tainty should not be required in an indictment surely. Here the charge is that the defendant bet and wagered "goods, wares, and merchandise;" surely such a charge in an indictment does not contain requisite certainty. The judgment of the circuit court is affirmed.

KIRKPATRICK *et al.* v. S. W. RAILROAD BANK.

KNOXVILLE, SEPTEMBER, 1845.

VERDICT MUST RESPOND TO ALL THE ISSUES. The verdict of a jury must respond to all the pleas in the cause, and therefore, where, to an action of debt on simple contract, the pleas were *nil debet* and payment, a verdict that the defendants have not paid the t in the declaration mentioned, and assessing the plaintiff's deb is fatally defective, and the judgment must be reversed. (Citing Crutcher v. Williams, 4 Humph. 345, which see. See, also, Code, secs. 2872, 2873.)
[Cited in: Sneed, 18.]

Rogers, for plaintiffs in error.

Crozier, for the Bank.

Green, J., delivered the opinion of the court.

This is an action of debt on simple contract. The defendant pleaded *nil debet* and payment. The verdict of the jury is that "the defendants have not paid the debt in the declaration [46] mentioned, and assessed, etc.," taking no notice of the issue on the plea of *nil debet*. The question is whether the verdict is a response to the plea in this cause; and we think it is not. We do not think that a technical response is necessary; but, if its sense or legal effect makes a response to the pleadings, the court will sustain it and pronounce judgment upon it. Boon v. Planters Bank, 3 Humph. 84. But it has always been held that, when there are several issues, they must all be found by the jury before judgment can be pronounced. Crutcher v. Williams, 4 Humph. 345.

The verdict in this case is that the defendants have not paid the debt. That may be very true, and it may also be true that they never did owe it. That they have not paid does not negative the plea that they do not owe. If the verdict had been "that the defendants owe the debt," both

pleas would have been negatived, for, in common parlance, they could not owe if they had paid.

The judgment must be reversed.

SWAN, Administrator, v. HAZEN *et al.*

KNOXVILLE, SEPTEMBER, 1845.

JUDGMENT—PRINCIPAL AND SURETY—SCIRE FACIAS. The judgment against the principal debtor upon appeal, and the judgment against the surety of appeal, are in different rights, the one being a judgment of affirmance, the other an original judgment on motion, and need not, and, strictly speaking, ought not, to have been united, and a *scire facias* by the personal representative of the plaintiff, in the event of his death, to revive the judgment against the principal debtor, is good if it only recite that judgment.

W. Swan, for plaintiff.

W. G. Swan, for defendants.

Turley, J., delivered the opinion of the court.

Stewart obtained a judgment by affirmance, in the supreme court of errors and appeals at Knoxville, against Birdseye & Hazen, and at the same term, also, a judgment on motion against Jacob Peck, security for the appeal. Before the judgment was satisfied Stewart died. Moses M. Swan administered on his estate, and has issued a *scire facias* against Birdseye & Hazen to show cause why he should not have [47] execution against them upon the judgment, and it is now shown as cause that the *scire facias* is not as broad as the judgment upon which execution is sought to be had; that Jacob Peck is a party to it; and that the *scire facias* should have been against him, also. We do not think so; the judgment against Birdseye & Hazen, and the judgment against Peck, are in different rights—the one is a judgment of affirmance on appeal, the other is an original judgment on motion. They need not have been, and, properly speaking, ought not to have been, united.

We think, therefore, that the *scire facias* describing a judgment against Birdseye & Hazen is properly supported by a judgment of affirmance against them, although at the