

the Judge had judicially circumscribed the operation of a certificate under the *Pennsylvania* bankrupt law, within the limits of the State.

1796

By THE COURT :—Let the rule be made absolute.

BEACH *versus* LEE.

THIS was an action on the case, brought against the defendant, under the following circumstances, which were established by evidence on the trial. The defendant's wife, previous to her marriage, had executed a bond to the plaintiff; which, at the time of her death, remained unsatisfied. It appeared, however, that, in consequence of the marriage, the defendant had become possessed of, and still enjoyed, a considerable property, belonging to his wife, more than equal to the amount of the bond; that, during her life time, he had assumed to pay the bond, and had actually made several partial payments on account of it; and that he had promised to pay the remainder, even subsequent to her decease.

The action was founded on the express *assumpsit*; and though it was conceded by the plaintiff's counsel, that the defendant was not liable, since the death of his wife, on the bond itself; yet, he insisted, that the bond was good evidence to prove the existence of the debt, to which the special *assumpsit* applied. See 1 *Roll. Abr.* 351. *pl.* 35. *Bro. Abr. tit.* "Debt" *pl.* 180. 1 *Lev.* 25. *Corwp.* 290. *Bull. N. P.* 281.

But, upon the facts proved, it was agreed by the counsel for the defendant, and sanctioned by THE COURT, that the plaintiff was entitled to recover; though it was not admitted, that, without proof of the special *assumpsit*, the defendant would have been liable for the debt.

The cause was, accordingly, left to the Jury, merely to ascertain how much was the balance due on the bond.

*M. Levy* for the plaintiff. *Lewis* for the defendant.

WALKER *versus* DILWORTH, *et al.*

THIS was a summons in partition, on which the plaintiff, as tenant by the curtesy, demanded partition against the defendants, under the circumstances stated in the following declaration.

*Philadelphia County*, to wit :—*Ann Dilworth*, the elder, late of the said county, widow, and *Ann Dilworth* the younger, late