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opinion of this court, that the statute law of New York, by which the health-commissioner of the city of New York is declared entitled to demand and receive, from the master of every vessel from a foreign port that should arrive in the port of said city, the sum of one dollar for each steerage passenger brought in such vessel, is repugnant to the Constitution and laws of the United States, and therefore void. Whereupon, it is now here ordered *and adjudged by this court, that the judgment of the said Court for the Trial of Impeachments and the Correction of Errors be and the same is hereby reversed, with costs, and that this cause be and the same is hereby remanded to the said Court for the Trial of Impeachments and the Correction of Errors, in order that further proceedings may be had therein, in conformity to the aforesaid opinion and judgment of this court. [*573]

Norris v. The City of Boston.

This cause came on to be heard on the transcript of the record of the Supreme Judicial Court of Massachusetts, and was argued by counsel. On consideration whereof, it is the opinion of this court, that the third section of the act of the legislature of the Commonwealth of Massachusetts of the 20th of April, 1837, entitled, "An act relating to alien passengers," under which the money mentioned in the record and pleadings was demanded of the plaintiff in error, and paid by him, is repugnant to the Constitution and laws of the United States, and therefore void. Whereupon, it is now here ordered and adjudged by this court, that the judgment of the said Supreme Judicial Court of Massachusetts be and the same is hereby reversed, with costs, and that this cause be and the same is hereby remanded to the said Supreme Judicial Court, in order that further proceedings may be had therein in conformity to the aforesaid opinion and judgment of this court.

JOHN TYLER, WHO IS A CITIZEN OF VIRGINIA, PRESIDENT OF THE UNITED STATES, AND SUCCESSOR IN OFFICE OF MARTIN VAN BUREN, AND TRUSTEE FOR THE USE OF THE ORPHAN CHILDREN PROVIDED FOR IN THE NINETEENTH ARTICLE OF THE TREATY WITH THE CHOCTAWS, OF SEPTEMBER, 1830, PLAINTIFF IN ERROR, v. JOHN H. HAND, JOHN HUDDLESTON, AND THOMAS G. BLEWETT, DEFENDANTS IN ERROR.

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A general demurrer by the defendant, assigning reasons why the plaintiff should not recover, must be considered and treated as a special demurrer, which is an objection for defects in form.

In this case, none of the reasons are valid as objections to a matter of form, but the court, nevertheless, will examine them as if brought forward to sustain a general demurrer.

Where bonds were given to the President of the United States, and his successors in office, for the use of the orphan children of certain Indians, and the declaration so averred, it was not a good cause of demurrer to allege that they were taken without authority of law. They were valid instruments, though voluntarily given and not prescribed by law; and as the demurrer admitted the facts stated in the declaration, the defendant was estopped from contesting the right of the obligee to sue.

*574] *So, also, it was not a valid reason to say, in support of the demurrer, that the bonds were given without consideration; and if there was any illegality in the transaction, it should have been pleaded in bar.

Where the defendant demurred, and assigned as a reason that the place of abode of the plaintiff, or his right to sue, was not set forth in the declaration, it was demurring in abatement, and the judgment of the court, if the demurrer be overruled, will be final for the plaintiff.

So, also, it is not good ground for the defendant to say that the plaintiff has shown no title to the bonds. It is not a good objection to a matter of form or substance.

Nor was it a good ground of demurrer to say that the *cestui que* use was not named in the declaration. The demurrer admits that the recital of the use in the declaration was correct, and it was not necessary for the plaintiff to set out the individual uses, when the uses were general in the bonds.

THIS cause was brought up, by writ of error, from the District Court of the United States for the Northern District of Mississippi.

The circumstances were these.

By the treaty of Dancing Rabbit Creek, of the 27th September, 1830, the Choctaw nation ceded to the United States the entire country they owned and possessed east of the Mississippi River. The nineteenth article (7 Stat. at L., 336, 337), allowing certain reservations to be made, by its sixth section provides as follows:—

“Sixthly. Likewise, children of the Choctaw nation, residing in the nation, who have neither father nor mother, a list of which, with satisfactory proof of parentage and orphanage, being filed with the agent in six months, to be forwarded to the War Department, shall be entitled to a quarter-section of land, to be located under the direction of the President; and with his consent the same may be sold, and the proceeds applied to some beneficial purpose for the benefit of said orphans.”

The number of orphans entitled to the provision above recited was one hundred and thirty-four; and the lands having been selected, the same were sold in quarter-sections at public sale in 1838, by Mr. Aaron V. Brown, under the direction of President Van Buren, for a sum amounting to

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upwards of one hundred and thirty-five thousand dollars. The purchasers were entitled to a credit of two, four, and six years, were to give security for the payment of the purchase-money, with interest, and no title was to be given until the whole amount of principal and interest was paid. Thomas G. Blewett became a purchaser of several pieces of the land, and, together with John H. Hand and John Huddleston, executed joint and several bonds to "Martin Van Buren, President of the United States, and his successors in office, for the use of the orphan children provided for in the nineteenth article of the treaty with the Choctaws of September, 1830." The bonds bore the *following dates, [*575 and were for the following sums of money, viz. :—

1838, May 28,	\$300	1838, May 28,	\$250
" " "	300	" June 6,	300
" " "	300	" " "	300
" " "	300	" " "	350
" " "	600	" " "	450

The bonds were given as security for the payment of the interest upon certain notes for the principal, which last-mentioned notes were recited in the above ten bonds.

In May, 1843, John Tyler, as President of the United States, brought an action of debt upon these bonds in the District Court for the Northern District of Mississippi, which exercised the jurisdiction of a Circuit Court.

The declaration contained a count for each separate bond, the first of which was as follows, viz. :—

"John Tyler, who is a citizen of Virginia, President of the United States, and successor in office of Martin Van Buren, and trustee for the use of the orphan children provided for in the nineteenth article of the treaty with the Choctaws of September, 1830, by attorney, complains of Thomas G. Blewett, John Huddleston, and John H. Hand, citizens of the State of Mississippi, being in the custody of the marshal, &c., of a plea that they render unto him the sum of thirty-four hundred and fifty dollars, which to him they owe, and from him unjustly detain; for that whereas the said defendants, by the way and style of Thomas G. Blewett, John Huddleston, and J. H. Hand, heretofore, to wit, on the 28th day of May, A. D., 1838, at, to wit, in the district aforesaid, by their certain writing obligatory, sealed with their seals, and now here to the court shown, the date whereof is a certain day and year therein mentioned, to wit, the day and year aforesaid, jointly and severally acknowledged themselves to be held and firmly bound to Martin Van Buren, President of the United States,

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and his successors in office, for the use of the orphan children provided for in the nineteenth article of the treaty with the Choctaws of September, 1830, in the sum of three hundred dollars, to be paid to the said Martin Van Buren, President as aforesaid, and his successors in office, in good and lawful money of the United States; and the said plaintiff avers that he is President of the United States, and a successor in office of Martin Van Buren, which said writing obligatory was and is subject to a condition thereunder written, to wit, that whereas the said Thomas G. Blewett, on the 28th day of May, 1838, at a public sale of the Choctaw orphan lands, had *576] and held in the town of Columbus, *became and was the purchaser of northwest quarter of section thirty-two, township twenty-three, range eight east, for which the said Thomas G. Blewett has executed his three several notes with Thomas McGee, John Huddleston, and John H. Hand, his security, to Martin Van Buren, President of the United States, for the use of the Choctaw orphan children provided for in the nineteenth article of the treaty with the Choctaws of September, 1830, to wit, one note dated the 28th day of May, 1838, and due the 28th day of May, 1840, for two hundred and fourteen dollars and twenty-six cents; one other note of same date and amount, due the 28th day of May, 1842; and one other note of the same date and amount, due the 28th day of May, 1844. All of said several bonds or notes, by the terms of said purchase, are to bear interest from their date at the rate of six per cent. per annum. Now, if said Thomas G. Blewett shall pay or cause to be paid interest at the rate of six per centum per annum on said several notes at the expiration of each and every year from the date of the same, in good and lawful money of the United States, at the office of the Commissioner of Indian Affairs, in Washington city, then this obligation to be void, otherwise to be good and binding as by the said writing obligatory, and the condition thereof will more fully and at large appear.

“Nevertheless,” &c. (setting out the breach).

To this declaration, the defendants filed the following demurrer, viz. :—

“And said defendants, by attorney, come and defend the wrong and injury, when, &c., and say that the plaintiff ought not to have or maintain his aforesaid action thereof against them, because they say that the declaration and matter therein contained are insufficient in law for the plaintiff to maintain his aforesaid action thereof against them, and that they are not bound by law to answer the same, and this they are ready to verify; wherefore, they pray judgment, and that

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the plaintiff be barred from having or maintaining his aforesaid action thereof against them, and according to the statute they state and show the following causes of demurrer, viz.:—

“1st. That there is no sufficient averment in the proceedings or record showing the citizenship or place of abode of the plaintiff, or that he is, by reason of the nature of his place of abode and citizenship, entitled by law to maintain said suit.

“2d. That the plaintiff shows no title to the bonds or obligations sued on, nor such an interest in the suit as will authorize him to maintain the same.

“3d. That the parties for whose use the suit is brought (who, *by the laws of Mississippi, are the real plaintiffs, and responsible for costs) are not named in the [*577 record.

“4th. That said bonds sued on were taken without authority of law, the said Martin Van Buren, President of the United States, having no such delegated power, and having no right to make the same payable to himself and his successors in office, or to assume to himself or his successors in office a legal perpetuity and succession unknown to the said office and not given by law.

“5th. That said bonds in the declaration mentioned appear, from the face of the pleadings, to have been given without any actual consideration, and by virtue of an assumption of authority on the part of said Martin Van Buren to dispose of said orphan Indian lands at public sale, without any legal right to sell the same. And because the said declaration is in other respects informal and insufficient.”

The plaintiffs joined in demurrer, and in December, 1844, the case was argued upon the demurrer, which was sustained by the court.

To review this judgment, a writ of error brought the case up to this court.

It was argued at the preceding term, and held under a *curia advisare vult*.

It was argued, on the part of the plaintiff in error, by *Mr. Clifford*, then Attorney-General, and on the part of the defendants in error, by *Mr. Eaton* and *Mr. Foote*, with whom were *Mr. S. Adams* and *Mr. Bibb*.

The *Attorney-General*, for the plaintiff in error, stated the facts in the case, and proceeded as follows.

For error it is assigned,—

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1st. That the suit was well brought in the name of John Tyler, a citizen of the State of Virginia.

2d. That the plaintiff, as the successor of President Van Buren, had title to the bonds sued on.

3d. That there was no necessity that the parties for whose use the suit was brought should be named in the record.

4th. That the bonds sued on were lawfully taken to Mr. Van Buren, as President, and his successors in office.

5th. That Mr. Van Buren had authority to dispose of the lands, and that there was no failure of consideration.

I. The declaration avers, that John Tyler, the plaintiff, is a citizen of the State of Virginia, President of the United States, and successor in office of Martin Van Buren. This is the usual mode of averring citizenship, and meets the requirements of the Constitution and the Judiciary Act on the subject.

*578] *II. The declaration avers, that the bonds were taken payable to Martin Van Buren, President of the United States, and his successors in office. If Mr. Van Buren had any title to the bonds in question while President, and as President, then Mr. Tyler, as his successor, had the same title. The title was not in Mr. Van Buren individually, but in him as President. The bonds were executed to him as President of the United States, and his successors; and the suit is well brought in the name of Mr. Tyler, who was in office at the time it was commenced. No principle is better settled than the one which asserts that no suit could be commenced in the name of Mr. Van Buren after he had retired from the office of President, and of course it must be brought in the name of his successor, according to the terms of the bond. This is the law and the contract. The point is destitute of all merit, as it seems to me, and need not be further examined.

III. There is no law requiring a plaintiff who sues as trustee to name in the record the parties for whose use the suit is brought; and if there were, it could not apply to a case like the present. It is presumed the demurrer is based upon the thirtieth section of the process act of Mississippi, which falls far short of sustaining the position assumed by the defendants. It provides that, "if any suit or action shall be commenced in any court of record in this State, in the name of any person for the use and benefit of another, the same shall not abate by the death of the nominal plaintiff, but shall progress to final judgment, and execution may be awarded thereon in like manner as if brought in the name of the person for whose use or benefit such suit or

action was instituted, who shall be liable for the costs of suit as in other cases." (H. & H. Miss. Laws, 584.)

The act nowhere makes any such requirement as is supposed by the demurrer. It authorizes the suit to progress, notwithstanding the death of the nominal plaintiff; and in such cases costs are allowed.

This action is therefore well brought in the name of the trustee, who must hold whatever may be recovered, subject to the disposition which the law authorizes and directs, for the benefit of the *cestui que trust*. This point, being unaffected by the Mississippi act, stands upon general principles, which are clearly against the defendants.

The description given of the *cestui que trusts* in the declaration follows the language of the bond, and is therefore sufficient. It might, however, have been wholly omitted, and, being entirely immaterial, may be rejected as surplusage, and cannot embarrass the suit.

*IV. That these bonds were lawfully taken, and made payable to the President for the time being, and [579 to his successors in office, there can be no doubt. To take securities for the lands sold, if it should be deemed most advantageous for the interests of the Indian orphans that they should be sold on credit, was not only an incident to the power to make the sale, but an obvious duty incumbent on the President. It was no more than an act of common prudence to see that the securities were executed in such form that payment could be enforced, if delayed beyond the period when he might expect to retire from office, and to leave the trust reposed in him in the hands of a successor. *United States v. Tingey*, 5 Pet., 115; *Lord v. Dall*, 12 Mass., 115; *Dugan v. United States*, 3 Wheat., 172; *Commonwealth v. Wolbert*, 6 Binn. (Pa.), 292.

V. The fifth ground of demurrer raises the main question involved in the case. The defendants contend that the bonds were given without any actual consideration; the President having, as they allege, no authority to dispose of the lands.

The first question is, Can this point be raised on the record as it stands? The declaration does not state of whom the purchase was made, or by what authority the sale took place. Until it otherwise appears, it must be presumed that it was made by virtue of a lawful authority. A bond under seal imports a consideration without its being expressed: and a want or failure of consideration is not sufficient at law to avoid a specialty. (*Vrooman v. Phelps*, 2 Johns. (N. Y.), 177; *Dorlan v. Sammis*, Id., 179; *Dorr v. Munsell*, 13 Id., 430.) A note in Petersdorff's Abridgment, Vol. IV., p. 613,

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cites a number of cases to the same effect, and defines the true rule on the subject.

It is a very great error, as it seems to me, to suppose that there is any want of consideration in these bonds appearing on the face of the record and pleadings. It is a familiar principle that the demurrer admits every thing that is well pleaded; and under this rule the point is not open to the defendants even by the Mississippi statute, which requires a special plea to authorize a party "to impeach any writing under seal, or to go into the consideration of the same." (H. & H. Miss. Laws, 589.)

But was it competent for the President to direct the sale of these lands? It is contended, on the part of the defendants, that he had no such authority, but that the Indian orphans took a fee-simple estate under the treaty, as tenants in common, and that they were in all respects competent to dispose of the lands thus vested in them, subject only to the consent of *the President for the time being. It is, *580] however, insisted for the plaintiff, that the terms of the provision do not in the least degree countenance any such construction of the treaty. It might, perhaps, be considered a sufficient answer to this proposition of the defendants, to ask the attention of the court to the fact, that no particular Indian, for whose benefit the lands were to be reserved and selected, is named in this provision. Even the number entitled was unknown, and had to be subsequently ascertained in virtue of the stipulation under which this pretension is set up.

The true intent and purpose of the provision seems to me to be apparent. It was to create a trust for the benefit of the orphans, of which the President of the United States was declared to be the trustee, and which he was to execute. The object of the trust was to create a fund for the benefit of the orphans, in which all were to participate equally. This is the leading idea in the provision. The construction contended for on the other side would defeat the end intended to be accomplished. The language of the provision is not, it is admitted, precise, but its true meaning and intention cannot well be mistaken. When the number of orphans entitled had been ascertained in the manner prescribed, and the list of them forwarded to the War Department, the lands were to be located under the direction of the President, and with his consent sold, and, with the like consent, the proceeds were to be applied for some beneficial purpose for the benefit of the orphans. The legal title to the lands in question was vested in the United States, and

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was held by them in subordination to this provision, giving authority to the President to sell and invest the proceeds for some beneficial object in accordance with the trust. That the legal title to the whole lands of the Choctaw nation east of the Mississippi became vested in the United States is clear, not only from the third article by which the cession is made, but from the fourteenth, which provides for reservations to such Choctaws as were desirous to become citizens of the United States, and especially from the provision which stipulates that grants in fee simple should issue from the United States to this class of Indians. The other reservations in the nineteenth article are to certain parties by name, and to certain classes of the Indians who had made improvements, and furnish no argument to illustrate this case. These reservations stand on a very different footing from those of the orphans. They were ascertained and certain, and constituted the homes in which the Indians lived. But in the case of the orphans, the lands had no identity, and, when selected, were to be sold to raise a fund for their benefit.

**Mr. Eaton* and *Mr. Foote*, for the defendants in error, rested their argument upon the point that the President had no power to order the sale; that the treaty secured to him no such authority, and that if he could be considered in the character of trustee, even then he was incapable by law to delegate the trust to another, and being so delegated, the act and every thing under it were void. This point was illustrated with great particularity. [*581]

Mr. Adams contended that the court below did not err in sustaining the demurrer, and that the judgment should be affirmed:—1st. For the reasons that the President had no authority to sell, had no title in himself, nor obligation upon others to make title; that he was not a trustee with power to sell for the benefit of the Indians, or otherwise; and that the contract is void for the want of proper parties and consideration. 2d. That the fee is still in the reservees, who cannot be deprived of it but by their own act, with the consent of the President, or the law. 3d. For the reasons assigned in the first, second, third, and fourth special causes of demurrer.

Mr. Justice WAYNE delivered the opinion of the court.

This suit is brought upon ten bonds payable to Martin Van Buren, President of the United States, and his successors in office, for the use of the orphan children provided

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for in the nineteenth article of the treaty with the Choctaw Indians of September, 1830.

The principal and interest due upon the bonds are demanded, and the plaintiff in the action, John Tyler, sues as successor of Martin Van Buren and trustee for the orphan children.

The defendants have demurred to the plaintiff's declaration, pursuing the usual form of a general demurrer, and have added thereto several special causes of demurrer. There is a joinder in demurrer. Upon these pleadings, the court below sustained the demurrer of the defendants. It is that judgment which is now before this court by writ of error.

In our opinion, there is error in the judgment. We shall reverse it, with an order to the court below to enter up a final judgment for the plaintiff.

The cause is not before us on the grounds upon which it was placed in argument by the counsel of the defendants, except as to the insufficiency of the facts averred in the plaintiff's declaration to entitle him to recover, or to enable the defendants to sustain their demurrer.

A demurrer is an objection made by one party to his opponent's pleading, alleging that he ought not to answer it, for *582] some defect in law in the pleading. It admits the facts, and refers the law arising thereon to the court. (Co. Lit., 71 b; 5 Mod., 132.) The opposite party may demur when his opponent's pleading is defective in substance or form, but there can be no demurrer for a defect not apparent in the pleadings. This being so, the question now is, whether or not, notwithstanding the objections in substance and form which the defendants have made to the plaintiff's declaration, sufficient matter appear in the pleadings, upon which the court may give judgment according to the very right of the case. Five special causes of demurrer are assigned; they were of course meant to be objections for defects in form, as none other can be assigned in a special demurrer. A general demurrer lies only for defects in substance, and excepts to the sufficiency of the pleading in general terms, without showing specially the nature of the objection. A special demurrer is only for defects in form, and adds to the terms of a general demurrer a specification of the particular ground of exception.

Our first remark, then, is, that neither of the special causes of demurrer alleged in this case is for a matter of form. They are as follows:—

“1st. That there is no sufficient averment in the proceedings or record showing the citizenship or place of abode of

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the plaintiff, or that he is, by reason of the nature of his place of abode and citizenship, entitled by law to maintain said suit.

"2d. That the plaintiff shows no title to the bonds or obligations sued on, nor such an interest in the suit as will authorize him to maintain the same.

"3d. That the parties for whose use the suit is brought (who, by the laws of Mississippi, are the real plaintiffs, and responsible for costs) are not named in the record.

"4th. That said bonds sued on were taken without authority of law, the said Martin Van Buren, President of the United States, having no such delegated power, and having no right to make the same payable to himself and his successors in office, or to assume to himself or his successors in office a legal perpetuity and succession unknown to the said office, and not given by law.

"5th. That said bonds in the declaration mentioned appear, from the face of the pleadings, to have been given without any actual consideration, and by virtue of an assumption of authority on the part of said Martin Van Buren to dispose of said orphan Indian lands at public sale, without any legal right to sell the same. And because the said declaration is in other respects informal and insufficient."

The case, then, is before the court upon a general demurrer, *in which must be considered the whole record, and judgment should be given for the party who on the whole appears to be entitled to it. (*Le Bret v. Papillon*, 4 East, 502.) It cannot be better shown in this case for whom the judgment should be, than by showing that the special causes of objection assigned, supposing them to have been made as matters of substance, are not sufficient in law to prevent a recovery by the plaintiff. We will first speak of the fourth and fifth, because they are the chief reliance of the defendants to show that no judgment can be rendered against them.

The fourth is, that the bonds given by the defendants were taken without authority of law. The fifth is, that it appears from the face of the pleadings they were given without any actual consideration. Neither of these points can be raised in this case by a demurrer. As to the first of the two, it was not necessary to aver in the declaration that the bonds were taken with the authority of law,—nor is it so averred. The bonds are made to the President of the United States and his successors in office, for the use of the orphan children provided for in the nineteenth article of the treaty with the Choctaw Indians of September, 1830. They are so recited in the

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declaration, and are admitted by the defendants to have been given by them. In point of law, then, they are valid instruments, though voluntarily given, and not prescribed by law. (*United States v. Tingey*, 5 Pet., 115.) It is not the case of a bond given contrary to law, or in violation of law, but that of bonds given voluntarily for a consideration expressed in them to a public officer, but not happening to be prescribed by law. Nor does it matter that they are made to the President of the United States and his successors in office, if the political official character of the President is recognized in them, and is so averred in the declaration. This cause of demurrer, whether well taken or not, admits the fact that the bonds were given, and estops the defendants from denying it as a matter of form, or from contesting by a demurrer the right of the obligee and his successors in office to sue the obligors at law. As to the alleged want of consideration for these bonds, as stated in the fifth special cause of demurrer, that affords no ground for a demurrer, as a bond cannot be avoided at law either for a want or failure of consideration, and any thing illegal in the consideration can only be pleaded in bar to the action. (*Fallowes v. Taylor*, 7 T. R., 475.)

But it is said that these bonds were given without any actual consideration, the President, as it is alleged, having no authority to dispose of the land. What of that? The declaration does not state of whom the purchase was made, or by *584] what authority the sale took place. The defendants admit that a sale did take place, that they were purchasers of the lands, and that they gave the bonds voluntarily, according to the terms of sale. Neither of these questions, then, can be raised under the demurrer of the defendants, and could not have been the foundation of the judgment given in their favor.

Having disposed of the fourth and fifth special causes of demurrer, we will now inquire, in their order, whether or not the judgment which was given can be sustained upon either of the other alleged grounds.

The first is, "That there is no sufficient averment in the proceedings showing the citizenship or place of abode of the plaintiff, or that he is, by reason of the nature of his place of abode and citizenship, entitled by law to maintain this suit." This cannot justify the judgment, because it is demurring in abatement. In such a case the plaintiff is entitled to final judgment. If the matter of abatement be extrinsic, the defendant must plead it. If intrinsic, the court will act upon it upon motion, or notice it of themselves. (*Dockminique v. Davenant*, Salk., 220.) But it does not follow, because a de-

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murrer in abatement cannot be available for the defendant, that it is to be rejected altogether from the pleading, if tendered in proper time. It will be received, but being erroneously put in, it entitles the plaintiff to final judgment, so that for this reason the judgment of the court below would have to be reversed.

Perhaps the best exposition of this point of pleading anywhere to be found is that given in *Furniss et al. v. Ellis and Allen*, in 2 Brock., 17, by Chief Justice Marshall. He says, "The cases quoted to show that the demurrer is not good, do not show that even in England it ought not to be received, if tendered in proper time. In 5 Bac. Abr., 459, it is said, if a defendant demur in abatement, the court will, notwithstanding, give a final judgment, because there cannot be a demurrer in abatement. This does not prove that the demurrer shall be rejected, but that it shall be received, and that the judgment upon it shall be final. A judgment on a plea in abatement, or on a demurrer to a plea in abatement, is not final, but on a demurrer which contains matter in abatement it shall be final, because a demurrer cannot partake of the character of a plea in abatement. Salk., 220, is quoted by Bacon, and is to the same purport, indeed in the same words. These cases show that a demurrer, being in its own nature a plea to the action and being even in form a plea to the action, shall not be considered as a plea in abatement, though the *special cause alleged for demurring be matter of [*585 abatement. This court will disregard these special causes, and, considering the demurrer independently of them, will decide upon it as if they had not been inserted in it." And then the Chief Justice adds, in respect to the particular case then in hand, that "these cases go far to show that the court would overrule the demurrer, and decide the cause against the party demurring, not that it should be expunged from the pleadings."

The second ground of special demurrer is, that the plaintiff shows no title to the bonds or obligations sued on, nor such an interest in the suit as will authorize him to maintain an action on the same. Neither fact stated is a matter of form, and cannot therefore be a cause for a special demurrer. But taking them as matters of substance, the insertion of them in the plaintiff's declaration is not necessary to show his right to sue and recover upon these bonds, or material for the defendants in their plea. This objection will not avail to sustain the judgment.

The remaining objection to be considered is the third in order stated, and may be as briefly and as satisfactorily dis-

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posed of as some of the rest have been. It is, that the parties for whose use the suit is brought are not named, who by the laws of Mississippi are the real plaintiffs, and responsible for costs. We remark, that for whose use the bonds were taken is not recited as personal to any of the Choctaw orphans, but as an aggregate for all such as were entitled to lands under the nineteenth article of the treaty. The demurrer admits that the bonds were so made by the defendants, and that the recital in the declaration is as the fact is expressed in the bonds. The inquiries, then, into who are individually the orphan children residing in the Choctaw nation, or who by name are entitled to a quarter-section of land, or any such averments in the plaintiff's declaration, were not necessary to entitle him to recover, and could not be shown either as a cause of special demurrer or be urged under a general demurrer, to prevent a recovery in this case.

All of us are of the opinion, that there is nothing in the causes of demurrer which were shown in argument, or in the special causes assigned, to sustain the demurrer, and thinking, as we all do, that nothing has been shown to lessen the obligation of the defendants to pay these bonds, or their liability to be sued for them at law, we shall direct the judgment of the court below to be reversed, with costs, and shall order the cause to be remanded to the District Court, with directions to that court to enter judgment in this case (principal and interest) for the plaintiff in that court.

*586]

*ORDER.

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Northern District of Mississippi, and was argued by counsel. On consideration whereof, it is now here ordered and adjudged by this court, that the judgment of the said District 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 District Court, with directions to that court to enter judgment in this case for both principal and interest for the plaintiff in that court.