

delivered the opinion of the Court:

Mr. Justice

Blase, ~~et~~ This was an action of debt on an appeal bond ^{in the} with a penalty of twelve hundred dollars, brought by the plaintiff against the administrator of the deceased obligor, and the surviving obligor. There was a trial by jury, and a verdict rendered for plaintiff for twelve hundred dollars debt and eight hundred and twenty seven ^{and thirty-six cents} $\frac{36}{100}$ dollars, damages, on which the following judgment was entered: It is therefore commanded by the court that the said plaintiff have and recover of the said defendant the said sum of twelve hundred dollars for his debt, and the said sum of eight hundred and twenty seven ^{and thirty-six cents} $\frac{36}{100}$ dollars, for his damages; also his costs and charges by him him expended, and that he have execution therefor.

The points made are, that the entry of the judgment is erroneous in this, that it should have been for twelve hundred dollars the ~~debt~~ penalty of the bond to be discharged on payment of ^{\$827.36} the damages found by the jury.

This objection is well taken. Austin ^{vs} The People, 11 M. 452; Joley ^{vs} Cole, id., 562.

Another objection is, that the Court awarded execution against the administrator, when it should have been, that the

Pay the same in due course of adminⁿ & Treas^y.

A good judgment could not be
 understood in this action inasmuch as there
 is a misjoinder of parties. The administrator
 should not have been a party, and it was
 error to join her with the surviving obligor.
 The action should be against him alone. The
 key objection under, as to the form of
 the complaint shows conclusively, the
 improper joinder for which as against
 the survivor Eggertson, ^{he is charged de bonis propriis} ~~the joint and~~
~~and separate~~ ^{separately} ~~separate~~
~~should be against him as to the adminis-~~
~~trator, it must be against her as her~~ ^{Charged de bonis legationis}
~~representative character. Thus undeny-~~
~~ing plaintiff's property in the same~~
~~case.~~

This is no longer better than former
 place this, that you can be found in
 the same action a party had in his
 son in the with one had a administration on
 donation.

The rule is well settled, if a contract is severed on joint and several the administrator of the decedent may be sued at law in a separate action but he cannot be sued jointly with the decedent because one is to be charged de bonis

testator and the other as bonis propius
1 Ch. Pl. 50.

In some states, as in N. Carolina
by statute, an administrator of a deceased
joint obligor may be sued jointly with
the surviving obligor. Prosser vs. Clay
1 Haywood, 107.

The judgment is reversed.

~~In this opinion the whole Court concurred.~~

Judgment reversed.

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