to raise the objection in a State court against a purchaser at the sale, and attempt to prove that the Circuit Court had no jurisdiction over the case, because the executor was not a citizen of Louisiana. Evidence dehors the record cannot be introduced to disprove it.¹

¹ DISTINGUISHED. *Holmes v. Oregon &c. R. Co.*, 9 Fed. Rep., 244; s. c., 7 Sawy., 400. FOLLOWED. *Id.*, 237, 392. CITED. *Davis v. Gaines*, 14 Otto, 392; *Draper v. Town of Springport*, 15 Fed. Rep., 331. See *Hutchinson v.*

Green, 2 McCrary, 476; s. c., 6 Fed. Rep., 838.

A judicial sale and title acquired under the proceedings of a court of competent jurisdiction cannot be questioned collaterally, except in case of