

Pittsboro Dec 24th 1869.

Hon, A. W. Tourgee Esq. 7th St. D.

Dear Sir

I regret that it has become necessary for me to trouble you about matters that I had supposed were fully disposed of for at least as the action of your Hon. was concerned. I thought and still think that you made your opinions perfectly clear in reference to judgments against executors and administrators at the last term of our Superior Court and I supposed that you were fully understood by every other member of the bar. I find however that my friend Mr. Manning has been writing to you since Court in reference to judgments in certain cases pending in the Superior Court in which I was of course for the plaintiffs. I deeply regret that Mr. Manning had not thought proper to call my attention to his extreme dissatisfaction with those judgments.

and to the fact that he had written
 or intended to write to you urging
 a reversal of the judgment, before
 he did write in order that I
 might have had an opportunity
 of transmitting some accompany-
 ing explanations, in behalf of the
 plaintiffs - Mr Manning expressed
 a wish that I would let them see
 the judgment alluded to before
 I sent them off - I accordingly
 called at his office after I had
 drawn the judgment, and submitted
 them to his inspection as he is
 counsel for the defendant ^{in fact} had
 a right to ask - He expressed
 no disapprobation, except as to
 one of them - I thought his objection
 immaterial, but afterwards drew
 up the judgment somewhat ~~shorter~~
 to allay his anxiety, and to obviate
 all possible difficulties, as he requested
 although I thought and still
 think that the legal effect of
 both were the same. I would have
 been as well satisfied with one
 as the other. I sent the judgments to
 your Hon. They were before you
 for inspection and approval and

have been regularly signed by you
 have and file with the clerk
 whatever may be the object of the
 dependents. Whimby apprehend
 that the selling back of these
 judgments, can result in nothing
 else than delay, which is contrary
 to the policy of the law. For no
 matter how many trials may be
 had, we must come back to the
 same result, at last. The cir-
 cumstances in the case of Mary
 Fike vs John Wilgreen &
 Robert Green, Executors, vs
 John Green, John Wilgreen &
 J. J. Goldston are these, as the
 the docket will show - John
 vs John Green note, the execution
 of which is not denied -
 The executor Robert Green
 is the only one of the four depen-
 dents that plead the other
 three dependents are not re-
 sponsible by contract at all
 The case was referred at the
 time before the last to the
 Bench to state and report
 an account of the effect in the
 hands of said executor. The

did do - neither party filed any
 exceptions to the report - It appear-
 ed from the report as I thought
 and still think that the execu-
 tor had or ought to have had assets
 much more than sufficient
 to pay the plaintiffs debt -
 It further appeared upon the
 testimony of the executor B.
 or Green that the plaintiffs
 debt was the only one now
 due and owing from the
 estate of his testator, who died
 in 1863. - Of this part of the
 evidence is not reported by
 the report it certainly comes
 out upon the examination
 of the contesting executor
 before the referee - The report
 may not be as definite as it
 might have been if it was
 sufficiently specific for the
 purpose for which it was
 intended and unquestionable
 since the executor with af-
 fore more than sufficient to pay
 the plaintiffs debt and all
 other debts of the testator
 and I would have been perfectly
 willing to have put my

The affirmation of the plea of
 full administration and other
 debt of equal dignity upon
 the defendant. He fails to
 show any other debt due
 and owing from his estate or
 interest - how it be possible
 that the plaintiff in such a
 case would not have the right
 to his judgment for his whole
 debt of 500 dollars against
 the executor or administrator
 in his representative capacity
 and that if he should afterwards
 waste the assets, the judgment
 would not bind his property
 or be evidence of a devastat
 even after his refusal to pay.
 The debt and the notice of entry
 and issuing of execution by
 leave of the Court as required
 by the last Act therein because
 the judgment was entered for
 the entire debt specifically
 instead of a general judgment
 for a proportionate part -
 it is judgment that the plaintiff
 recover his proportionate part of
 a debt without ascertaining

and fixing the specific amount
seems to be no judgment at all
or at best a mere interlocutory
order upon which no execution
could issue and that upon the
coming in of the report from
the judge if probate another
and final judgment would have
to be entered at which term if
the Court would the parties sub-
mit their issues to the jury
when the first judgment was
rendered or the last if it is
apprehended that it is not the
object of the Act to deprive
the parties of a trial by jury.
The Act (as your Hon. knows)
provides that in suits pending
at the time it went into effect
the parties shall have the right
to strike out the former pleas
and change the issues, with their
formal amendment in order
to carry out the provisions of
the statute in other respects.
In the case of *Harold Hill* vs
John S. Chapman an administrator
of *Williston* and *J. B. Degross* and
the judgment is taken for the amount

proceed to do as the judge
 thought, under the circumstances
 Jones & Al
 I H. Headen
 come to any jury in Scotland
 upon the evidence of that report
 and the newspaper which the
 action was brought on —
 Crown it seems to me that upon
 every principle of law and
 allowing the construction
 given by your Honor to the recent
 act of Parliament in reference to
 executors and administrators to
 be the true one the plaintiff is
 entitled to a judgment for the
 full amount of her debt —
 If such is not the case then
 an Act of Parliament which was
 intended to perpetuate and
 widen that maxim of equity
 "that equality is equity" will
 serve no other purpose than
 to throw all the principles of
 pleading upon this subject
 into chaos — An action is brought
 against an executor or administrator
 for 500 dollars he pleads
 fully administered other debts
 to the amount of equal
 dignity — upon reference it is
 ascertained that he has paid
 to the amount of 1000 dollars

James H. & Co.

Petersboro

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