

Case No. 583.

ASHTON V. FITZHUGH ET AL.

[1 Cranch, C. C. 218.]¹

Circuit Court, District of Columbia.

Dec. Term, 1804.

PLEADING—DECLARATIONS—NOT FOR SPECIFIC SUM—DEMURRER.

A declaration in debt for “\$103 1/3, or 31 pounds Virginia,” is bad on special demurrer. It must be for a sum certain.

At law. Special demurrer; because the declaration is that defendants render to plaintiff \$103 1/3, or 31 pounds of Virginia, which they owe and detain; which is uncertain, not being positive, nor certain what pounds are meant, whether of tobacco or anything else. It was also suggested by Mr. Caldwell, that it was uncertain because it stated that the defendants were bound, &c, and there are no defendants until after plea or defence taken. The writ was against Philip and McCarthy Fitzhugh, to answer to Henry Alexander Ashton, in a plea that they render to him “one hundred three dollars, thirty-three one third cents, or thirty-one pounds of Virginia, which they owe and detain.” The declaration was that H. A. Ashton complains of Philip Fitzhugh and McCarthy Fitzhugh, late of the district and county, aforesaid, yeomen, who were summoned to answer in this behalf of a plea that the said defendants render the said plaintiff one hundred three dollars, thirty-three one third cents, or thirty-one pounds of Virginia, which they owe and detain; for that the defendants, on 20th March, 1797, at &c, by their certain writing obligatory of that date, sealed with their seals, and now here exhibited, promised to pay the plaintiff on or before the 25th of December thereafter, sixteen pounds ten shillings of Virginia, equivalent to fifty-five dollars, for the hire of negro Charles, with suitable clothing, victuals and taxes, to the payment whereof they bound themselves in the penal sum of thirty-one pounds of Virginia, equivalent to one hundred three dollars, thirty-three one third cents; and the plaintiff avers they did not pay the said sixteen pounds ten shillings, or fifty-five dollars, according to the tenor of the said writing, whereby action accrued to have the said penal sum; yet though often requested, the defendants have refused and still refuse to pay the said thirty-one pounds, or one hundred three dollars, thirty-three one third cents, to the damage of the plaintiffs five hundred dollars, wherefore they sue, &c.

Mr. Woodward, for plaintiff.

Mr. Caldwell, for defendants.

THE COURT was of opinion that the declaration is too uncertain, but gave leave to amend on payment of costs of the term and a continuance if required by defendant.

¹ [Reported by Hon. William Cranch, Chief Judge.]