

Case No. 2,299.

CALDER v. PYFER.

[2 Cranch, C. C. 430.]¹

Circuit Court, District of Columbia.

Oct Term, 1823.

ACTION BY ADMINISTRATOR DE BONIS NON.

An administrator de bonis non cannot support an action in his own name for goods of his intestate sold by the previous administrator.

At law. Assumpsit for goods sold and delivered. The declaration stated that Henry Pyfer was attached to answer to William Calder, administrator of James Melvin, and contained the common counts of indebitatus assumpsit for sundry matters chargeable in account, and for goods sold by the plaintiff to the defendant, and the common money counts; and also a special count, stating that the defendant, in consideration that James Melvin, Junior, the administrator of James Melvin, Senior, deceased, had sold and delivered to the defendant certain goods and chattels of the value of \$301.87½, the property of the said James Melvin, deceased, undertook and promised the said James Melvin, Junior, to pay him the said sum of \$301.87½ when he should be thereunto afterwards required; that afterwards, and before the payment of the said sum of money, and before the impetration of the original writ in this case, the orphans' court revoked the letters of administration granted to the said James Melvin, Junior, and granted letters on the estate of the said James Melvin, Senior, deceased, to the plaintiff; wherefore the defendant became indebted to the plaintiff in the said sum of money, and, in consideration thereof, afterwards, etc., promised the plaintiff to pay him the said sum of money when afterwards he should be thereto required.

Mr. Marbury, for the plaintiff, cited the Maryland testamentary law of 1798, c. 101, ch. 14, 2, and *Hirst v. Smith*, 7 Term R. 182, and contended that there was a privity between the plaintiff and his predecessor, and that the plaintiff may recover upon the promise to the administrator, James Melvin, Junior.

Mr. Key, contra.

In the case of *Hirst v. Smith*, the debt was due to the intestate in his lifetime, and was

part of his assets. But here the defendant never was the debtor of the intestate. The administrator sold the property of the intestate to the defendant, who thereby became the debtor of the administrator.

THE COURT took time for consideration, and at the following term (THRUSTON, Circuit Judge, absent) were of opinion that the plaintiff could not sustain the action in his own name.

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

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