under the order of the County Court of Franklin County, made in pursuance of the authority conferred on the court by the act of Assembly in question, and as the defendants claim to be innocent holders, and this is true for the purpose of the exception, the complainant has no standing in a court of equity.

DECREE AFFIRMED.

MAXWELL *v.* STEWART.

1. To make a record of a judgment valid upon its face, it is only necessary for it to appear that the court had jurisdiction of the subject-matter of the action and of the parties, and that a judgment had in fact been rendered.
2. A trial by the court without the waiver of a jury is at most only error. A judgment after such a trial is not necessarily void. Mere errors cannot be set up as a defence to an action brought upon it.
3. When the record of a case, a judgment in which is sued upon, shows that an attachment was issued in it and laid on property appraised at a less sum than the judgment was given for, a demurrer which makes, in virtue of the attachment, a defence of payment and satisfaction, is not good.
4. A seizure of personal property even to the full value of the sum claimed, under an order of attachment issued during the pendency of an action, is not necessarily a satisfaction of the judgment when afterwards obtained. The defendant must show affirmatively that it was applied to and satisfied the judgment.
5. A court will acquire jurisdiction of the person in a suit originally commenced by an attachment *in rem*, if the party against whom the claim is set up voluntarily appears and submits himself to the jurisdiction, demurs, pleads, and goes to trial on issues made.
6. Fraud cannot be pleaded to an action in one State upon a judgment in another.
7. *Nil debet* is not a good plea to an action upon a judgment in another State.

ERROR to the Supreme Court of New Mexico; the case being thus:

Stewart sued Maxwell in one of the courts of the State of Kansas, claiming $7000; and publication having been prop-

erly made, laid an attachment on certain personal property of the defendant of which the sheriff took possession, and which was appraised at $6825. What was finally done with the property did not exactly and by direct evidence appear. No redelivery bond, it seemed, was now existent. After the attachment had been made Maxwell voluntarily appeared and submitted himself to the jurisdiction of the Kansas court, in the case wherein the attachment issued. He filed, first, a demurrer, afterwards an answer, and finally went to trial on issues which the pleadings raised. Judgment was given against him for $7050 by the court, no jury, apparently, having been had in the case. He moved for a new trial, but did not get one. After the entry of judgment he got a rule on the sureties "in the redelivery bond," for the redelivery of the property attached; but as already observed, apparently no redelivery bond itself was now existent as part of the record of the suit.

In this state of facts, Stewart now sued Maxwell in a court of New Mexico on the judgment thus obtained in Kansas, setting forth in his declaration the record of the court there which disclosed the facts above mentioned, but not a great many more.

Judgment having been given for the plaintiff in the court of New Mexico, in which the suit was brought, and this being affirmed in the Supreme Court of the Territory, the defendant brought the case here, assigning these errors:

1. That the record sued upon was not full and complete, because it did not contain copies of certain papers—a summons which it appeared had issued, or affidavits of publication which had been made, &c.—which papers had been filed in the progress of the cause.

2. That it also showed that the judgment was rendered upon a trial of the cause by the court without the waiver of a jury.

3. That the judgment was satisfied in law because, as shown by the record, certain personal property of the defendant, worth $6825, was seized and taken into the possession of the sheriff under an order of attachment issued at the

time of the commencement of the action, and because this property had not been legally accounted for.

[This objection was first made by a demurrer to the petition which set forth the record in full, and afterwards by plea.]

4. That the court in Kansas did not have such jurisdiction of the defendant as was necessary in order to bind him by its judgment.

5. That the judgment sued upon was obtained by a false and fraudulent assertion of a contract, and by means of false and interested testimony; and—

6. That a demurrer had been sustained to the plea of *nil debet*, filed in the court below (the court of New Mexico), in the present suit.

Mr. J. S. Watts, for the plaintiff in error; Mr. P. Phillips, contra.

The CHIEF JUSTICE delivered the opinion of the court.

We will consider the errors assigned in the order in which they come before us:

1. The form of the record of a judgment is regulated by the practice of the court in which the action is prosecuted. To make such a record valid upon its face, it is only necessary for it to appear that the court had jurisdiction of the subject-matter of the action and of the parties, and that a judgment had in fact been rendered. All else is form only. The record sued upon in this case did show the existence of these essential facts.

2. A trial by the court without the waiver of a jury is at most only error. A judgment after such a trial is not necessarily void. Mere errors cannot be set up as a defence to an action brought upon it.

3. So far as the defence of payment and satisfaction was made by demurrer to the petition, it is enough to say that it did not anywhere appear in the pleadings, by averment or otherwise, that the value of the property taken under the attachment was sufficient to discharge the entire judgment.

On the contrary its appraised value was less than the amount of the judgment. If upon the case made by the pleadings the plaintiff could recover anything, the demurrer was not well taken. Issue was joined upon the plea presenting the same defence, and upon the trial of that issue it may have been shown that the property had been legally accounted for. In fact, it can be fairly inferred from the record itself, that the property had been restored before judgment to the possession of the defendant, upon the execution of a redelivery bond. It appears affirmatively that after judgment a rule was granted and served upon the sureties on such a bond.

But even if this were not so, it does not follow that the defence insisted upon was good. A seizure of personal property under an order of attachment issued during the pendency of an action is not necessarily a satisfaction of the judgment when afterwards obtained. Such a seizure is made for the purposes of security and, if the property is retained in the possession of the sheriff, he will be held responsible for the exercise of ordinary care for its preservation. If wasted, lost, or destroyed by his negligence he must account, and the amount for which he is liable on such account will, when ascertained, be applied toward the satisfaction of any judgment that may have been obtained. To that extent the plaintiff is made responsible for the sheriff, but such an application can only be made upon a proper showing by the defendant. There is no presumption which throws the burden of proof upon the plaintiff. No such showing was made or attempted in this case.

4. The record shows that the action was commenced by attachment and service had by publication. So far the action was in the nature of a proceeding *in rem*, and would bind only the property attached. But afterwards, as the record also shows, the defendant voluntarily appeared and submitted himself to the jurisdiction of the court. He at first filed a demurrer, then an answer, and finally went to trial upon the issues made by the pleadings. After judgment he moved for a new trial which was overruled. If these

statements appearing in the record are true, the court did have jurisdiction of the person of the defendant, and could bind him by a judgment. No evidence was introduced to contradict the record. Its truth is, therefore, presumed.

5. In *Christmas* v. *Russell*,* this court held that fraud could not be pleaded to an action in one State upon a judgment in another. With this we are satisfied.

Since the case of *Mills* v. *Duryea*,† it has been settled in this court that *nil debet* is not a good plea to an action upon a judgment in another State.

JUDGMENT AFFIRMED.

HAYCRAFT *v.* UNITED STATES.

Under the act of March 12th, 1863, relating to captured and abandoned property, and which enacted that any person claiming to be the owner of such property may, "at any time within two years after the suppression of the rebellion, prefer his claim to the proceeds thereof in the Court of Claims, and, on proof . . . that he has never given any aid or comfort to the present rebellion," receive the proceeds of the sale of such property, a person who did give aid and comfort to the rebellion, and who has not been pardoned until after two years from the suppression of the rebellion cannot, on then preferring his petition, obtain the benefit of the act, even though in cases generally the limitation of actions in the said court is one of six years. The question is not one of limitation but of jurisdiction. And the inability of an unpardoned rebel to sue in the Court of Claims does not control the operation of the statute.

APPEALS from the Court of Claims; the case being thus:

By an act of March 3d, 1863,‡ relating to the Court of Claims, it was enacted that—

"The said court shall have and determine *all* claims founded upon . . . *any* contract, express or *implied*, with the government of the United States."

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* 5 Wallace, 304.

† 7 Cranch, 481.

‡ Act reorganizing the Court of Claims, 12 Stat. at Large, 767; and see the act of February 24th, 1855, 10th id. 612, organizing the said court.