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Title: Letter from Roger B. Taney to Unknown Recipient

Date: November 30, 1832

Location: I-SpahrB-1965-17

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Washington Nov. 30. 1852

My dear Sir

The last week I staid at Annapolis, I was sick & unable to attend to business with the exception of one day when I made myself worse by attempting an argument in Court - and the same cause has prevented me from replying sooner to your letter directed to me here - I have however today examined the case to which you referred me in *2. Har. & Gill.* - That case is abundantly strict & adverse to the principles of justice. But the Court of Appeals will without doubt adhere to it. - They will not however I hope be disposed to extend its principles - & I think our case may be distinguished from it.

In the case referred to, the judgment was I presume against the Adm^r. in his representative character & was therefore only a judgment for assets - and

not a judgment in personam. In our case the
the decree against Mrs. Dawson is a decree in
personam for money found to be due from
her in the character of Ex. P., and upon that decree
we should not have been obliged to proceed against
the assets of the deceased, - nor to have suggested
a devastavit, but might have proceeded per-
sonally against her as far as debt found to be
due from her. Although therefore the bond states
the decree against her without naming her as
executrix - it yet states it truly & does not vary
from the decree actually made. - The bond
states a decree against her personally - and the
decree was against her personally, for a debt
for which she had become liable by rea-
son of the assets found to be in her hands.

If I am right in this position we can maintain
our action on the bond. - And I should deem
it the safest mode to unite all the plaintiffs
& Defendants in one suit. - as to the form of
specifying the breaches, you may consult your
own consciences & either state them in the
Declaration - or reserve them for the application

as you prefer. The legal results will be the same
either way. — And if I am right in the notions
above stated as to the character of the decree
against Mrs. Bowyer, we shall recover in
either form of pleading. —

But if the Court should hold that the decree
against Mrs. Bowyer, is not against her per-
sonally, then there is no form of pleading
in which we shall be able to maintain
an action against her on the appeal bond
according to the doctrine in *2. Herd & Gile*.
And there is no mode of pleading by which the
defendant could be precluded from availing
herself of the variance if it be a substantial
one. — Upon looking again at your statement I find that in
giving me the language of the decree
you state it to be the 11th July 1830. — You mean
I presume the decree of the Court of Appeals 1832
as it is upon the decree in that Court that the
breach is to be assigned. What is the language of
the Chancellor's Decree? for it is his Decree that
is recited in the bond — and if that is truly recited
then she is liable by the condition for the
performance of any decree which the Court
of Appeals may make in the premises, whether

it orders her to pay individually a certain sum
or to pay it out of the effects of the Decedent. For
the stipulation in the bond individually binds
her to perform any decree that the court of
appeals may make on that appeal. - The
difficulty in the case of Birchard & Saunders
was that the bond recited a different judgment
in the County Court from the one offered in
evidence. - Is the Chancellors decree against her
personally & is it correctly recited in the bond?
If it is - then I think we have nothing to
apprehend from the form in which the
Court of Appeals have decreed in the "Premises".

I am sensible that I have not stated my
notions to you in very lucid order, - but you
will I hope be able to comprehend them & will
accept as an apology for the manner in which
it is done, my present state of health which
is by no means suited for close legal disqui-
sitions. - Upon examining my papers I am
mortified to find that I have mislaid your
note to me at Annapolis - If my health per-
mits I shall return to Annapolis on Monday
next - and if you will take the trouble to repeat
what you stated in that note I will promise

to take better care of it - & hope to be able to answer it without so much delay. - I do not at this time remember its contents well enough to say whether it contained any enquiries not included in your last letter -

I am Sir, very respectfully

I truly yrs

B. B. Taney

1832

R. B. Jancy

Washington 30 char

1832
Nov. 30 TANEY, ROGER BROOKE

To

My Dear sir

The last week I staid at Annapolis, I was sick & unable to attend to business with the exception of one day when I made myself worse by attempting an argument in court - and the same cause has prevented me from replying sooner to your letter directed to me here. I have however today examined the case to which you referred me in 2. Har. 2 Gill. - That case is abundantly strict & adverse to the principles of justice. But the court of appeals will without doubt adhere to it. - They will not however I hope be disposed to extend its principles - & I think our case may be distinguished from it.

In the case referred to, the judgment was I presume against the admr. in his representative character & was therefore only a judgment for assets - and not a judgment in personam. In our case then the decree against Mrs. Davison is a decree in personam for money found to be due from her in the character of Ex. T-, and upon that decree we should not have been obliged to proceed against the assets of the Deceased, - nor to have suggested a , but might have proceeded personally against her as for a debt found to be due from her. Although therefore the bond states the decree against her without naming her as executrix - it yet states it truly & does not vary from the decree actually made. - The bond states a decree against her personally - and the decree was against her personally, for a debt for which she had become liable by reason of the assets found to be in her hands. If I am right in this position we can maintain an action on the bond. - and I should deem it the made to unite all the plaintiffs & Defendants in one suit.- as to the form of assigning the b chesm you may consult your own convenience & either state them in the Declaration - or reserve them for the replication as you prefer. The legal results will be the same either way.- and if I am right in the notions above states as to the character of the Decree against Mrs. Davison, we shall recover in either form of pleading.

But if the Court should hold that the Decree against Mrs. Davison, is not against her personally, then there is no form of pleading in which we shall be able to maintain an action against her on the appeal bond according to the doctrine in 2 Har. 2 Gill. And there is no form of pleading by which the defendant could be precluded from availing herself of the of it if it be a substantial one. Upon looking again at your statement I find that in giving me the language of the decree you state it to be the 11th July 1830. - You mean I presume the decree of the court of appeals 1832 as it is upon the decree in that court that the breach is to be assigned. What is the language of the chancellor's decree? for it is his decree that is recited in the bond - and if that is truly recited then she is liable by the condition for the performance of any decree which the court of appeals may make in the premises, whether it orders her to pay individually a certain sum or to pay it out of the assets of the deceased. For the stipulation in the bond individually binds her to perform any decree that the court of appeals may make on that appeal. - The difficulty in the case of Birckhead & Saunders was that the bond recited a different judgment in the county court from the one offered in evidence. - Is the chancellor's decree against her personally & is it correctly recited in the bond? If it is - then I think we have nothing to apprehend from the formin which the court of appeals have decreed in the "principus".

I am sensible that I have not stated my notions to you in very lucid order,- but you will I hope be able to comprehend them & will accept as an apology for the manner in which it is done, my present state of health which is by no means suited for close legal disquisitions. - Upon examining my papers I am mortified to find that I have mislaid your note to me at Annapolis - If my health permits I shall return to Annapolis on Monday next - and if you will take the trouble to repeat what you stated in that note I will promise to take better care of it - & hope to be able to answer it without so much delay, - I do not at this time remember its contents well enough to say whether it contained any enquiries not contained in your last letter -

I am Dr. sir very respectfully

& truly yrs.

R. B. Taney